

## PUBLIC HEARING

MONDAY, MARCH 9, 2020

6:45 P.M. (ACTUAL START TIME 7:09 P.M.)

**Roll Call** Walt Sackinsky presiding. Board members Ed Snee and Brian Lucot were present. Also in attendance were: Karen Fosbaugh, Township Manager; Dennis McDonough, Chief of Police; Aaron Laughlin, Director of Public Works; Irving Firman, Solicitor; and Tom Bonidie, Code Enforcement Officer;

**Purpose of Hearing** The purpose of the Public Hearing is to take oral or written testimony on the following ordinance:

**ORDINANCE NO. 695:** AN ORDINANCE OF THE TOWNSHIP OF SOUTH PARK, ALLEGHENY COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE NO. 556, AS AMENDED, ENTITLED “SOUTH PARK TOWNSHIP ZONING ORDINANCE,” TO AMEND THE DEFINITION OF “DISTRIBUTED ANTENNA SYSTEM (DAS)” AND STEALTH TECHNOLOGY, TO AMEND AND ADD PROVISIONS REGARDING RETENTION OF EXPERTS AND TO DEFINE AND ESTABLISH CONDITIONS FOR “SMALL WIRELESS COMMUNICATIONS FACILITIES” AND “MICRO-WIRELESS COMMUNICATIONS FACILITIES.

**Testimony** **Jennifer Halaszynski** – Ms. Halaszynski stated that she is present on behalf of Comcast. She asked if Mrs. Fosbaugh received the letter from their attorney, Mrs. Webber. Mrs. Fosbaugh replied that she has distributed the letter to the Board members. Ms. Halaszynski explained that Comcast is asking for an amendment to the ordinance. Comcast currently has six Wi-Fi hot spots in South Park, which do not provide telecommunication services. There are three reasons, supported by law, that Comcast’s Wi-Fi hotspots should not be included in the proposed ordinance: 1) Federal law defines Internet access service as an information service, not a telecommunications service. 2) Comcast’s Cable Franchise Agreement with the Township grants the right to maintain their cable system and place the wireless communications facilities on their plan. It is not mounted on poles or directly on their facilities. 3) The FCC Third Report and Order has not been upheld in court and has not been overturned. As it currently stands, it allows cable operators to use their facilities for other uses, such as Wi-Fi access points. Ms. Halaszynski stated that Attorney Voltz’s analysis is very inconsistent with the law. The Township is complying with one FCC order, but may be violating another FCC order. The Township may have a potential legal cost if the ordinance is enacted as currently written.

She asked that the original amendment language be inserted into the ordinance to provide clarity and prevent a violation of the FCC.

**Mr. Firman** – Mr. Firman stated that he appreciated Ms. Halaszynski’s comments, and he has read Ms. Webber’s letter. He commented that if Comcast is doing exactly as Ms. Webber’s letter states, he does not believe the ordinance would govern and regulate them. For that reason, it is not necessary to change the ordinance. Mr. Firman added that the ordinance, as it’s written, would withstand any type of legal challenge. It only applies to Comcast if they do things outside what was stated by their attorney. **Ms. Halaszynski** replied that with Mr. Voltz’s analysis, he attempts to say that Comcast is supposed to be regulated; and therefore, subject to permit fees on the Wi-Fi. **Mr. Firman** commented that it would depend on what they were doing. He added that he is not certain that what Mr. Voltz analyzed was what Ms. Webber placed in her letter. Comcast has not been turned down for anything that they have applied for; and if something was denied, it would be evaluated. If there was a legitimate dispute as to the activity that Comcast was performing, the Township would address it at that time. The ordinance does not regulate protected activities; it is, in fact, protected activity. **Ms. Halaszynski** commented that in the ordinance, it clarifies micro-wireless facilities. That is the definition that Comcast had originally requested. He groups it into the small cell wireless ordinance definition, which does not make sense. **Mr. Firman** stated that he feels it meets that standard, and that is the Township’s position. **Ms. Halaszynski** stated that they have had complete amendments across the state, which she sent to Ms. Fosbaugh. **Ms. Fosbaugh** commented that she shared the documents Ms. Halaszynski submitted with the Board and Mr. Firman. **Ms. Halaszynski** remarked that everyone interprets it differently, and Mr. Firman disagreed. He stated the words in the ordinance dictate what it means. **Ms. Halaszynski** commented that they will have to agree to disagree. **Mr. Lucot** asked to view the pictures of the hot spots. He commented that assuming Ms. Halaszynski is correct, and Mr. Firman is incorrect, the ordinance could possibly be amended at a later date when an issue may occur. **Ms. Halaszynski** commented that the next Board or Solicitor could interpret it completely different, and that is why they are requesting the clarity of the language be added to the ordinance.

**Close Public Hearing**

Motion by Mr. Snee and seconded by Mr. Lucot to close the public hearing. All members voted aye. Motion carried.

**Adjournment**

Motion by Mr. Snee and seconded by Mr. Lucot to adjourn the public hearing. All members voted aye. Motion carried.

**Time: 7:23 p.m.**