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THROOP BOROUGH COUNCIL  
PUBLIC HEARING

DATE: OCTOBER, 12TH, 2018

TIME: 6:00 p.m.

PLACE: THROOP BOROUGH BUILDING  
436 SANDERSON STREET  
THROOP, PA 18512

MEMBERS:

RICHARD KUCHARSKI

ROBERTY MAGLIOCCHI

VINCE TANANA

MICHAEL CHORBA

CHARLENE TOMASOVITCH

WAYNE WILLIAMS

ANTHONY GANGEMI

LOUIS CIMINI, SOLICITOR

JOSPEPH TROPIAK, MAYOR

MARIA MCCOOL, RPR  
OFFICIAL COURT REPORTER

1 MR. KUCHARSKI: Can we have a roll  
2 call, please?

3 MS. O'MALLEY: Gangemi.

4 MR. GANGEMI: Present.

5 MS. O'MALLEY: Chorba.

6 MR. CHORBA: Present.

7 MS. O'MALLEY: Kucharski.

8 MR. KUCHARSKI: Here.

9 MS. O'MALLEY: Tomasovitch is  
10 absent. Williams.

11 MR. WILLIAMS: Here.

12 MS. O'MALLEY: Tanana.

13 MR. TANANA: Here.

14 MS. O'MALLEY: Bob Magliocchi is  
15 absent. Attorney Cimini.

16 ATTY. CIMINI: Present.

17 MS. O'MALLEY: Mayor Tropiak.

18 MAYOR TROPIAK: Here.

19 MS. O'MALLEY: And O'Malley is here.

20 ATTY. CIMINI: Okay, this is the  
21 time and date scheduled and advertised for a  
22 public hearing regarding the Borough's adoption  
23 of the zoning amendment known as the Wireless  
24 Infrastructure 5G Law Act 50.

25 Jack Varaly, the Borough zoning

1 consultant prepared a 25-page amendment that  
2 from what I understand is the greatest  
3 protection that the Borough can get for itself  
4 in relation to the new law.

5 So let the record reflect that at  
6 6:00 there are no members of the public in  
7 attendance. This was advertised in the  
8 Scranton Times for this date at 6 p.m. --  
9 October 12th at 6 p.m.

10 So I think what we should do next I  
11 know the Borough Zoning Officer, Andy Hegedus  
12 has been very involved with this along with  
13 Jack. But I believe Jack is participating via  
14 Zoom to give the Borough a summary of the  
15 amendment he prepared.

16 MR. KUCHARSKI: Okay.

17 MR. VARALY: Thank you. Do you want  
18 me to proceed now?

19 MR. KUCHARSKI: Yes.

20 MR. VARALY: Good evening, Council.  
21 The amendment before you tonight deals with  
22 wireless communication facilities. And what's  
23 new in this ordinance as compared to the prior  
24 regulations, is there is now a definition at  
25 the state level for what is deemed as a small

1 wireless facility.

2 It's defined in your ordinance and  
3 one of the things that have changed in terms of  
4 making this unique is you could now regulate  
5 cell equipment that's located in a public  
6 right-of-way, primarily on phones or poles and  
7 that was previously not allowed.

8 The tradeoff is by allowing them in  
9 terms of regulating where they go and being  
10 able to charge a fee. The way the state law is  
11 written, the small wireless facilities are  
12 permitted in all zoning districts. So there's  
13 no choice in terms of deciding which districts  
14 you would like to have them approved in or not.

15 The state made that determination  
16 through about a year ago so of negotiating with  
17 the wireless company Verizon and Mobile T.  
18 Now, if you take a look at Andy handed out some  
19 stuff in terms of Act 50 in terms of a printout  
20 that I had from a seminar that I went to.

21 If you go to page -- maybe it's 11  
22 or 12, there is photos of what is termed as a  
23 small wireless facility. I don't know if I  
24 gave you the right page number. You could see  
25 the examples of the different types of

1 wireless.

2 When you take a look at the example  
3 of the small wireless facilities, whether they  
4 are attached to a pole along the utility lines,  
5 that looks like a small garbage can. They do  
6 nothing to increase coverage.

7 What they do is to increase the  
8 capacity. And when you look at that report in  
9 one of the beginning sections it has in 2018  
10 there was a 150,000 bytes I think -- it's not  
11 bytes. It's an internet term for how many data  
12 was used using small wireless facilities.

13 And they've grown by so much that by  
14 the end of 2018, there was 150,000 nationwide.  
15 By the end of 2022, there should be about  
16 800,000. So they are growing by leaps and  
17 bounds. And the positive aspect is, by doing  
18 so you're not creating an aesthetic issue in  
19 terms of fouling up the skyline with another  
20 tower.

21 It's not to say that other towers  
22 won't be constructed, but it seems like this is  
23 the fix that the wireless industry needs for  
24 coverage. And when they talk about coverage at  
25 the seminar, they used a real simple example.

1           They said probably if you went back 10 years  
2           ago and you had -- went to any given house  
3           there would probably be wireless devices in  
4           there, maybe one cell phone, maybe one tablet.

5                     He said by the time we were well  
6           into this decade, it turns out that if you were  
7           looking at a home if there is three people  
8           living in, there's a good chance that there's  
9           three cell phones, at least one tablet and so  
10          on.

11                    So the wireless need or demand has  
12          grown by leaps and bounds. By adopting this  
13          ordinance it keeps cell towers and also  
14          wireless communication facilities that are  
15          attached to buildings in the same locations as  
16          they were approved as they were included in the  
17          zoning permit that was enacted in January.

18                    The only difference is, we changed  
19          those names from commercial communication to  
20          wireless communication. So all the regulations  
21          dealing with wireless communication facilities  
22          whether they are attached to something or  
23          freestanding have remained the same, different  
24          name but the regulations have not changed.

25                    The game change for this ordinance

1 is the small wireless facility by having to  
2 have an allowed in all zoning districts  
3 throughout the Borough. The only exception is  
4 if you have a development where all the  
5 development has underground utilities, in those  
6 cases you would be able to prohibit them in  
7 locations such as example, Schoolside Estates.

8 The other ones that you can change  
9 the regulations that you do have for the  
10 wireless facilities include insurance  
11 requirements indemnification the developer may  
12 have to provide on the part of the Borough to  
13 hold them harmless from any accidents or  
14 unforeseen circumstances that apply.

15 I think the ordinance is good. It  
16 would have been included in the original draft  
17 except this law just came about August 31st of  
18 2021. And I think if you adopt it the way it  
19 is drafted, it will be in compliance with the  
20 state regulations.

21 The state regulations pretty much  
22 for the most part mirror the Federal  
23 Telecommunication Act of 1996. There's some  
24 different twists in it. But essentially there  
25 is not much difference between the federal

1 requirements and the state.

2 That's about the best summation that  
3 I could give in terms of breaking down the 25  
4 pages in a few paragraphs or less. Some of the  
5 life of the ordinance is due to the fact that  
6 whenever I'm changing something, I have to  
7 include in the ordinance how it's currently  
8 written and then what it's being changed to.

9 So a lot of the material in the  
10 ordinance deals with change of verbiage but not  
11 change of regulations particularly for those  
12 that are tower based or attached to a structure  
13 or --

14 ATTY. CIMINI: And, Jack, recently  
15 you gave a presentation to the Planning  
16 Commission?

17 MR. VARALY: I did. I think this  
18 past Monday or last Monday?

19 MR. HEGEDUS: Last Tuesday.

20 MR. VARALY: I knew it was last, I  
21 just had the wrong day.

22 ATTY. CIMINI: And the Planning  
23 Commission submitted correspondence adopting  
24 and recommending that Council adopt the -- your  
25 zoning amendment.



1 MR. VARALY: That's correct. And I  
2 believe it was also sent to Lackawanna County.  
3 But I don't know if the Borough got a response  
4 back from Lackawanna County formally. I think  
5 informally Mary Liz Donato said there shouldn't  
6 be a problem with it because the Borough is  
7 just enacting regulations which it doesn't  
8 really have much choice in terms of how they're  
9 adopted (inaudible) same course that's been  
10 laid out.

11 MR. HEGEDUS: Jack, if I may,  
12 Lackawanna County Mary Liz Donato, Regional  
13 Planner said that the commission -- or the  
14 Authority is not meeting until 14th in  
15 Lackawanna County. And she is fine with the  
16 way ours is written for us to proceed as  
17 written. She put it in an e-mail for me.

18 MR. VARALY: Thank you.

19 MR. HEGEDUS: You're welcome.

20 ATTY. CIMINI: Does anybody on  
21 Council have any questions for Jack?

22 MR. GANGEMI: Yeah, probably. Let's  
23 see. So what are -- it sounds like you have to  
24 allow it.

25 ATTY. CIMINI: Yeah.

1 MR. GANGEMI: Right? This is just  
2 for small, not for the big towers.

3 MR. HEGEDUS: Correct.

4 MR. GANGEMI: What are some of the  
5 reasons you can deny.

6 MR. VARALY: The only reason you  
7 could deny it is if there is underground  
8 utilities where you have to show just cause as  
9 to why you're denying it. It can't be based  
10 upon electrowave frequency, the environment or  
11 anything like that because of all the  
12 operational features of a wireless facility are  
13 controlled by the state or federal government.

14 And you wouldn't have any  
15 regulations to supersede how they're regulated  
16 at that level. So as I mentioned earlier,  
17 there -- except for the fact that they can be  
18 prohibited from areas that have underground  
19 utilities, there is no other basis for saying,  
20 no, we don't want it here -- all zoning  
21 district meaning residential, commercial, and  
22 industrial.

23 MR. GANGEMI: Is there any limit to  
24 the number of wireless transmitters you could  
25 have in the Borough say of our size?

1 MR. VARALY: Can you repeat that,  
2 somebody? I couldn't quite hear it.

3 MR. GANGEMI: Is there any limit to  
4 the number of wireless facilities you could  
5 have in a Borough of our size?

6 MR. VARALY: No.

7 MR. KUCHARSKI: Any other questions  
8 for Jack?

9 MR. HEGEDUS: And, Jack, as I  
10 understand it, the law that was passed is  
11 actually a watered down best case scenario  
12 after negotiating. And the law as written  
13 prior to the one that was passed was even more  
14 of an issue for municipalities.

15 MR. VARALY: True because you didn't  
16 have any jurisdiction to issue permits and  
17 collect permit fees for those who were located  
18 in the public right-of-way previously. So the  
19 game changer -- another game changer in the  
20 sense is with zoning.

21 When I talk to people I say, zoning  
22 only regulates uses within the boundaries of a  
23 private property line. It cannot extend into  
24 the private right-of-way. This law has changed  
25 that.

1                   ATTY. CIMINI: Thank you.

2                   MR. VARALY: Oh, by the way, one  
3 other thing that I wanted to call to your  
4 attention, when you look at the -- both the  
5 printout and the ordinance itself, there is  
6 what is referenced as a shot clocks. So there  
7 are time limitations from the time the Borough  
8 receives an application depending upon the type  
9 to range anywhere from 30 to 90 days to render  
10 a decision on the application.

11                   And if you fail to render a decision  
12 within the specified time period, it becomes a  
13 deemed approval. Now, what Lou had just  
14 mentioned about a negotiated settlement, the  
15 law that is now passed was a compromise between  
16 the State Borough Association of Pennsylvania  
17 and the wireless providers.

18                   So nobody got everything that they  
19 wanted, but I think it's still a fair shake in  
20 the sense that zoning is still under --  
21 wireless communication facilities are still  
22 under the jurisdiction of municipalities. They  
23 didn't take the local zoning control away from  
24 the municipalities.

25                   MR. HEGEDUS: And, Jack, do you want

1 to just mention the fee structures that we'll  
2 have to adopt?

3 MR. VARALY: Yeah, they give you  
4 recommended ranges of fee structures. If you  
5 hold on one second, it's in the printout that I  
6 gave you.

7 MR. HEGEDUS: And some of these are  
8 recurring fees as well too right, Jack? It's  
9 an annual fee.

10 MR. VARALY: Correct.

11 MR. HEGEDUS: So we're going to get  
12 I believe up to \$270 -- municipals may exceed  
13 the \$270 fee upon a showing that actual  
14 reasonable costs are in excess of \$270 per year  
15 for right-of-way use fees. So it will be an  
16 ongoing every year for every pole.

17 MR. CHORBA: There'd probably be one  
18 on every pole.

19 MR. VARALY: And probably what  
20 they'll do is, you might have a company coming  
21 in that wants to put four or five small  
22 wireless facilities in one location; and  
23 there's ways that -- I don't have the sheet in  
24 front of me on the cost.

25 It gives you -- in the printout that

1           Andy gave you -- limitations on what is  
2           considerable reasonable fees to charge for  
3           small wireless communication facilities.

4                   MR. HEGEDUS: That is a next step  
5           for us after adopting this.

6                   MR. VARALY: And you could do that  
7           by resolution. I'm going to talk to Andy and  
8           to Lou on that. The ordinance would come first  
9           and that will be followed by a resolution to  
10          propose a fee schedule.

11                   MR. HEGEDUS: Jack, one other thing.  
12          I believe it's in the deck here too is that  
13          there is a limit to the number of permits they  
14          could submit at any one given time.

15                   MR. GANGEMI: Yeah, it says one.

16                   MR. HEGEDUS: It's one to five  
17          generally on a permit, yeah. So you're not  
18          overwhelmed. There is some standards that have  
19          been set in there.

20                   MR. TANANA: The one thing is, Jack,  
21          when it comes to repairing the right-of-way, we  
22          have a very stringent pave cut ordinance and,  
23          you know, refurbishment ordinance of, like,  
24          sidewalks. And we fine the utility companies  
25          pretty heavily.

1 I believe this restricts us to a  
2 certain amount for the small wireless facility  
3 contractors. Now would that mean that other  
4 utilities could say, wait a second here, you  
5 know --

6 MR. HEGEDUS: They are not covered  
7 under Act 50.

8 MR. VARALY: No, they are not  
9 covered under Act 50. And the other thing with  
10 regard to potential damage to streets, don't  
11 forget they are not cutting into any  
12 underground sidewalks or anything. They are  
13 overhead.

14 And they're pretty small. I mean,  
15 27 cubic feet isn't tiny. But by the same  
16 token, it's something that your eye  
17 automatically won't necessarily go to when you  
18 look up towards a pole.

19 MR. TANANA: Right. But I believe  
20 if they have to put a new pole in the  
21 right-of-way and they do have to dig up a  
22 sidewalk and they just leave it -- let's say it  
23 was concrete.

24 They leave it macadam for a year,  
25 it's in there that we can only charge them

1 reasonably, you know, where pretty much when UG  
2 and everything came through here, you know, we  
3 pretty much with the pave cutting and  
4 restoration ordinance if they dig up a  
5 sidewalk, if they don't fix it in a certain  
6 amount of time, they're getting fined -- what  
7 is it, Mike, 500 or --

8 MR. CHORBA: I forget what the  
9 fine is.

10 MR. TANANA: I think \$500 a day.  
11 So, I mean --

12 MR. GANGEMI: Right. But do these  
13 go on existing poles or do they go on new?

14 MR. HEGEDUS: They could go on both.

15 MR. GANGEMI: They could come in and  
16 put a new pole in.

17 MR. TANANA: Yes. Yes. And that is  
18 my concern.

19 MR. HEGEDUS: Sorry to interrupt  
20 you. That's basically what's going on now in  
21 Scranton and Dunmore. They are banging new  
22 poles right in.

23 MR. TANANA: That's my only concern  
24 because we have --

25 MR. VARALY: Vince, to answer your



1 question, they would still be governed by any  
2 existing ordinance in the township. I mean,  
3 when you say they are exempt from getting  
4 zoning approved for the ones that are the small  
5 facilities, it doesn't exclude them from  
6 complying with any and all applicable  
7 regulations of the Borough.

8 MR. TANANA: So if they are damaged  
9 and they are putting a pole in -- and maybe the  
10 way we could best address that is when we're  
11 doing the fee schedule if we have the fee  
12 schedule listed and then have an asterisk at  
13 the bottom and say please refer to -- and refer  
14 back to that ordinance that you mentioned for  
15 any damages. So they're going to be  
16 responsible to repair or reimburse the Borough.

17 MR. HEGEDUS: Pave cut ordinance  
18 number 5 of 2021.

19 MR. VARALY: Okay.

20 MR. GANGEMI: And if it was -- if  
21 one of these facilities was on the existing  
22 pole say Dunmore Street and we have -- the pole  
23 had to be relocated, it's their responsibility  
24 to move it. We won't be our -- we wouldn't  
25 incur costs to that, right?

1 MR. HEGEDUS: No, I wouldn't think  
2 so. No.

3 MR. TANANA: No, it would be just  
4 like having Verizon now.

5 MR. GANGEMI: Okay.

6 MR. KUCHARSKI: Okay. Any other  
7 questions? All right, Jack, thank you.  
8 Appreciate your expertise.

9 MR. VARALY: I'm glad you let me  
10 attend by Zoom because it would have taken me  
11 longer to get up there and back than it did to  
12 take the explanation I provided this evening.  
13 Thank you.

14 MR. KUCHARSKI: And you did great.  
15 You did great.

16 MR. HEGEDUS: Thank you, Jack.

17 MR. KUCHARSKI: Take care.

18 MR. VARALY: Good night.

19 MR. KUCHARSKI: All right. We have  
20 10 minutes.

21 ATTY. CIMINI: We're going to vote  
22 on this now.

23 MR. HEGEDUS: Yeah, once the hearing  
24 is declared over, now you can --

25 ATTY. CIMINI: And let's for the

1 record, it's 6:18. And there are still no  
2 public at the meeting or no members of the  
3 public present.

4 MR. KUCHARSKI: So are you saying we  
5 have to vote on this now?

6 ATTY. CIMINI: We're going to close  
7 the hearing. And then we're going to go into  
8 the special meeting and vote.

9 MR. KUCHARSKI: Oh, okay. All right  
10 then. The meeting is officially closed.

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C E R T I F I C A T E

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2  
3 I hereby certify that the proceedings and  
4 evidence are contained fully and accurately in the  
5 notes taken by me of the above-cause and that this copy  
6 is a correct transcript of the same to the best of my  
7 ability.

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11 Maria McCool, RPR  
12 Official Court Reporter  
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LACKAWANNA COUNTY PLANNING COMMISSION  
ORDINANCE/AMENDMENT  
EVALUATION REPORT

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**Office Use Only:**

REC'D: 30-Aug-21

REV'D: 20-Sep-21

RET'D: 14-Oct-21

**Municipality:**

Throop Borough

**Ordinance:**

Zoning

**Replacement/Amendment:**

Amendment

**Date of Current Ordinance:**

Jan-21

**Summary:**

Revise definitions and supplemental regulations for

Wireless Communication Facilities

**Submitted by:**

Andy Hegedus, Zoning Officer

**COMMENTS**

The LCRPC has no comments or concerns regarding this amendment.

Reviewer:

*Mary J. [Signature]*