

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Noise Ordinance Amendment-Chapter 1, and Wireless Communication Ordinance Amendment-Chapter 27 Discussions

**Worksession Minutes
Tuesday, April 12, 2022
2:00 p.m.**

ATTENDANCE

The Board of Supervisors held a worksession that continued the discussions for amendments on Chapter 10-Noise Ordinance and Chapter 27-Wireless Communications Ordinance on Tuesday, April 12, 2022, as a hybrid meeting. In attendance were:

Board:	Laura Dininni, Chair	Staff:	Centrice Martin, Interim Township Manager
	Lisa Strickland, Vice-Chair		Jenna Wargo, Planning/Zoning Director
	Patty Stephens		Chris Albright, Chief of Police
	Hilary Caldwell		Eric Endresen, Finance Director

Others in attendance included: Betsy Dupuis, Solicitor.

I. CALL TO ORDER

Ms. Dininni called the Tuesday, April 12, 2022, worksession to order.

Ms. Martin welcomed everyone to the meeting and noted that the Board of Supervisors meeting had been advertised in accordance with the PA Sunshine Act as a hybrid meeting with an option to attend online utilizing zoom and the main meeting room for any public members to participant. Persons attending the meeting as members of the public and wanted to participate were asked to state their name, municipality, and topic. Members of the public were asked to be muted during the meeting and must be acknowledged by the Chair and then unmute for comment. Board members were asked to indicate their name when motioning or seconding a motion so that the minutes are accurate. Ms. Martin took Roll Call and there was a quorum. Ms. Strickland attended in person. Ms. Williams was not present at this time.

Ms. Dininni noted the intent of this worksession was to receive the information from staff that have been working on the both amendments and ask questions for clarification with no intent on any action at this time. These items can be added to future regular meeting agendas in short periods of time.

Ms. Dininni noted that she would conduct the meeting for the first item and that Ms. Strickland will take over for the second item for the remainder of the meeting.

II. CITIZENS INPUT - There were no comments.

III. UNFINISHED BUSINESS

1. CONTINUED DISCUSSION ON CHAPTER 10, HEALTH AND SAFETY, PART 3, NOISE ORDINANCE AMENDMENT

Chief Albright introduced the first item of business. Provided with the agenda was a draft noise ordinance that the Chief noted staff would like the Board's input on the proposed changes and any

potential changes before moving forward. In context, Ms. Dininni highlighted what the previous Board had discussed about the ordinance.

- Out of date;
- Majority from the 1980s;
- Growing pains;
- Structure;
- No longer serving its function;
- Did not acknowledge enforcement by the police – elaborated discussion on what ordinances are enforced by police.

Ms. Dininni said she liked what has been proposed in the draft noise ordinance. The zoning proponent, in Ms. Dininni's opinion, needs to be updated. Chief Albright noted he has discussed this ordinance with Zoning and Planning staff and shared the discussion. He explained the adjudication process that Planning and Zoning does for items brought before the Zoning Hearing Board (ZHB) and that it is much different from the police enforcement. Ms. Dininni had a question on the relief of the ordinance that would indicate how strict the rules are depending on a particular situation.

Questions included:

- Manager's authority to write temporary exemption permits from the noise ordinance, examples given;
- Different ways of seeking relief that are not in the zoning ordinance and would not have the same test or process as other items going before the ZHB for LDPs, and drifting across property lines.

Ms. Wargo was asked to weigh in on the discussion. Ms. Wargo was not aware that the ZHB was the authority for this ordinance and deferred to the solicitor for recommendation. Discussion followed on definition area of the ordinance. Ms. Dupuis noted there are conditional uses and that some municipalities that have noise ordinances have gone to great extremes to require people to do certain things relative to new development, i.e., noise test. According to Ms. Dupuis, the proposed noise ordinance that is in today's agenda reads for standard operations, the power to enforce it is vested with the Police; however, some language in the ordinance as noted by Chief Albright needs to be broader that we can talk about which is separate from zoning. Ms. Dupuis explained by in-large when creating zoning districts and setting them up against (next to) each other, some of this (noise ordinance language) is in consideration. Examples might be setting up an industrial district next to a residential property that has setbacks, zoning was not in place or exceptions were made, or rezoning. Other examples were given including the process with the Rahl property. Ms. Dupuis did not think a bifurcated process is necessary. The noise ordinance, in Ms. Dupuis opinion, needs to be enforced by the Police department. In addition, there are liquor code violations for noise that we have agreed to take on under our ordinance that has been approved in the past. This would make more sense to have under one process than the Liquor Control Board coming in and enforcing their codes. Ms. Dupuis noted that Patton Township has a wavier process in speaking to the Manager's prerogative on temporary exemptions. Ms. Dininni noted a process for relief should be listed in our noise ordinance. Examples were given. Discussion continued on noise issues, i.e., home occupations that need defined and/or considered as uses and place language in the ordinance for that item. Ms. Dininni asked Ms. Wargo to look into what home office occupations are allowed for zoning. Ms. Wargo noted there is a limited list for zoning.

Suggested proposed changes discussed:

- Time period limits;
- Power equipment – discussion addressing language to add: “intended for infrequent use in residential areas”.

Chief Albright suggested trying to find a happy medium. Board discussion followed on addressing language for the noise enforcement and other general ordinance language. Be cognizant of the reality that the right set of facts may not always work in your favor.

Ms. Dininni asked Ms. Wargo to help determine how zoning currently interacts with the noise ordinance and how to envision a better way to interact with it, i.e., decibel meters vs using buffers or a combination of both. Ms. Wargo stated the only time noise comes up in zoning is for conditional uses. Ms. Dininni asked Chief Albright to incorporate the changes into the noise ordinance amendment for a future review.

The discussion on the noise ordinance amendment concluded and Ms. Strickland conducted the next agenda item below.

2. CONTINUED DISCUSSION ON CHAPTER 27, ZONING, SECTION 710 WIRELESS COMMUNICATIONS ORDINANCE AMENDMENT

Ms. Wargo presented the document as provided with the agenda. The document is solely related to Act 50 amendments. Staff met and reviewed with Mr. Modricker the concerns on right-of-way (ROW) and other items of interest. A number of items were noted as being questions for the solicitor. There are a lot of unknowns of what can be done and what must be done based on the amendments.

Ms. Strickland asked, according to Act 50, what is it asking to change in the ordinance vs. the green text in the attachment? Ms. Wargo stated her understanding of the Act 50 amendments are reflected in the draft that is presented in the document provided today.

Ms. Dupuis noted she had a conversation with Ms. Martin and Ms. Wargo previously about this document and one of the solicitor’s satellite office’ is looking into this item for clients. The provisions of Act 50 went into effect regardless of whether municipalities had amended their ordinances. The intent of the legislature was to allow these uses with some areas of limited flexibility. Directed discussion for review was on zoning, ROW and use of public facilities. There has been no litigation on this issue, i.e., no enforcement. Beyond that, we cannot determine if a court will or will not disagree with what we decide to do.

Mr. Modricker discussed his comments provided for working in the ROW. Ms. Dupuis noted it was a good idea to segregate out the tower items for less confusion. Mr. Modricker explained for the Board the permitting process for work performed in the ROW in Ferguson Township. He recalled one wireless facility for review in the Township to attach to an existing pole. The amendment, in Mr. Modricker’s opinion, rewrites what is required; meaning the Township would no longer issue pave cuts in ROW occupancy permits. The zoning officer would issue a wireless facility permit that would most likely be reviewed by in-house engineering staff. Mr. Modricker had more directed discussion on verbiage of his comments under Act 50. i.e., not hindering what is required, but bolstering what the Township already requires in the ROW. Act 50 does not require restoration deposits, name of contractor doing the work or certifications to name a few; however, the Township does. Mr. Modricker was asked to provide comments not included in today’s agenda and did so via email to Ms. Dupuis for the solicitor’s team review. Ms. Martin noted the final review of comments was done after the website posting of the agenda packet.

Ms. Strickland thanked Mr. Modricker for his review and questions. Ms. Strickland asked if it was a requirement on page 1, number 1, in regards to the height of the wireless facility, noted changed from 40 feet to within 50 feet max when located in the ROW. Ms. Wargo confirmed it was and reviewed in detail with a Powerpoint view. Questions were asked about unused facilities - whether a service provider is required to notify the Township of discontinued use; is it only for that primary user; and take down unused facilities? Ms. Wargo discussed encouraging use of existing poles and limiting number of new poles being placed in the ROW. More directed discussion followed on secondary users, notification requirements and dismantle language to keep tight and understandable per Ms. Strickland's suggestion. Ms. Dupuis made the observation if one applicant discontinues use and another applicant wants to locate at the same place it would be one swapping out for another. Hypothetically, if applicant A puts in the pole and applicant B wants to co-locate at the same location, there will have to be language put in place for the applicant A-original permit holder and notice to Township of Applicant B-co-locator to work with original permit holder. Then have lease language in the document for if original applicant permit holder leaves and co-locator applicant wants to take over the same location. Discussion on what is permissible and allowable under Act 50. The intent of Act 50, in Ms. Dupuis opinion, is to not restrict these facilities within the public ROW. Ms. Dupuis agreed with Ms. Strickland that it should be a straightforward process. Ms. Strickland agreed and noted if the facility is no longer useful, to be removed and add it to the list.

Ms. Strickland asked about the new definition vs. the old definition for the non-tower based wireless communication facilities under § 27-1102. Discussion followed and it was determined that It appears to be more specific to what it applies to than what the old definition stated per the draft Ms. Wargo shared with the Board today. Ms. Dininni had a question on the handout from the packet provided. As noted above, the packet today is solely related to Act 50 that excludes Mr. Modricker's comments. Ms. Wargo noted Mr. Modricker's comments were included with all the amendments presented to the Board at the April 5th regular meeting. Following discussion on the draft changes, Ms. Dininni asked that the Board members be forwarded the document with all changes accepted except for the Act 50 changes marked and to follow-up by sending to the solicitor for review for any costs and responsibility we are allowed by law to capture in the document.

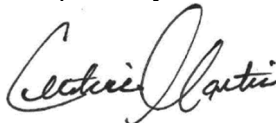
There were no other comments. In review, Mr. Strickland noted we need a clean copy with just the Act 50 legislation in the document. Ms. Dupuis will follow-up with other parties to answer the questions raised today.

IV. CALENDAR ITEMS – APRIL – as noted on the agenda.

V. ADJURNMENT

With no further business to come before the Board of Supervisors, Ms. Stephens motioned to adjourn the meeting. The meeting adjourned at 3:20 p.m.

Respectfully submitted,



Centrice Martin, Township Manager
For the Board of Supervisors

Date approved by the Board: 05-03-2022