

MEMORANDUM

To: Hon. Kurt Heise, Supervisor
Plymouth Township Board of Trustees

Date: March 22, 2017

From: Laura Haw, Senior Planner
Christopher Khorey, AICP, Principal Planner

Subject: **Zoning Ordinance: Section 28.11 Wireless Telecommunications Facilities and Services**

As requested, we have reviewed Section 28.11 of the Township Zoning Ordinance, regarding wireless telecommunications, for compliance with the Michigan Zoning Enabling Act (MZEA) and other potential updates. Our comments follow:

MZEA Restrictions

The Michigan Zoning Enabling Act places some restrictions on communities with regard to zoning processes for wireless telecommunications. In summary, the Township must comply with the following:

- Modifications and co-locations must be approved administratively, except in certain cases where they enlarge the height or width of the tower or the size of the compound (Section 3514.1.a-b).
- New facilities can be required to obtain Special Use approval, and can be denied through that process if appropriate, but some communities have interpreted the MZEA to mean that wireless towers cannot be outright prohibited in any zoning district (Section 3514.1). The Township Attorney can comment further on this issue.
- There are a series of “shot clocks” that communities must follow in the approval processes. The community must request additional information within 14 business days of receiving an application, and must make a decision on an administrative approval with 60 days (or 90 days in the case of a Special Use) (Section 3514.4-8).

The Township’s current Zoning Ordinance does not directly address these restrictions. The Township may wish to consider the following amendments to the existing Zoning Ordinance to ensure compliance with the MZEA:

Section 28.11.2(a) prohibits wireless facilities near Mettetal Airport. It may be prudent to update that section to make a more general statement that airport safety will be a component of Special Use approval, rather than outright prohibit the facilities. That way, aviation safety experts at MDOT or the airport itself can be used to justify Special Use decisions, which is less likely to be problematic than an outright ban.

Section 2.11.3 states that adding an antenna to an existing structure only requires administrative approval, while new towers are only permitted by Special Use and then only permitted in certain districts. Two subtle changes would bring this section into compliance with the MZEA – first, modifications to existing facilities should be clearly stated to be administrative approvals, whether or not they involve new antennas. Second, instead of prohibitions in specific districts, many communities are instead adopting a “prioritization list”,

which lists all of the zoning districts in order of priority for new wireless facilities, with the burden on the applicant to prove, for coverage or capacity reasons, that they cannot locate in a higher priority zoning district before moving on to the lower priority one.

The Township may also wish to consider requiring new facilities that locate on existing structures (such as church steeples or utility poles) to receive Special Use Approval.

We do not recommend that the Township adopt the State “shot clocks” into its Ordinance, as that would be redundant and would bind the Township in the event of a State law change. However, Township staff should be familiar with the process requirements of the MZEA and prepared to react quickly to a wireless application.

THE METRO ACT, DISTRIBUTED ANTENNAE NETWORK SYSTEMS (DAS), & RIGHT-OF-WAY FACILITIES

The METRO Act is designed to streamline approvals for communications technology installations within rights-of-way and it supersedes local regulations in many respects. However, the METRO Act states explicitly that “antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware use to provide federally licensed commercial mobile service” are not included in its regulations (Section 2.j). So most wireless telecommunications facilities, even when located in the right-of-way, are subject to local zoning and not the METRO Act.

However, in 2004 the State issued Determination #1 for the METRO Act, stating that Distributed Antennae Network Systems are subject to the provisions of the Act, and that their installation in rights-of-way requires approval under the METRO Act rather than local ordinances. The question becomes whether a proposed wireless facility is a Distributed Antenna Network or designed to be part of one.

The Township has an existing DAS system that is expanding. Our understanding is that the expansion is taking the form of new equipment on existing utility poles. That could be approved under the METRO Act, although we would recommend applying the Administrative Approval process in Section 28.11.4 of the Township Zoning Ordinance, which would be in compliance with the MZEA and would give the Township more control.

Many communities around the State, including Plymouth Township, have received applications for wireless facilities in public rights-of-way that claim to be subject to the Metro Act, but only consist of a single tower, rather than a distributed system. Sometimes the proposed towers are up to 120 feet tall. It is our opinion that these are not distributed antenna systems and that they require local zoning approval. Additionally, since they are new facilities, they can be required to obtain Special Use Permits.

The Township may wish to amend its ordinance to define “Distributed Antenna Network” and then state that facilities in the right-of-way that do not meet that definition require Special Use Approval. Further, if the Ordinance does not explicitly address the zoning of rights-of-way already, the Township may wish to amend the Ordinance to clearly state that public rights-of-way are assumed to have the same zoning as the adjacent privately-owned land.

OTHER CONSIDERATIONS

After reviewing the Township's Ordinance, we have the following comments:

Section 28.11.7.b.4. This section regulates the height of a wireless tower and may be difficult to enforce. There are Federal protections against wireless towers being denied based on aesthetic reasons, and height could be considered aesthetic. Section 28.11.7.b.1 already requires the applicant to justify the height of the tower for service reasons, and show that lower heights are not possible. That should be sufficient to control the height of new towers.

Section 28.11.7.b.5. This section requires a 1,000 foot setback from residentially zoned or used land for all facilities. This could be very hard to enforce and could violate the MZEA. We recommend adopting the prioritization list described above and listing residential districts as the lowest priority locations for new facilities, which would require an applicant to show that no commercial, industrial, or public districts would be practical from a coverage or capacity standpoint.

Section 28.11.7.c-e. These sections appear to be redundant, and could be removed.

SUMMARY

In conclusion, if the Township undertakes an amendment of Section 28.11, we recommend the following:

- *Replace the prohibition on facilities near Mettetal Airport with a requirement that towers near the airport must show compliance with all relevant aviation safety requirements, including receiving a Tall Structures Permit from MDOT.*
- *Amend Section 28.11.3 to include a prioritization list that requires applicants to demonstrate that they cannot locate in all zoning districts that are higher priority than the one they proposed to locate within. Remove all prohibitions on towers in specific districts.*
- *Define "Distributed Antenna Systems" based on an industry definition, and then require all new facilities that do not meet that definition to receive a Special Use Permit in order to locate in the public right-of-way.*
- *Remove the maximum height requirement and rely instead on the requirement that the tower be the shortest possible height to achieve the necessary coverage or capacity improvement.*
- *Remove the setback from residential areas and rely instead on the prioritization list described above.*
- *Remove subsections 7c, d, and e.*

We look forward to discussing this issue further with the Board of Trustees, Township Attorney, Planning Commission and Administration. If you have any questions, please do not hesitate to contact us. Thank you!

Cc: Plymouth Township Planning Commission
Mark Lewis, Township Building Official
Kevin Bennett, Township Attorney