

ORDINANCE NO. 1998 - /

AN ORDINANCE OF THE TOWNSHIP OF MARION, BERKS COUNTY, PENNSYLVANIA, REGULATING THE LOCATION, INSTALLATION AND CONSTRUCTION OF COMMUNICATION TOWERS AND ANTENNAS AND COMMUNICATIONS EQUIPMENT BUILDINGS BY AMENDING THE MARION TOWNSHIP ZONING ORDINANCE TO PROVIDE FOR SAID USES IN CERTAIN ZONING DISTRICTS BY SPECIAL EXCEPTION; AND BY ADDING GENERAL REGULATIONS FOR SUCH USES.

WHEREAS, technical developments in the telecommunications field have provided new options for the expansion and delivery of communications services to the Township of Marion and its residents; and

WHEREAS, the Board of Supervisors of Marion Township recognizes that the Township of Marion and its police, fire and emergency medical services and its residents and visitors rely on wireless communications services for business and personal uses; and

WHEREAS, the Board of Supervisors of Marion Township therefore desires to encourage efficient and adequate wireless communication services within the Township of Marion while at the same time, protecting the public health, safety and welfare; and

WHEREAS, in an effort to facilitate efficient and adequate communications services and protect interests of its residents, the Board of Supervisors of Marion Township desire to regulate the construction and the placement of communications towers and antennae; and

WHEREAS, federal and state statutes and regulations impose certain limitations on the ability of the Board of Supervisors of Marion Township to regulate the placement and construction of communications towers and antennae; and

WHEREAS, it is necessary to amend the Marion Township Zoning Ordinance of 1979,

as amended, to make it consistent with the interests of the Township of Marion and its residents and consistent with the limitations imposed by federal and state statutes and their accompanying regulations relating to communications towers and antennae.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Marion, Berks County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1. The Marion Township Zoning Ordinance of 1979, as amended, ("Zoning Ordinance") is herein further amended to provide the following regulatory guidelines relative to the location, construction and installation of communication towers and antennas and communications equipment buildings as a use permitted by special exception within the hereinafter mentioned zoning district; to provide regulations and standards for the siting, construction, and installation of the same and to provide definitions in regard to the same as hereinafter set forth.

SECTION 2. The following definitions shall be added to Section 201, Specific Terms, of the Zoning Ordinance at the appropriate location in alphabetical order:

Communications Antenna: Any device used for the transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio service or any other wireless communications signals, including without limitation omnidirectional or whip antennas and directional or panel antennas, owned or operated by any person or entity licensed by the Federal Communications Commission (FCC) to operate such device. This definition shall not include private residence mounted satellite dishes or television antennas or amateur radio equipment including without limitation ham or citizen band radio antennas.

Communications Equipment Building: An unmanned building or cabinet containing communications equipment required for the operator of communications antennas and covering an area on the ground not greater than 250 square feet.

Communications Tower: A structure other than a building, such as a monopole or a self-supporting or guyed tower, designed and used to support communications antennas.

Height of a Communications Tower: The vertical distance measured from the ground level to the highest point on a communications tower, including antennas mounted on the tower.

SECTION 3. The following paragraph shall be added to Section 404 of the Zoning Ordinance as a use permitted by special exception within the A-R Agricultural Rural zoning district on land designated Prime Agricultural Land:

3. Communications towers, communications antennas and communications equipment buildings, all subject to the standards set forth in Section 528 of this Ordinance.

SECTION 4. The following paragraph shall be added to Section 406 of the Zoning Ordinance as a use permitted by special exception within the A-R Agricultural Rural zoning district on land not designated as Prime Agricultural Land:

7. Communications towers, communications antennas and communications equipment buildings, all subject to the standards set forth in Section 528 of this Ordinance.

SECTION 5. The following section shall be added to Article V, General Regulations, of the Zoning Ordinance:

Section 528 - STANDARDS GOVERNING COMMUNICATIONS TOWERS AND ANTENNAS AND COMMUNICATIONS EQUIPMENT BUILDINGS

The following standards shall be applicable to the siting, installation, and construction of communications towers, communications antennas and communications equipment buildings wherever the same may be respectively permitted under this Zoning Ordinance:

1. The applicant shall demonstrate that it is licensed by the Federal Communications Commission to operate a communications tower, if applicable, and communications antennas. If the use of such a tower or antenna also requires licensing by any other state or federal agency, the applicant shall submit evidence that it has obtained the same.
2. The applicant shall demonstrate that the communications tower and communications antennas proposed to be mounted thereon comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation and shall not adversely impact humans or animals whether by field current, radio waves or the like.
3. Communications towers shall comply with all applicable Federal Aviation Administration, Commonwealth Bureau of Aviation and any applicable Airport Zoning Regulations.
4. Any applicant proposing construction of a new communications tower shall demonstrate that a good faith effort has been made to obtain permission to mount the communications antennas on an existing building, structure or communications tower (hereinafter collectively referred to as Structures). A good faith effort shall require that all owners of potentially suitable Structures within a one-quarter (1/4) mile radius of the proposed communications tower site be contacted and that one (1) or more of the following reasons for not selecting such Structure apply:
 - a. The proposed antennas and related equipment would exceed the structural capacity of the existing Structure and its reinforcement cannot be accomplished at a reasonable cost.
 - b. The proposed communication tower or antennas and related equipment would cause radio frequency interference with other

existing equipment for that existing Structure and the interference cannot be prevented at a reasonable cost.

- c. Such existing Structures do not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - d. Addition of the proposed communication tower or antennas and related equipment would result in electromagnetic radiation from such Structure exceeding applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation.
 - e. A commercially reasonable agreement could not be reached with the owners of such Structures.
5. Access shall be provided to the communications tower and communications equipment building by means of a public street or easement to a public street. The easement shall be a minimum of twenty (20) feet in width and shall be improved to a width of at least 10 feet with a dust-free, all weather surface for its entire length.
6. A communications tower may be located on a lot occupied by other principal structures and may occupy a leased parcel within a lot provided that the larger lot meets the minimum lot size requirements for the Zoning District. A communications tower and antenna and a communications equipment building use shall not be subject to the minimum dimensional requirements of this Zoning Ordinance as those dimensions relate to area and distances within the leased parcel itself.
7. Township approval and recording of a plan of subdivision or land development shall be required for a parcel on which a communications tower is proposed to be constructed.
8. The applicant shall demonstrate that the proposed height of the communications tower and antenna is the minimum height necessary to perform its function. The maximum total height of a combined communications tower and antenna shall be two hundred (200) feet.

9. The foundation and base of any communications tower shall be set back from a property line (not lease line) in accordance with the minimum yard and setback requirements of the Township Zoning Ordinance in the district where the tower is located, or at a distance at least equal to the total height of the communications tower and antenna, whichever is greater.
10. The communications tower shall be landscaped so as to screen from abutting properties the communications tower foundation and base and the communications equipment building and the fence surrounding the site. The screen can be either a hedge or a row of evergreen trees. The screen shall be a minimum height of six (6) feet at planting, and shall grow to a minimum of fifteen (15) feet at maturity. In addition, existing vegetation on and around the site shall be preserved to the greatest extent possible. The communications tower shall be made to blend with its surroundings whenever possible.
11. The communications equipment building shall comply with the required minimum yard and setback requirements and with the maximum building height requirements of the applicable zoning district for a commercial accessory structure within that district.
12. The applicant shall submit a certification from a Pennsylvania registered professional engineer that the proposed communications tower and antenna will be designed and constructed in accordance with the current Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, published by the Electrical Industrial Association/Telecommunications Industry Association and applicable requirements of the Marion Township Building Code. Applicant is required to obtain a building permit from Township prior to commencement of construction or modification of any communications tower or communications equipment building. Furthermore, before a Certificate of Use and Occupancy will be issued, the applicant shall provide the township with an engineer's certification that the communications tower is constructed as designed.
13. The applicant shall submit a copy of its current Federal Communications Commission license; the name, address and emergency telephone number for the operator of the communications tower and antenna and a

Certificate of Insurance covering such tower and antenna evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence.

14. All guy wires associated with guyed communications towers and antennas shall be clearly marked so as to be visible at all times and shall be located within a fenced enclosure.
15. The site of a communications tower and communications equipment building shall be secured by a fence with a minimum height of eight feet and with a locked gate to limit accessibility by the general public.
16. No signs or lights shall be mounted on a communications tower and antenna except as may be required by the Federal Communications Commission, the Federal Aviation Administration or other governmental agency which has jurisdiction, including the Marion Township Zoning Hearing Board.
17. Communications towers and antenna shall be protected and maintained in accordance with the requirements of the Marion Township Building Code.
18. If a communications tower remains unused for a period of twelve (12) consecutive months, the owner or operator shall dismantle and remove the communications tower within six (6) months of the expiration of such twelve (12) month period.
19. Two off street parking spaces with a dust-free all weather surface shall be provided within or adjacent to the fenced area.
20. In order to reduce the number of communications towers needed in the Township in the future, any proposed communications tower shall be designed and made available to accommodate other users, including but not limited to, other communication competitors, police, fire and emergency services.
21. The applicant shall notify the Township of the name and address of any other users of the communications tower.

22. Building mounted communications antennas shall not be located on any single family dwelling or two family dwelling.
23. Building mounted communications antennas shall be permitted to exceed the height limitations of the applicable Zoning District by no more than twenty (20) feet.
24. Any applicant proposing communications antennas to be mounted on a building or other structure shall comply with and submit the following:
 - a. A certification from a Pennsylvania registered professional engineer that the proposed installation will not exceed the structural capacity of the building or other structure, considering wind and other loads associated with the antenna location.
 - b. Detailed construction and elevation drawings indicating how the antennas will be mounted on the structure for review by the Township Building Inspector for compliance with the Marion Township Building Code and other applicable law.
 - c. A copy of agreements and/or easements necessary to provide access to the building or structure on which the antennas are to be mounted so that installation and maintenance of the antennas and communications equipment building can be accomplished.
25. Communications antennas shall not cause radio frequency interference with other communications facilities located in the Township and shall not interfere with residential radio, television, cordless telephone, CB, ham radio and the like.

SECTION 6. All Ordinances or parts of Ordinances which are inconsistent herewith, except to the extent otherwise provided herein, are hereby repealed.

SECTION 7. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of

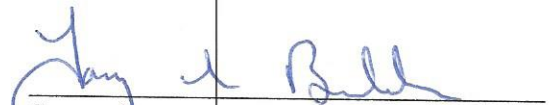
this Ordinance. It is hereby declared as the intent of the Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 8. This Ordinance shall become effective five (5) days after the date of its enactment.

ORDAINED and ENACTED as an Ordinance by the Township of Marion, Berks County, Pennsylvania, this 30th day of April, 1998.

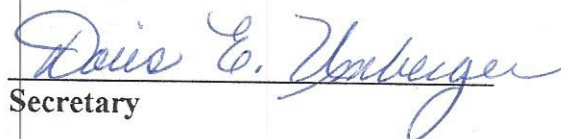
BOARD OF SUPERVISORS OF THE
TOWNSHIP OF MARION, BERKS
COUNTY, PENNSYLVANIA


Chairman


Supervisor


Supervisor

Attest:


Secretary

GENE M. VENZKE
ATTORNEY AT LAW
534 ELM STREET
READING, PENNSYLVANIA 19601

(610) 372-2172

FAX (610) 372-2165

May 1, 1998

Mr. Harry D. Barrell
Hanover Engineering
Associates, Inc.
2770 West Philadelphia Avenue
Oley, PA 19547

Re: Marion Township - Communications Ordinance

Dear Harry:

You should be aware that the Marion Township Board of Supervisors, at their meeting held on April 30, 1998, enacted Ordinance No. 1998-1 which regulates communications towers, antennas and equipment buildings within Marion Township. I have enclosed a photocopy of that Ordinance for your information. The Ordinance becomes effective five (5) days after April 30, 1998.

Very truly yours,

Gene M. Venzke

GMV:kmh
Enclosure

cc: Ms. Doris E. Umberger ✓

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GENE M. VENZKE
ATTORNEY AT LAW
534 ELM STREET
READING, PENNSYLVANIA 19601

(610) 372-2172

FAX (610) 372-2165

May 1, 1998

Berks County Law Library
Berks County Courthouse
633 Court Street, 10th Floor
Reading, PA 19601-3591

Re: Marion Township - Communication Tower Ordinance

Gentlemen:

Enclosed, as required by law, you will find a copy of Ordinance No. 1998-1 which was adopted by the Marion Township Board of Supervisors on April 30, 1998 to amend the Township Zoning Ordinance to permit communication towers by special exception as set forth therein. I have also enclosed my check in the amount of \$5.00 payable to the Berks County Law Library, which I understand to be the filing fee.

If you would have any questions concerning the above, please let me know.

Very truly yours,

Gene M. Venzke

GMV:knh

Enclosures

cc: Ms. Doris E. Umberger ✓

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GENE M. VENZKE
ATTORNEY AT LAW
534 ELM STREET
READING, PENNSYLVANIA 19601

(610) 372-2172

FAX (610) 372-2165

May 1, 1998

Berks County Planning Commission
Berks County Services Center
633 Court Street, 14th Floor
Reading, PA 19601-3591

Re: Marion Township - Communication Tower Ordinance

Gentlemen:

Enclosed, as required by law, you will find a copy of Ordinance No. 1998-1 which was adopted by the Marion Township Board of Supervisors on April 30, 1998 to amend the Township Zoning Ordinance to permit communication towers by special exception as set forth therein.

If you would have any questions concerning the above, please let me know.

Very truly yours,

Gene M. Venzke

GMV:kmh

Enclosure

cc: Ms. Doris E. Umberger ✓

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GENE M. VENZKE
ATTORNEY AT LAW
534 ELM STREET
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October 22, 1998

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Berks County Assessment Office
Berks County Services Center
Third Floor, 633 Court Street
Reading, PA 19601

Re: Communication Tower Assessment

Gentlemen:

I am the solicitor for Marion Township, Berks County, Pennsylvania. Marion Township had recently contacted your office to inquire if communication towers are subject to real estate tax based on an assessed value equal to the fair market value of the tower and the land on which the same is situate. The Township was informed by your office that such towers are not assessed for real estate tax purposes and that only an equipment building or fence would be taxed.

Please let me know the legal basis for the above conclusion. If a communications tower would cost in excess of \$60,000.00 to construct as a permanent improvement on land, the Township believes that the tower and land should pay real estate taxes based on its value as would any home or other improvement on land.

Very truly yours,

Gene M. Venzke

GMV:kmh

cc: Ms. Doris E. Umberger ✓
Edwin L. Stock, Esquire