

**EAST GOSHEN TOWNSHIP
PLANNING COMMISSION
Meeting Agenda
Wednesday, December 1, 2021
7:00 PM**

- A. Call to Order / Pledge of Allegiance and Moment of Silence
- B. Chairman will ask if anyone is going to record the meeting
- C. Review of Tracking Log / Determine need for Workshop Meeting**
- D. Public Comment on Non-Agenda Items
- E. Approval of Minutes**
 - 1. November 3, 2021**
- F. Subdivision and Land Development Applications
- G. Conditional Uses and Variances
- H. Ordinance Amendments**
 - 1. Small Wireless Facilities / §190**
- I. Old Business
- J. New Business
- K. Any Other Matter
- L. Liaison Reports
- M. Correspondence
- N. Announcements

Bold Items indicate new information to review or discuss.

East Goshen Township Planning Commission
Application Tracking Log

DDecember 1, 2021 PC Meeting

Application Name	Application (CU, LD, ZO, SD, V, SE, CA)	Type (Sk, P, F)	Date Filed	Start Date	Date to Township Engineer	Date to CCPC	Date to Abutting Prop. / ABC's	Extension	PC NL 7 Action Date	BOS NL 7 Action Date	Hearing Date	Drop Dead date	Comments
The Malvern Institute	LD	P	6/28/2021	7/1/2021	6/30/2021	6/29/2021	8/13/2021	12/30/2021	12/1/2021	12/21/2021	NA	12/30/2021	
Small Wireless Facilities	ZO	F	NA	NA	NA	NA	NA	NA	NA	NA	12/7/2021	NA	

Bold = New Application or PC action required

Completed in 2021

Imperial Marble, 1311 WCP	V	Sk	10/25/2021	10/25/2021	NA	NA	10/28/2021		11/3/2021	11/16/2021	12/14/2021	12/24/2021	
14 Reservoir Rd. / Glossen	V	Sk	5/25/2021	5/25/2021	NA	NA	5/27/2021		6/2/2021	7/6/2021	7/15/2021	7/23/2021	A
ESKE Development LLC	V	S	4/20/2021	4/20/2021	4/27/2021	NA	4/27/2021		5/5/2021	5/11/2021	5/26/2021	6/18/2021	A
Albert and Lynn Greto	V	S	4/26/2021	4/26/2021	NA	NA	4/29/2021		5/5/2021	6/1/2021	6/8/2021	6/25/2021	D
1365 Enterprise Drive	V	Sk	4/1/2021	4/1/2021	NA	NA	4/1/2021		5/5/2021	5/18/2021	TBD	5/31/2021	A
198 Oneida Ln	V	Sk	1/26/2021	1/27/2021	NA	NA	1/28/2021		2/3/2021	1/16/2021	2/25/2021	3/26/2021	A
Pipeline HMS / Consultation Zone	ZO / S	DRAFT	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	AD

Completed in 2020

1631 E. Strasburg Rd	V	Sk	9/29/2020	9/29/2020	NA	NA	10/2/2020		10/7/2020	10/20/2020	10/27/2020	11/28/2020	A
Solar Ordinance Amendment	ZO	Sk	10/30/2020	NA	NA	NA	NA		NA	NA	12/1/2020	NA	AD
Synthes USA / 1303 Goshen Parkwa	LD	P/F	4/27/2020	5/6/2020	4/28/2020	4/30/2020	4/30/2020	1	9/15/2020	9/2/2020	NA	10/2/2020	A
Boyle, 1137 N. Chester Rd.	V	Sk	7/29/2020	7/29/2020	NA	NA	7/31/2020		9/2/2020	9/15/2020	8/26/2020	9/25/2020	A

KEY

A - Approved
AD - Adopted
D - Denied

Draft
EAST GOSHEN TOWNSHIP
PLANNING COMMISSION MEETING
November 3, 2021

The East Goshen Township Planning Commission held their regular monthly meeting on Wednesday November 3, 2021 in the Township Building.

Members present are highlighted:

Chair – Ernest Harkness

Vice Chair – John Stipe

Dan Daley

Edward Decker

Michael Koza

Mark Levy

Michael Pagnanelli

Also present was:

Mark Gordon, Zoning Officer

Michele Truitt, Township Supervisor

COMMON ACRONYMS:

B●S – Board of Supervisors

BC – Brandywine Conservancy

CB – Conservancy Board

CCPC – Chester Co Planning Commission

CPTF – Comprehensive Plan Task Force

CVS – Community Visioning Session

SWM – Storm Water Management

ZHB – Zoning Hearing Board

FORMAL MEETING – 7 p.m.

1. Ernest called the meeting to order at 7:00 pm. He led the Pledge of Allegiance and a moment of silence to remember our military, first responders, medical personnel and those who keep us safe.
2. Ernest asked if anyone would be recording the meeting and if there were any public comments about non-agenda items. There was no response.
3. The tracking log was checked and no need for a workshop meeting.
4. The minutes of the September 15, 2021 meeting were approved. The October meeting was cancelled.

CONDITIONAL USES AND VARIANCES

1. ALK Management LLC, d/b/a Imperial Marble and Granite (Zoning Ordinance)

1311 West Chester Pike - Bill Christman attorney for the owner of the building and owner Albert Kzelian were present. Mr. Christman provided a photo of the building before it was purchased by the applicant in September 2020. The request has two parts. 1. The Applicant seeks to install a wall sign of approximately 36 sq. ft. Since the Zoning Ordinance allows one sign up to 32 sq.ft., he is requesting a dimensional variance of 4 sq. ft. Also, the height of the sign will be 16 feet 3 inches which exceeds the 14 feet allowed under the Ordinance. Mr. Christman pointed out that the sign will be lower than the car wash sign. Also, the building is set back from West Chester Pike.

2. There is an architectural feature around the front windows of the building in the shape of an “I” and “M”. Township staff refers to this as a sign. Mr. Christman pointed out other buildings that have symbols on them as part of their architecture (cross on a church). The Applicant is requesting a dimensional variance to allow the architectural feature to remain on the building. Mr. Christman asked the Planning Commission for their support. They plan to go to the Board of Supervisors in two weeks and then the Zoning Hearing Board in December.

Ernest verified the dimensions of the sign. Mike P. asked about lighting in the “IM” sign. Mr. Christman responded that there is no lighting in that sign. It is made of marble. Mark Gordon reviewed the permit process. A sign permit was not issued. Mr. Kzelian mentioned that he had to take over the lead in this process because his architect was hospitalized. Ernest spoke about the definition of a sign in the Ordinance. Ed asked about lighting in general. Mr. Christman commented that there are three lights on the building over the sign. Also, there are three lights in the ground in front of the “IM” feature. John asked about the phylon sign along the road and the subtenants. Mr. Kzelian spoke about the two subtenants. He also explained the use of marble and the design of the signs so that architects who will come to his business can see what can be done with marble. Ernest reviewed the items that were discussed. Mark Gordon reviewed the sign restrictions and made some recommendations for their presentation to the BOS and ZHB. Mike K. made a motion that the Planning Commission recommend that the Board of Supervisors take “No Position” on this application. John seconded the motion. The motion passed unanimously.

OLD BUSINESS

None

NEW BUSINESS

None

ANY OTHER MATTER

PA Act 65 of 2021, Sunshine Law Amendment - Mark explained the Amendment to PA Act 65. This requires that the agenda for public meetings must be available 24 hours before the meeting and how an item can be discussed that is not on the agenda. He feels that East Goshen has always followed these rules, but some others did not, so, Harrisburg added this Amendment.

LIAISON REPORT

1. Board of Supervisors – Michele mentioned that the many events that the Park and Recreational Commission had in October were very successful. The BOS has four meetings remaining in 2021. On November 16th they plan to roll out the 2022 Budget. She recommends that the PC members take a look at it.

2. Business Park Task Force – John mentioned that they completed their project and presented their report to the BOS.

ADJOURNMENT

There being no further business, Mike K. made a motion to adjourn the meeting. Mark L. seconded the motion. The meeting was adjourned at 7:45 pm. The next regular meeting will be held on Wednesday, December 1, 2021 at 7:00 pm.

Respectfully submitted,

Ruth Kiefer, Recording Secretary

Memorandum

East Goshen Township
1580 Paoli Pike
West Chester, PA 19380
Voice: 610-692-7171
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E-mail: mgordon@eastgoshen.org

Date: 11/16/2021
To: Planning Commission
From: Mark Gordon, Township Zoning Officer 
Re: Small Wireless Facility Ordinance

Planning Commission Members,

The Township staff has been working with the Solicitor to draft a revision to the Zoning ordinance and a new stand-alone ordinance to address the most recent changes to state statutes regulating Wireless Communication Facilities (WCF) and Small Wireless Facilities (SWF).

STAFF COMMENTS

The solicitor has prepared a summation of the new statutes, which is very clear, and worth a read. Regulations on large WCF towers do not change however, the regulations surrounding Small Wireless Facilities (SWF) have. SWF permits will become more prevalent in the future with the buildout of 5G networks, thus the Township will be subject to permitting these facilities as outlined in the state statutes. The new SWF ordinance will be a stand-alone ordinance outside of the zoning ordinance. SWF will not be subject to and not subject to Zoning or planning reviews by the Planning Commission or Board of Supervisors. These reviews and approvals must be completed within certain timeframes and will be handled similar to building permit reviews. The review of SWF applications will be conducted by the Code Enforcement Department.

The following information is enclosed for your review:

1. We have a drafted amendment to the Zoning Ordinance, which cross references the zoning ordinance with the new Small Wireless Facility ordinance.
2. We also have the new stand-alone SWF ordinance (New Ch. 190) regulating the siting, construction, installation, collocation, modification, operation, regulation and removal of SWF within the public ROW of streets and roads.
3. We have a set of design guidelines for SWF

Staff supports affirmative action on these ordinances and design guidelines.

DRAFT MOTION

Mr. Chairman, I move that the Planning Commission recommend that the Board of Supervisors approve the zoning ordinance amendment addressing small wireless facilities, the new stand-alone small wireless facility ordinance, and the small wireless facility design guidelines.



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MEMORANDUM

To: Rick Smith & Mark Gordon
East Goshen Township

From: Kimberly P. Venzie

Date: April 27, 2020

Subject: Wireless Communications Facilities (WCF) Ordinance Provisions,
Background of State and Federal Law, Updates to the Law, and
Amendments Needed related to Small Wireless Facilities (SWF)

Attachments to this Memorandum are as follows:

1. **Ordinance to update WCF provisions of the Zoning Ordinance.**
2. **Small Wireless Facilities Ordinance (which will be a standalone ordinance).**
2. **Small Wireless Facility Design Guidelines to be adopted by Resolution (also referred to in the SWF Ordinance).**

Several years ago, the Township amended its Zoning Ordinance in order to update certain wireless communications facilities ordinance provisions to comply with state and federal law. However, telecommunications law, and the technology associated with it, is constantly evolving. Below I have summarized legislative history in this area of law to bring you up-to-speed, and outlined the next steps that the Township needs to take in order to accommodate and manage the expected influx of 5G through the installation of small wireless facilities in the Township. I realize that you both may be familiar with much of this law. However, at some point, we can use this memorandum to help educate the Planning Commission and the Board of Supervisors on this area of the law.

A. FEDERAL AND STATE LAW

Federal and state law regulating traditional cell towers, such as those that are hundred (100') feet or higher in height, have remained relatively unchanged in recent years. However, the laws and regulations that govern mini-cell towers have been in a constant state of flux over the last few years. This is in large part due to the federal government's support of the rapid deployment of distributed antennae systems (DAS) and small cell networks. DAS are the wireless communications facilities that are often referred to as mini-cell towers. DAS use small antenna to relay cellular and data signals from mini-

cell tower to mini-cell tower. DAS are often placed within public rights-of-way on existing utility poles, streetlamp posts or upon newly constructed poles. Certain types of DAS qualify as Small Wireless Facilities ("SWF"), which will be discussed in more detail later in this Memorandum. There are currently a number of federal laws and regulations that govern a municipality's authority to regulate WCF. Congress has passed certain statutes that are intended to facilitate the deployment of WCF, and the Federal Communications Commission (the "FCC") issues rulings that interpret these statutes and provide even more detailed guidance and directives that municipalities are required to follow in their local regulation of WCF. The Telecommunications Act of 1996 (the "Telecommunications Act") has been referred to as a deregulation of the telecommunications industry. The Telecommunications Act provides that no state or local regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service. The Telecommunications Act also provides that applications need to be processed in a reasonable period of time. In 2009, the FCC issued a ruling (the "Shot Clock Ruling") which provides for specific time limits for the review of zoning requests for certain wireless towers. The time period for an initial collocation request is 90 days and 150 days for new towers.

In 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the "Spectrum Act") providing that local governments must approve any request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station. In 2014, the FCC issued the Wireless Infrastructure Order which implemented the Spectrum Act. This Order clarifies that the shot clocks for specific time of review and approval are also applicable to DAS and small cell deployments. This Order imposed time limits for the review of DAS facilities, 60 days for site modification and 90 days for a new installation. If a municipality does not meet these time limits, the applications are deemed granted unless both parties mutually agree to an extension of time.

Most recently, in September of 2018, the FCC issued a ruling (often referred to as the "Small Cell Wireless Order" or herein as the "FCC 2018 Ruling") establishing federal regulations governing small cell wireless facilities and shorter shot clocks governing the amount of time within which local governments must review applications. The FCC provides a definition for small wireless facilities ("SWF") and provides a 60-day review period for collocation and 90-day review period for new builds. Municipalities may charge fees that are no greater than a reasonable approximation of the objectively reasonable costs for processing such applications and managing deployments in the public rights-of-way. The FCC 2018 Ruling sets forth specific fees/costs that would be considered acceptable. Municipalities are permitted to impose aesthetics controls provided they are reasonable, no more burdensome than those applied to other types of infrastructure deployments within rights-of-way, and published in advance. This FCC ruling also holds that the providers cannot be required to enter into agreements that mandate providers to pay municipalities a percentage of their gross revenues or any type of fees that are not directly associated with costs incurred by the municipality.

With regard to state law, in 2012, Pennsylvania adopted the Wireless Broadband Collocation Act (the “Broadband Act”) that expands upon federal law and streamlines the approval process for modifications and collocations of WCF. Under the Broadband Act, applications for replacement, collocation or modification of WCF or wireless support structures cannot be subject to the issuance of new zoning or land use approvals or reviews beyond the initial zoning or land use approval issued for the previously approved wireless support structure or wireless telecommunications facility. The Broadband Act also imposes a 90-day time frame for the review of applications for modifications or collocations of a WCF or the application is deemed approved. There is additional pending legislation in Pennsylvania to further encourage SWF deployment; however, that legislation has not been passed as of today’s date.

Local municipalities that attempt to regulate WCF, including SWF, may do so provided those ordinances comply with, and do not conflict with, the above cited state and federal laws.

B. PUBLIC UTILITY STATUS AND ITS IMPACT UPON REGULATION

Prior to 2017, the Pennsylvania Public Utility Commission (“PUC”) considered DAS providers to be public utilities which allowed these companies to assert that they were exempt from zoning requirements and had the power to condemn. A Certificate of Public Convenience pre-empts local control over the siting of mini-cell towers. In 2017, the PUC then determined that DAS providers and operators did not meet the definition of public utility and therefore were not entitled to obtain Certificates of Public Convenience. However, this PUC decision was appealed and the Pennsylvania Commonwealth Court held that DAS providers fall within the definition of a public utility. *Crown Castle NG East, LLC v. Pa. PUC*, 188 A.3d 617(Pa. Cmwlth 2018). This decision is currently on appeal before the Pennsylvania Supreme Court. Nevertheless, as a result of the Pennsylvania Commonwealth Court decision, DAS network operators are again considered to be public utilities, and upon receipt of Certificate of Public Convenience from the PUC, network operators (also referred to as “providers”) are entitled to access public rights-of-way for installations. We will monitor the pending appeal in the Pennsylvania Supreme Court and notify you once a decision is rendered.

C. THE IMPACT OF THE RECENT 2018 FCC RULING

The FCC 2018 Ruling is intended to remove state and local regulatory barriers that inhibit the deployment of infrastructure necessary for 5G, and other advanced wireless services. Amendments were made to Township’s Zoning Ordinance to bring ordinance provisions into compliance with prior enacted laws. However, additional ordinance and design regulations are needed so that the Township can maintain some allowable control over SWF in the Township. It is clear from the FCC 2018 Ruling that the FCC expects municipalities to facilitate the deployment of wireless infrastructure. The FCC, relying on its interpretation of existing federal law, reminds local government that it cannot adopt a regulation or ordinance that prohibits or has the effect of

prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

In particular, the FCC 2018 Ruling removes barriers to the deployment of WCF described as “Small Wireless Facilities”. These are the facilities that will support the next generation of wireless services, known as 5G. The FCC Order defines **“Small Wireless Facilities” (SWF) as facilities mounted on structures 50 feet or less in height or on structures no more than 10 percent taller than adjacent structures with an antenna no more than three cubic feet and total wireless equipment no more than 28 cubic feet.** The FCC 2018 Ruling also adds a time clock for review and decisions on applications for WCF that qualify as SWF. SWF must be approved in either 60 days for co-locations on an existing structure or 90 days for a siting on a new structure. Permit fees for SWF need to be reasonable, fair and commensurate with actual costs incurred by the municipality. The FCC has determined that the following fee amounts are presumptively reasonable:

(1) \$500 as a non-recurring fee (this would be an up-front application fee that includes up to five SWF, and \$100 more for each additional SWF) and \$1,000 as a non-recurring fee for a new pole intended to support one or more SWF; and

(2) \$270 per SWF per year as a recurring fee which would include a ROW access fee or attachment to a municipally owned structure.

In addition to other determinations, the FCC 2018 Ruling provides that municipalities can set forth aesthetic requirements as long as they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.

D. OBJECTIVES, POLICY DECISIONS & MEETING

Below I have listed the documents attached to this Memorandum and what they are intended to accomplish:

- An Ordinance to amend the WCF provisions of your Zoning Ordinance to cross-reference the new SWF ordinance and provide that timelines for approvals need to be consistent with state and federal law (to avoid having to continually amend those sections).
- The Small Wireless Facilities Ordinance is a standalone ordinance to regulate SWF within ROWs. This technology is being rapidly deployed and the Township can regulate by design more so than by zoning restrictions. So, SWF can be addressed in an ordinance separate from the Township’s Zoning Ordinance.
- The Small Wireless Facility Design Guidelines should be adopted by resolution and set forth all the design regulations for SWF in ROWs. These guidelines can be even more tailored to the Township’s preferences. Input is

needed as to what designs are deemed acceptable to the Township, particularly with respect to Figures 3 and 4 attached to the design regs.

As you will notice, the Small Wireless Facilities Ordinance (and related Design Guidelines) allow SWFs in all public Rights-of-Way, and does not limit them to certain zoning districts or streets; however, the ordinance does attempt to control the appearance of these SWF through very specific design requirements which include some placement controls – such as new poles not being placed directly in front of a residential home. This type of design criteria has been provided by our office as a starting point and can certainly be changed. Wireless Communications Facilities that do not qualify as Small Wireless Facilities would be required to comply with Section 240-31.C.(3)(h) of the Zoning Ordinance which does provide for more stringent controls.

After Township Staff reviews this Memorandum and the attachments, I would be happy to meet to discuss.

EAST GOSHEN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. ____ – 2021

**AN ORDINANCE OF THE TOWNSHIP OF EAST GOSHEN,
CHESTER COUNTY, PENNSYLVANIA, AMENDING THE
EAST GOSHEN TOWNSHIP CODE OF ORDINANCES, AS
AMENDED, TO PROVIDE A NEW CHAPTER ENTITLED
“CHAPTER 190 – SMALL WIRELESS FACILITIES” TO
ALLOW FOR, AND REGULATE, SMALL WIRELESS
FACILITIES, WITHIN THE PUBLIC RIGHTS-OF-WAY IN
THE TOWNSHIP.**

BE IT ENACTED AND ORDAINED by the Board of Supervisors of East Goshen Township that the East Goshen Township Code of Ordinances, as amended, is hereby further amended as follows:

SECTION 1. A new Chapter 190 entitled “Small Wireless Facilities” is hereby enacted as part of the Code of East Goshen Township and shall read as follows:

CHAPTER 190
SMALL WIRELESS FACILITIES

§190-1. PURPOSE AND INTENT.

The purpose of this Chapter is to establish procedures and standards, consistent with all applicable federal and state, laws, for the consideration, permitting, siting, construction, installation, collocation, modification, operation, regulation and removal of Small Wireless Facilities (“SWF”) in the public right-of-way of streets and roads.

(A) The intent of this section is to:

- (1) Establish basic criteria for applications to install and/or collocate SWF in the public right-of-way;
- (2) Ensure that SWF are appropriately designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
- (3) Preserve the character of the Township by minimizing the potentially adverse visual impact of SWF through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;

- (4) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of SWF for such facilities;
- (5) Comply with, and not conflict with or preempt, all applicable state and federal laws, as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

§190-2. APPLICABILITY

- (A) Subject to the provisions of this Chapter and granting of the required permits, an applicant may locate and/or collocate a SWF and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under a public right-of-way.
- (B) An applicant and/or operator shall comply with this Chapter and any rules, regulations, and design guidelines adopted by the Township that are consistent with this Chapter for the installation and/or collocation of a SWF and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the public rights-of-way, unless otherwise prohibited by state or federal law.
- (C) All SWF shall be constructed and maintained so as not to impede or impair public safety or the legal use of the public right-of-way by the Township, the traveling public, or other public utilities.
- (D) Nothing in this chapter precludes the Township from applying its generally applicable health, safety, and welfare regulations when acting on an application for a permit for a SWF in the public right-of-way.

§190-3. DEFINITIONS

COLLOCATION or COLLOCATE. The mounting or installing of an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

DECORATIVE POLE OR STRUCTURE. A pole, arch, or structure placed in the public right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed or are permitted to be placed in accordance with nondiscriminatory Township practices except for any of the following:

- (1) Electric lighting;
- (2) Specially designed information or directional signage;
- (3) Temporary holiday or special event attachments;
- (4) Small Wireless Facilities.

DESIGN GUIDELINES. Means those detailed design guidelines, specifications and examples promulgated by resolution that address, on a nondiscriminatory basis, the design and installation of facilities in the public rights-of-way, insofar as they do not conflict with any federal or state law, rule and regulation, including this Chapter.

TOWN CENTER/HISTORIC DISTRICT. An area that is zoned or otherwise designated as the Town Center and/or Historic District, or is otherwise subject to historic preservation regulations, under municipal, state or federal law and for which the Township maintains and enforces in an uniform and nondiscriminatory basis with regard to all users of the public right-of-way pursuant to this Chapter.

LOCATE. Means to install, mount, maintain, modify, operate, or replace SWF.

OWNER. A provider, operator or owner of SWF (who may also be the applicant).

PUBLIC RIGHT-OF-WAY. The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public way, public alley, public sidewalk, and any other land dedicated or otherwise designated for the same now or hereafter held by the Township or other governmental entity.

SMALL WIRELESS FACILITY “SWF”. A type of Wireless Communication Facility (WCF) as specifically defined by the Federal Communications Commission in Part 1 of Title 47 of the Code of Federal Regulations as follows, or as hereinafter amended:

(A) “Small Wireless Facility” means a facility that meets each of the following conditions:

- a. The structure on which antenna facilities are mounted –
 - i. Is 50 feet or less in height, or
 - ii. Is no more than 10 percent taller than other adjacent structures, or
 - iii. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
- b. Each antenna (excluding associated antenna equipment) are cumulatively no more than three cubic feet in volume; and
- c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- d. The facility does not require antenna structure registration under 47 CFR Part 17.
- e. The facility is not located on Tribal lands, as defined under 36 CFR § 800.16(x); and
- f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

TOWNSHIP-OWNED POLE. Means (i) a Utility Pole owned or operated by the Township, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Township such as a Decorative Pole.

TRANSMISSION POLE. A pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

UTILITY POLE. A pole or similar structure that is designed for, or used, for carrying electric distribution lines or for carrying cables or wires for electric, cable, or telecommunications service or for lighting, traffic control, or directional signage.

WIRELESS SUPPORT STRUCTURE. A freestanding structure, including a monopole, Decorative Pole, Township-Owned Pole, Transmission Pole, and Utility Pole, or other existing or proposed structure designed to support or capable of supporting SWF.

§190-4. APPLICATION PROCESS

- (A) *Application Required.* An applicant must apply to the Township to locate a new SWF and/or collocate any portion of a SWF on an existing Wireless Support Structure or to construct, maintain, modify, operate, or replace Wireless Support Structures in, along, across, upon, and under the Public Right-of-Way. Anyone seeking to perform any of these actions shall first duly file a permit application with the Township, in accordance with the requirements of this Chapter and additional requirements as set forth in the Small Wireless Facilities Design Guidelines as adopted by resolution and which may be modified from time to time by further resolution.
- (B) *Permit Required.* No person shall occupy or use the public right-of-way without first obtaining, under this Chapter, the required permit from the Township. Before placing SWF in the public right-of-way, an owner must apply for and receive a permit. This provision shall not be construed to waive any application fees, or any other construction or work permit necessary for work in the Township. While notice to the Township is required, a permit from the Township shall not be required for routine maintenance or same-size and type replacement of Small Wireless Facilities that do not interfere with pedestrian or vehicular traffic.
- (C) *Required Application Materials.* Unless otherwise required by state or federal law, all applicants shall submit to the Township all materials and information associated with each application as outlined below for the application to be considered complete:
 - (1) The Applicant's name, address, telephone number and e-mail address;

- (2) Facility owner's name, address, telephone number and email address, if different from Applicant;
- (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application, and if warranted written authorization for those consultants to speak on behalf of the applicant.
- (4) A description of the Small Wireless Facilities being proposed in order for the Township to verify that the proposed facilities are Small Wireless Facilities as specifically defined by the FCC;
- (5) A mapping showing the exact location of the proposed Small Wireless Facilities in the case of multi-site applications and photo simulations/depictions of the type and style of the proposed Small Wireless Facilities (which should be in compliance with the Township's Small Wireless Facility Design Guidelines).
- (6) A description of the proposed scope of work for the location or Collocation of the SWF. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
- (7) Verification that the SWF shall comply with this Chapter, including all applicable Small Wireless Facilities Design Guidelines;
- (8) Verification of payment of the application fees, annual municipal consent or administrative fee for use of Public Rights-of-Way and acknowledgment of its continuing annual obligation;
- (9) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the Federal Communications Commission, or a statement that it is not required;
- (10) A copy of an approved Pennsylvania Department of Transportation permit and all documents required by PennDOT as part of the encroachment permit application, if the proposed location is within a PennDOT Right-of-Way; and,
- (11) The applicant must provide a statement that the applicant has a lease, attachment agreement or other authorization from the owner of the Wireless Support Structure proposed for Collocation.

§190-5. FEES AND COSTS

- (A) *Rights-of-Way Access Fees:* Each individual Applicant will be subject to an annual Rights-of-Way access fee if locating within a Township owned Public Right-of-Way. Such fees shall not be in excess of those amounts deemed reasonable by the Federal Communications Commission.
- (B) *Application processing costs.* Unless otherwise provided by law, all applications for permits pursuant to this Chapter shall be accompanied by an application processing cost as follows: 1) application costs for Small Wireless Facilities addressed in a consolidated application shall be \$500 which may include up to five Small Wireless Facilities, and an additional \$100 for each Small Wireless Facility beyond five, up to and including 30 total Small Wireless Facilities per one application, and 2) application costs of \$1,000 for a new pole (not a collocation) intended to support one or more Small Wireless Facilities. Such costs may be altered by resolution but only in compliance with state and/or federal limits upon such costs.
- (C) *Compensation.* In addition to the applicable fee as specified above, every permit shall include as a condition the Applicant's agreement to pay a Right-of-Way access fee of \$200 per Small Wireless Facility per year, and/or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Township. Additionally, if the Small Wireless Facilities is proposed to be located upon a Township-Owned Pole with a Right-of-Way, and the Township consents to such Collocation, an additional annual fee of \$70 per Small Wireless Facility shall be payable to the Township for such placement. Such fees may be altered by resolution but only in compliance with state and/or federal limits upon such costs.
- (D) Small Wireless Facilities collocated on Township-owned utility poles or structures outside the Township rights-of-way are not subject to the rate limitations in this Chapter. Additionally, if the rate limitation imposed by the Federal Communications Commission is altered in the future, the Township may alter its fees by resolution to be consistent with the Federal Communications Commission's determinations or as might be otherwise altered by the state or federal government.
- (E) *Cease Payment.* Upon thirty (30) days written notice to the Township, an Owner is authorized to remove its Small Wireless Facility from a Township-Owned Pole and cease paying the annual fee to the Township as of the next due date for payment following the removal, provided; however, the Owner shall pay its pro-rata share of the remaining term and expenses, if any.
- (F) *Make-ready.* For Township-Owned Poles, the applicant shall reimburse the Township for expenses for any reasonable make-ready work, if any are required. The Township shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested SWF, including pole

replacement if necessary, within thirty (30) days after receipt of a completed request.

§190-6. APPLICATION REVIEW TIMEFRAMES

(A) Permit Application Review.

- (1) Collocation of SWF. Absent a written agreement to the contrary between the Township and the Applicant, the Township shall grant or deny an application to collocate, or to replace or modify any portion of a SWF on, or associated with, an existing wireless support structure not later than sixty (60) days after the date of filing by an entity of a completed application.
- (2) Installation of New SWF. Absent a written agreement to the contrary between the Township and the Applicant, the Township shall grant or deny an application for a SWF within the Public Right-of-Way not later than ninety (90) days after the date of filing by an entity of a completed application.
- (3) Removal of SWF. The Township shall act on requests to remove Wireless Support Structures associated with SWF from the Public Right-of-Way typical to the review timeframes for the Public Right-of-Way permit required for this activity.
- (4) Completeness. Within ten (10) business days of receiving an application, the Township will determine and notify the Applicant whether the application is complete; or if an Application is incomplete, the Township must specifically identify the missing information.
- (5) *Application Denials.*
 - (a) The Township shall not unreasonably withhold or deny an application for a permit to place a SWF within the Public Right-of-Way.
 - (b) If an application is denied, the Township will provide in writing its reasons for denying the request, including, if applicable, specific references to any applicable law supporting the denial.
 - (c) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Township and resubmit the Application within thirty (30) days of the denial, and the Township will approve or deny the revised Application within thirty (30) days of receipt of it, unless additional deficiencies are discovered.

§190-7. CONSOLIDATED APPLICATION FOR MULTIPLE SWF

- (A) Applicants seeking to construct, modify, collocate, or replace more than one SWF, may file, at the applicant's discretion, a consolidated application for up to 30 requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the SWF subject to the following:
 - (1) This single application may be filed for multiple SWF only if they are of substantially the same type.
 - (2) The Township must separately address SWF for which incomplete information has been received or which are denied, and it must grant a permit for any and all sites in a single application that it does not deny subject to the requirements of this Chapter.

§190-8. MAXIMUM HEIGHT, PROXIMITY OF SWF AND ALTERNATE LOCATIONS

- (A) Maximum Height. The maximum height of a new pole for the installation of a SWF is limited to a maximum height of fifty (50) feet, subject to any restrictions imposed by the Small Wireless Facility Design Guidelines. Applicant may collocate on existing Wireless Support Structures provided the Small Wireless Facility's height still qualifies as a Small Wireless Facility as defined by this Chapter and as by the Federal Communications Commission.
- (B) Alternate Locations. If an applicant is seeking to install a new Wireless Support Structure as part of its application, the Township may propose that the Small Wireless Facility be located on an existing utility pole or existing Wireless Support Structure within one hundred (100) feet of the proposed location. The Applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits, acts as an effective prohibition under federal law, or additional unreasonable costs will be incurred as determined by the Applicant. If the Applicant refuses an alternate location based on the foregoing, the Applicant shall provide legally competent evidence in the form of a written certification describing the property rights, technical limits or cost reasons that prevent the alternate location from being utilized.
- (C) The Township may reserve space on Township-Owned Poles for future public safety uses or for Township electric utility uses. Such reservation may preclude collocation of Small Wireless Facilities if the Township reasonably determines that the Township's poles cannot accommodate both uses, or if the collocation cannot be accommodated due to physical limitations of the Township-Owned Poles.
- (D) In certain circumstances, collocation may not be feasible, and a new pole needs to be installed by the Applicant. In such cases, a Small Wireless Facility located on a

new pole shall be separated by 150 feet from any other Small Wireless Facility located upon a pole with that singular purpose (meaning it is not a collocation but another stand-alone SWF pole).

§190-9. GENERAL DESIGN REQUIREMENTS

- (A) The Township has, or shall, adopt Small Wireless Facility Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area.
- (B) The Small Wireless Facility Design Guidelines may include examples of SWF preferences including visual depictions (if readily available and identified by the Township).
- (C) The provisions in this Chapter shall not limit or prohibit the Township's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Small Wireless Facility Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- (D) All Small Wireless Facilities and associated equipment located within the Public Right-of-Way shall be located such that it meets ADA requirements and does not hinder, obstruct or impede usual pedestrian and vehicular travel.
- (E) The Township shall have authority to update or supplement the Small Wireless Facility Design Guidelines to address relevant changes in law, technology, or administrative processes.
- (F) Wireless Support Structure Design Standards
 - (1) General Guidance
 - (a) SWF equipment must be indistinguishable from the support pole or structure to the greatest degree possible using matching colors, textures, and materials. The antennas and related equipment shall be in a color that will provide the most camouflage and blend in with the existing environment.
 - (b) All wires, antennas, and other small wireless facility equipment shall be enclosed and not visible.
 - (c) Screening and equipment enclosures shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment.

- (d) Casing to enclose all wires, antennas, and other small wireless facility equipment may be mounted on top of existing and new poles in a cylinder shape to look like an extension of the pole.
- (e) Brand logos and other signage are prohibited on all SWF except contact information to be used by workers on or near the SWF and as otherwise required by federal or state law. Signage will be no larger than required to be legible from street level.

§190-10. TOWN CENTER/ HISTORIC DISTRICTS OR HISTORIC PRESERVATION PROTECTED AREAS

- (A) This Chapter may not be construed to limit the Township's authority to enforce historic preservation zoning regulations consistent with the local, state or federal law including the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.
- (B) As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Town Center/Historic District (existing or as established in the future), the Applicant shall comply, to the greatest extent possible, with the design and aesthetic standards of the Town Center/Historic District, or historic preservation standards in place, to minimize the negative impact to the aesthetics in these districts or areas.
- (C) New Districts. Nothing in this Chapter shall prohibit or otherwise limit the Township from establishing subsequent new town center or historic districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Chapter prior to the establishment of the new district remain subject to the provisions of this Chapter, including routine maintenance and replacement of those facilities and structures. If a wireless services provider or a wireless infrastructure provider replaces such facilities in a manner that does not comply with this Chapter, or if a wireless services provider or a wireless infrastructure provider relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the newly established district.

§190-11. GENERAL CONDITIONS AND REQUIREMENTS OF PERMIT APPROVAL

- (A) *Permit Effect and Duration.* The Township's approval term for collocation or a new pole shall be for a period of nine (9) months. If construction, installation or collocation is not begun within such nine (9) month period, a new application must be submitted for review including any required fee. A permit from the Township authorizes an Applicant to undertake only certain activities in accordance with the Chapter and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others.

- (B) *Compliance with all applicable laws and Township Code.* Owner/Permittee shall always maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules. If state or federal standards and regulations are amended, the owners of any portion of SWF governed by this Chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within the time mandated by such amendment or, if no time is mandated, as soon as practicable under the circumstances, but no longer than ninety (90) days. The Township is not required to provide notice of any amendments in order to trigger this responsibility. Failure to bring SWF into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- (C) *Inspections; emergencies.* The Township or its designee may inspect any portion of SWF in the right-of-way upon reasonable notice to the Owner. The Owner shall cooperate with all inspections. The Township reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. If circumstances permit, the Township shall notify the Owner and provide the opportunity to move such facilities, poles, or support structures prior to the Township doing so, and the Township shall notify the Owner after doing so.
- (D) *Relocation or adjustment as requested by Township.* If requested by the Township, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an Owner shall relocate or adjust its facilities within the Public Right-of-Way at no cost to the Township, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.
- (E) *Contact information for responsible parties.* Within 10 days of any changes to any of the contact information provided in the application, the Applicant shall provide notice of the change to the Township.
- (F) *Indemnification.* Any entity who owns or operates SWF in the Public Right-of-Way shall indemnify, protect, defend, and hold the Township and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the entity who owns or operates the SWF and wireless service in the right- of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

- (G) *Good condition required.* SWF shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. All SWF shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers.
- (H) *Relocation for public improvement projects.* To the extent that the Township requires it to do so in the reasonable exercise of its police powers, Owner shall remove and relocate the permitted SWF at Owner's sole expense to accommodate construction of a public improvement project by the Township.

§190-12. REMOVAL OF SWF IF USE DISCONTINUED OR ABANDONED.

- (A) If a SWF is discontinued for a period of 120 days or is abandoned without notice from the owner, it shall be considered abandoned and the Township may remove it at the owner's expense if the Township provides written notice of its intent to remove under this section and, within thirty (30) days after receipt of such written notice, the Owner of the SWF does not reply to the Township in writing that the SWF continues to be in operation. Costs for such removal shall be collectible as allowed by law.
- (B) The Township reserves the right to inspect and to request information from the Owner, which the Owner shall provide following such request, as to the continued use of the operator's SWF(s) within the right-of-way.
- (C) The Township reserves the right (unless prohibited by law) to require the owner of SWF(s) to provide financial security to the Township sufficient to cover the costs of removal of SWF(s) if such use is discontinued or abandoned. The applicant shall submit an estimate of such removal costs to the Township Engineer for review and approval of same. Said financial security shall remain in place until said facility is removed.

§190-13. SAFETY REQUIREMENTS

- (A) Prevention of failures and accidents. Any person who owns or operates a portion of a SWF sited in the Public Right-of-Way shall always employ ordinary and reasonable care and install and maintain it using industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (B) Compliance with fire safety and FCC regulations. All SWF, including, but not limited to wires, cables, fixtures, and other equipment, shall be installed and maintained in compliance with the requirements of any applicable provisions of the National Electric Code and building codes, and in such manner that will not interfere with the use of other property or any existing public/private utilities or public safety systems.

- (C) Each attachment of wireless facilities should bear a marker or insignia legible at street level, identifying the Owner of the SWF and contact information.

§190-14. EXCEPTIONS TO APPLICABILITY

- (A) Nothing in this Chapter authorizes the collocation of small wireless facilities on:
 - (1) Property owned by a private party without the written consent of the property owner;
 - (2) Property owned or controlled by a unit of local government that is not located within Public Rights-of-Way without the written consent of the unit of local government (local governments are, however, required to authorize the collocation of small wireless facilities on utility poles owned or controlled by the local government or located within rights-of-way to the same extent the local government permits access to utility poles for other commercial projects or uses);
 - (3) A privately-owned utility pole or wireless support structure, without the consent of the property owner; or
 - (4) Property owned, leased or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes, without the consent of the affected district.

§190-15. APPEALS AND CONSISTENCY WITH STATE AND FEDERAL LAWS.

The appeals process shall be as provided and set forth by state and federal laws including any rulings issued by the Federal Communications Commission. The provisions contained herein regulating Small Wireless Facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this section. To the extent that any of the provisions in this section conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances. In which case, the more stringent provisions of local ordinances shall remain in effect and shall control in such instances.

§190-16. SEVERABILITY

The provisions of this Chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such Chapter to other persons

or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by the Board.

§190-17. PENALTIES

Any person, firm or corporations who violates or permits a violation of this Chapter shall, upon conviction in a summary proceeding brought before a Magisterial District Judge under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus costs of prosecution. In default of payment thereof, the defendant may be sentenced to imprisonment for a term not exceeding 90 days. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this Chapter that is violated shall also constitute a separate offense. Nothing herein shall prevent the Township from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations.

SECTION 2. SEVERABILITY. 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 hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 3. GENERAL CODE. General Code is hereby authorized to make any necessary formatting and numbering changes needed in order for this Ordinance to be made consistent with the formatting and numbering standards applicable to the East Goshen Township's Code of Ordinances as published by General Code.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED this day ____ of _____, 2021.

ATTEST:

**EAST GOSHEN TOWNSHIP
BOARD OF SUPERVISORS**

Derek J. Davis, Secretary

David E. Shuey, Chair

Michael P. Lynch, Vice-Chair

John F. Hertzog, Member

E. Martin Shane, Member

Michele D. Truitt, Member

EAST GOSHEN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
ORDINANCE NO. 2021 –

AN ORDINANCE OF THE TOWNSHIP OF EAST GOSHEN, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 240 OF THE EAST GOSHEN TOWNSHIP CODE, ENTITLED “ZONING” AT SECTION 240-31.C.(3)(h) WIRELESS COMMUNICATIONS FACILITIES, IN ORDER TO PROVIDE FOR PROVISIONS TO CLARIFY THAT SMALL WIRELESS FACILITIES ARE GOVERNED BY A SEPARATE ORDINANCE AND DESIGN GUIDELINES, CLARIFY ALLOWABLE PERMIT FEES, AND UPDATE PROVISIONS TO COMPLY WITH FEDERAL LAW WITH RESPECT TO WIRELESS COMMUNICATIONS FACILITIES IN EAST GOSHEN TOWNSHIP.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of East Goshen Township that Chapter 240 of the East Goshen Township Code, titled, “Zoning”, shall be amended as follows:

SECTION 1. Section 240-31.C.(3)(h) shall now include the following subsection immediately after (h)[1].Purpose. as follows:

“[1.1] Small Wireless Facilities. Wireless Communications Facilities that qualify as Small Wireless Facilities as has been defined by the Federal Communications Commission are governed by a separate ordinance, and related design criteria, as adopted by the Township to address Small Wireless Facilities. Wireless Communications Facilities that fall under the definition of Small Wireless Facilities are governed and controlled by the Small Wireless Facilities ordinance and approved design criteria. Small Wireless Facilities are not subject to the provisions of this subsection.”

SECTION 2. Section 240-31.C.(3)(h)[4][a] shall be amended to include the following subsection immediately following and beneath [a] as follows:

“[i] Timing of approvals. Applications for installation of any and all commercial communications antennas shall be processed in a timely manner and in compliance with the required time frames for municipal review and action as established by state and federal law and regulations.”

SECTION 3. Section 240-31.C.(3)(h)[5][a] shall be amended to include the following subsection immediately following and beneath [a] as follows:

“[i] Timing of approvals. Applications for installation of any and all wireless communications facilities shall be processed in a timely manner and in compliance with the required time frames for municipal review and action as established by state and federal law and regulations.”

SECTION 4. Section 240-31.C.(3)(h) shall be amended to include a new Section 6 as follows:

“[6] Permit Fees and Compliance with State and Federal Law.

[a] Permit fees. The Township may assess appropriate, fair and reasonable permit fees directly related to the Township’s actual costs in reviewing and processing applications for approval of wireless communications facilities as set forth in fee schedules established by the Township.

[b] Consistency with state and federal laws and regulations. The provisions contained herein regulating wireless communications facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this section. To the extent that any of the provisions in this section conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances. In which case, the more stringent provisions of local ordinances shall remain in effect and shall control in such instances.”

SECTION 5. Severability. 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 hereof. It is hereby declared as the intent of the Board of Supervisors of East Goshen 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 6. Repealer. All Ordinances or parts of Ordinances conflicting with any provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 7. Effective Date. This Ordinance shall be effective five (5) days following enactment as by law provided.

ENACTED AND ORDAINED this _____ day of _____, 2021.

ATTEST:

**EAST GOSHEN TOWNSHIP
BOARD OF SUPERVISORS**

Derek J. Davis, Secretary

David E. Shuey, Chair

Michael P. Lynch, Vice-Chair

John Hertzog, Member

E. Martin Shane, Member

Michele Truitt, Member

EAST GOSHEN TOWNSHIP **SMALL WIRELESS FACILITY DESIGN GUIDELINES**

I. PURPOSE AND COMPLIANCE

The municipality finds that in order to protect the public health, safety and welfare of its residents and to reasonably manage and protect the public rights-of-way (the "ROW") and its uses in the municipality, it is in the best interest of the municipality and its residents and businesses to establish Small Wireless Facility Design Guidelines (the "Guidelines") to provide the aesthetic requirements and other specifications and reasonable conditions that small wireless facilities and wireless support structures installed within the public ROW must meet prior to and following installation.

The objective of these Guidelines is to strike a balance between preserving and protecting the character of the municipality through careful design, siting, and camouflaging techniques to blend these facilities into their surrounding environment and provide other reasonable conditions upon such placement and use of the ROW, while enhancing the ability of small wireless facilities carriers to deploy small wireless facilities and wireless support structures in the municipality effectively and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

These Guidelines apply to requests to locate small wireless facilities ("SWF") in the ROW and ongoing use of the ROW for such purposes. These Guidelines are administered through the permitting process conducted by the codes department or zoning officer of the municipality.

Placement or modification of a SWF and/or wireless support structures shall comply with these Guidelines at the time the permit for installation or modification is approved and as amended from time to time. Wireless service providers and permittees are also required to comply with municipal ordinances, codes and other applicable law and regulations.

II. DEFINITIONS

The definitions contained in the municipality's Zoning Ordinance, and any Small Wireless Facilities Ordinance, as applicable to wireless

communications facilities are incorporated into this policy by reference as though fully set forth herein.

III. APPLICATION REQUIREMENTS

As part of the permitting process, the following must be provided:

A. PROOF OF AGENT DESIGNATION (IF APPLICABLE)

If the applicant is serving as an agent of a SWF owner/operator, the applicant must provide written documentation of the agent designation signed by the owner/operator.

B. MAP

The applicant must include an aerial map showing the location of the proposed or existing support structure to which the SWF is proposed to be attached, or from which a SWF is proposed to be removed.

C. PHOTO SIMULATIONS

For all applications to locate SWF in the ROW, the applicant shall provide photo simulations from at least two reasonable line-of-site locations near the proposed project site. The photo simulations must be taken from the viewpoints of the greatest pedestrian or vehicular traffic.

D. CONSOLIDATED APPLICATIONS

An applicant seeking to construct, modify, collocate or replace more than one SWF or more than one wireless support structure within the municipality may file a consolidated application for multiple small wireless facility requests or wireless support structure requests provided the requests grouped on a consolidated application only address substantially the same type of SWF or substantially the same type of wireless support structures.

E. SITE AND OTHER PLANS AND STRUCTURAL CALCULATIONS

The applicant must include fully dimensioned site plans, elevation drawings and structural calculations that depict any known existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission

equipment and other improvements, and the legal boundaries of the existing right-of-way and any associated access and utility easements. Fully dimensioned site plans shall indicate the spacing from existing curb, driveways, sidewalks, light poles and any other poles or appurtenances.

F. FULL DESCRIPTION OF NUMBER AND DIMENSIONS OF FACILITIES AND/OR STRUCTURES TO BE INSTALLED

The applicant must include a full description of the number and dimensions of all SWF proposed to be installed and the wireless support structure, either new or existing, to be utilized for each SWF. For all equipment proposed to be installed, the applicant must include: (1) the manufacturer's name and model number; (2) physical dimensions, including without limitation, height, width, depth and weight with mounts and other necessary hardware; and (3) the ambient noise level generated from the equipment, if any.

G. OWNER'S AUTHORIZATION AND SUBMISSION OF FEES

For any application to attach a SWF to a wireless support structure that is not owned by the municipality, the applicant must submit evidence sufficient to show that either: (1) applicant owns the proposed support structure; or (2) applicant has obtained the owner's written authorization to file the application. The applicant shall also submit the appropriate application fees to the Township and agree to pay any Right-of-Way access fees applicable to the project.

IV. AESTHETIC REQUIREMENTS FOR SMALL WIRELESS FACILITIES

A. ANTENNAS

1. Each small wireless antenna shall be located entirely within a shroud or canister type enclosure.
2. The diameter of the antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure. The enclosure shall not exceed six cubic feet in volume.
3. All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the wireless support structure, or mounted to the side of the wireless

support structure such that the vertical centerline of the antenna enclosure shall be parallel with the wireless support structure with the height of the side mounted antenna being at a location on the wireless support structure noted in the application and approved by the municipality, but at least 10 feet above ground level at its lowest point.

4. Tree "topping" or the improper pruning of trees is prohibited.

B. CABLES AND WIRES

All cables, wires and connectors related to the SWF must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the SWF hanging off or otherwise exposed on the wireless support structure.

C. COLORS

All colors shall match the background of any wireless support structure that the facilities are located upon, including equipment cabinets. Notwithstanding the foregoing, in the case of existing wood utility poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes, and equipment cabinets shall be the color of brushed aluminum.

D. EQUIPMENT ENCLOSURES/CONCEALMENT

1. Equipment enclosures, including electric meters, shall be as small as possible, but in no event larger than 28 cubic feet in volume. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure, unless other materials or colors are approved by the municipality. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
2. Radio equipment shall be fully enclosed within an equipment cabinet or concealed within the antenna shroud enclosure matching the color and materials of the wireless support structure, unless other materials or colors are approved by the municipality.

3. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two years of installation.

E. SIGNAGE/LOGOS/LIGHTS/DECALS/COOLING FANS

1. Signage: The SWF permittee shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches. If no cabinet exists, the signage shall be placed at the base of the pole.
2. Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accordance with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a streetlight pole.
3. Logos/Decals: The small wireless facility operator/permittee shall remove or paint over unnecessary equipment manufacturer decals. The color shall match or shall be as approved by the municipality. SWF and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The SWF operator/permittee shall utilize the smallest and lowest visibility RF warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
4. Cooling Fans: In residential areas, the small wireless facility operator/permittee shall use a passive cooling system. In the event that a fan is needed, the small wireless facility operator/permittee shall use a cooling fan with a low noise profile.

F. Solar Power Option

The aesthetic requirements may be permitted to be modified if the opportunity to utilize solar power can be reasonably accommodated as a source of power for the small wireless facility. The use of solar power is encouraged by the Township if feasible and technologically available now or in the future. The Township and the applicant shall work together to facilitate the use of solar power and agree upon related design parameters.

V. LOCATION REQUIREMENTS

A. COLLOCATION PREFERENCE

It is the municipality's strong preference that whenever an applicant proposes to place a new small wireless facility that the applicant collocate the same on existing wireless support structures.

B. LEAST PREFERABLE LOCATIONS

Residential Districts, Historic Districts and locations in close proximity to historic buildings or structures are the least preferred areas for new small wireless facilities and collocation is much preferred.

C. RESIDENTIAL DISTRICTS WHERE ALL UTILITIES ARE LOCATED UNDERGROUND

In residential district or historic districts where all utilities are located underground (other than municipal poles and attachments, including replacements of same), wireless support structures shall be prohibited. However, in instances where a wireless support structure is deemed to be necessary by the applicant in a residential district where all utilities are located underground, the applicant may seek a waiver for the installation of a new wireless support structure. The waiver request shall be addressed in a public hearing to be held by the Board of Supervisors. The owner of the property upon which the proposed wireless support structure is to be located upon (albeit within the right-of-way) shall be afforded an opportunity to participate in the hearing. A waiver may only be granted if the property owner approves of such waiver. If a new wireless structure is granted a waiver, such wireless support structure shall be designed to blend in with the neighborhood in the form of decorative poles or streetlights, and specifically constructed to comply with the design specifications designated for those types of neighborhoods.

D. CONSIDERATION OF ALTERNATE LOCATIONS

The municipality reserves the right to propose an alternate location for a SWF and/or wireless support structure to the location proposed in the application within one hundred feet of the proposed location, which the operator shall use if it has the right to use the alternate location on

reasonable terms and conditions and the alternate location does not impose technical limits, or unreasonable additional costs or act as an effective prohibition.

E. GUIDELINES ON PLACEMENT

The municipality desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a SWF facility and/or wireless support structure shall match and be consistent with the materials and finish of the wireless support structure, adjacent municipal-owned poles, and of the surrounding area adjacent to their location. In the absence of adjacent municipal-owned poles, the wireless support structure shall match the materials and finish of the adjacent utility poles.

The following additional guidelines on placement shall apply:

1. Small wireless facilities and wireless support structures shall be located no closer than 150 feet away, radially, from another small wireless facility and wireless support structure. This distance separation shall not be applicable to collocations on existing wireless support structures or collocations on the same wireless support structure.
2. A combination wireless support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary.
3. Small wireless facilities and wireless support structures shall be located in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a ROW.
4. Small wireless facilities and wireless support structures shall be located in a manner that does not obstruct the legal use of a ROW by a utility provider.
5. Small wireless facilities and wireless support structures shall be located in a manner that does not violate or conflict with the municipality's code, applicable law and regulations, or these Guidelines.
6. Small wireless facilities and wireless support structures shall be located in a manner that does not violate the federal Americans with Disabilities Act.
7. Small wireless facilities and wireless support structures shall be located in a manner that does not negatively impact the structural integrity of the associated wireless support structure.

8. Small wireless facilities and wireless support structures shall be located in alignment with existing trees, utility poles, and streetlights.
9. Small wireless facilities and wireless support structures shall be located equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
10. Small wireless facilities and wireless support structures shall be located with appropriate clearance from existing utilities.
11. Small wireless facilities and wireless support structures shall be located so as not to be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
12. Small wireless facilities and wireless support structures shall be located not within sight triangles at street intersections.
13. New wireless support structures shall not be located directly in front of any existing residential, commercial or industrial structure but rather shall be placed in between such structures to minimize visual impacts.
14. To the greatest extent possible, new wireless support structures shall be located in line with existing lot lines or an equidistance from any two existing structures. In areas of the municipality where multiple structures abut each other and/or where no side lot setback requirements exist, new wireless support structures shall not be located directly in front of an entrance or window of any existing structure.

VI. DEPICTIONS, PHOTOGRAPHS AND SPECIFICATIONS OF VARIOUS LOCATIONS AND DESIGNS DEEMED ACCEPTABLE BY THE MUNICIPALITY

The following are attached hereto, and incorporated herein, as part of the Small Wireless Facility Design Guidelines to provide specific guidance as to locations that are acceptable as well as designs that are deemed acceptable by the Municipality:

Figure 1 – Example of Acceptable Location Between Residential Homes

Figure 2 – Example of Acceptable Location Between Commercial Buildings

Figure 3 – Examples of acceptable Colocations Designs
(Such as being collocated on existing Street Lights, on existing Utility Poles, on existing decorative poles/poles for flags, on directional Street Pole Signs or Traffic Lights)

Figure 4 – Examples of acceptable new Wireless Support Structures Designs
(Such as Replacement/New Street Lights, New Decorative Poles or
Street Lights in Residential Neighborhood, New Decorative Poles or
Street Lights in Town/Historic District, New Poles on major roads)

VII. LIMITATIONS

While the municipality fully intends to apply the Guidelines established in this policy uniformly to all small wireless facility applications, there may be circumstances where not every specific guideline may be met. In this case, municipal staff will use its reasonable discretion in approving small wireless facilities permit applications that deviate from the strict application of this policy.

VIII. EFFECTIVE DATE OF POLICY

This Policy will be effective as of the date of the adoption of the enabling Resolution.

(FIGURES ATTACHED AS REFERENCED ABOVE)

Figure 1

**Example of Acceptable Locations Between
Residential Homes**

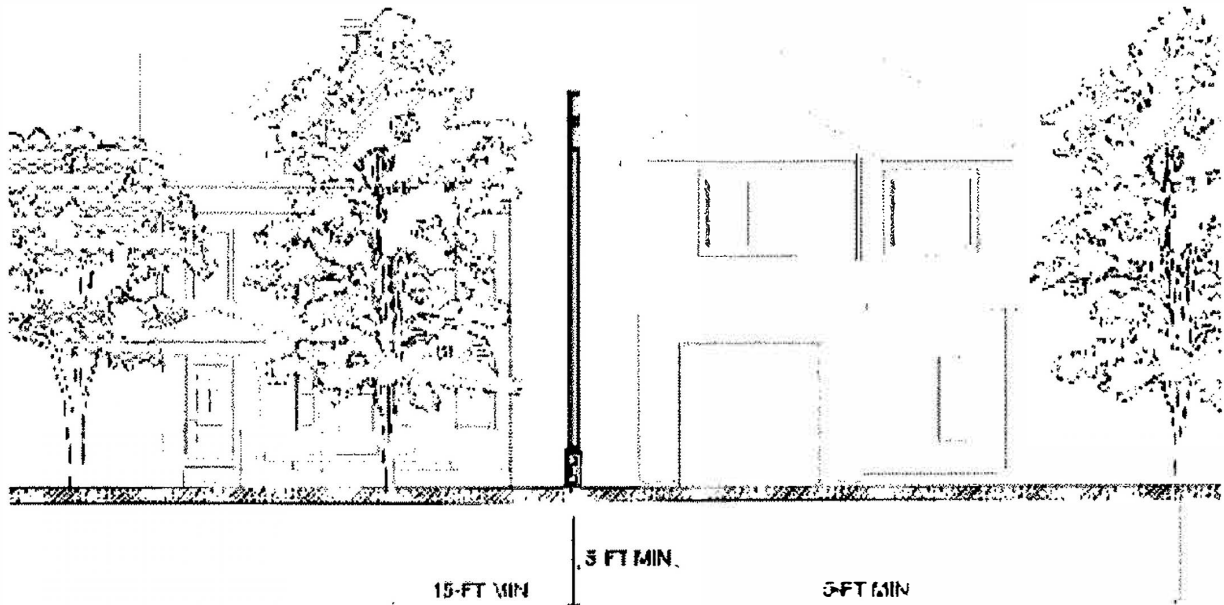


Figure 2

**Example of Acceptable Locations Between
Commercial Buildings**

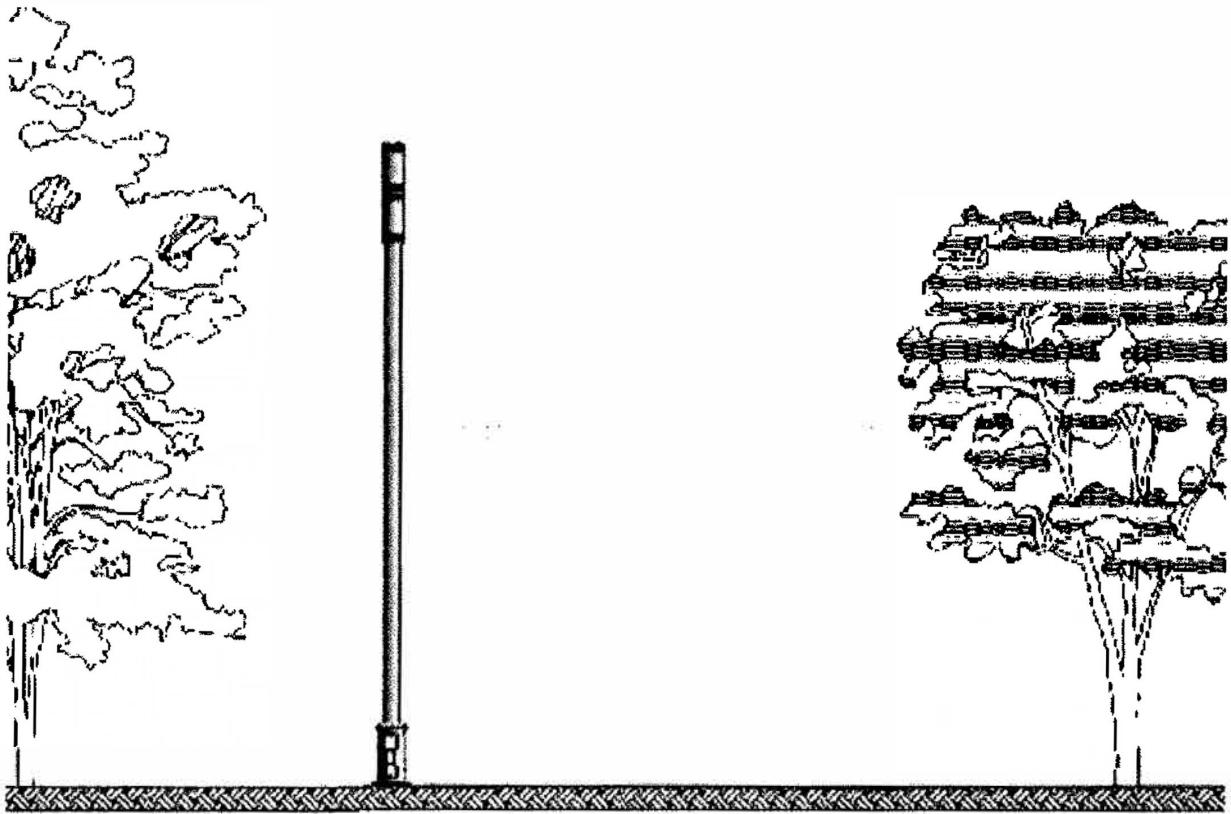


Figure 3

Examples of Acceptable Colocation Designs

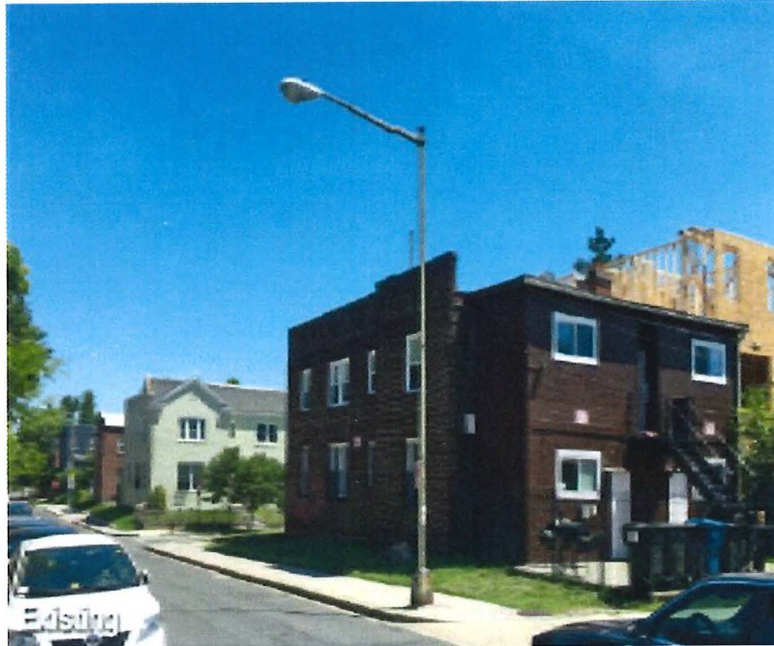
On Utility Pole



On Existing Utility/Light Pole



On Pendant Pole



On Existing Traffic Light



**Extension of Existing Street Light
(subject to further design discussion)**



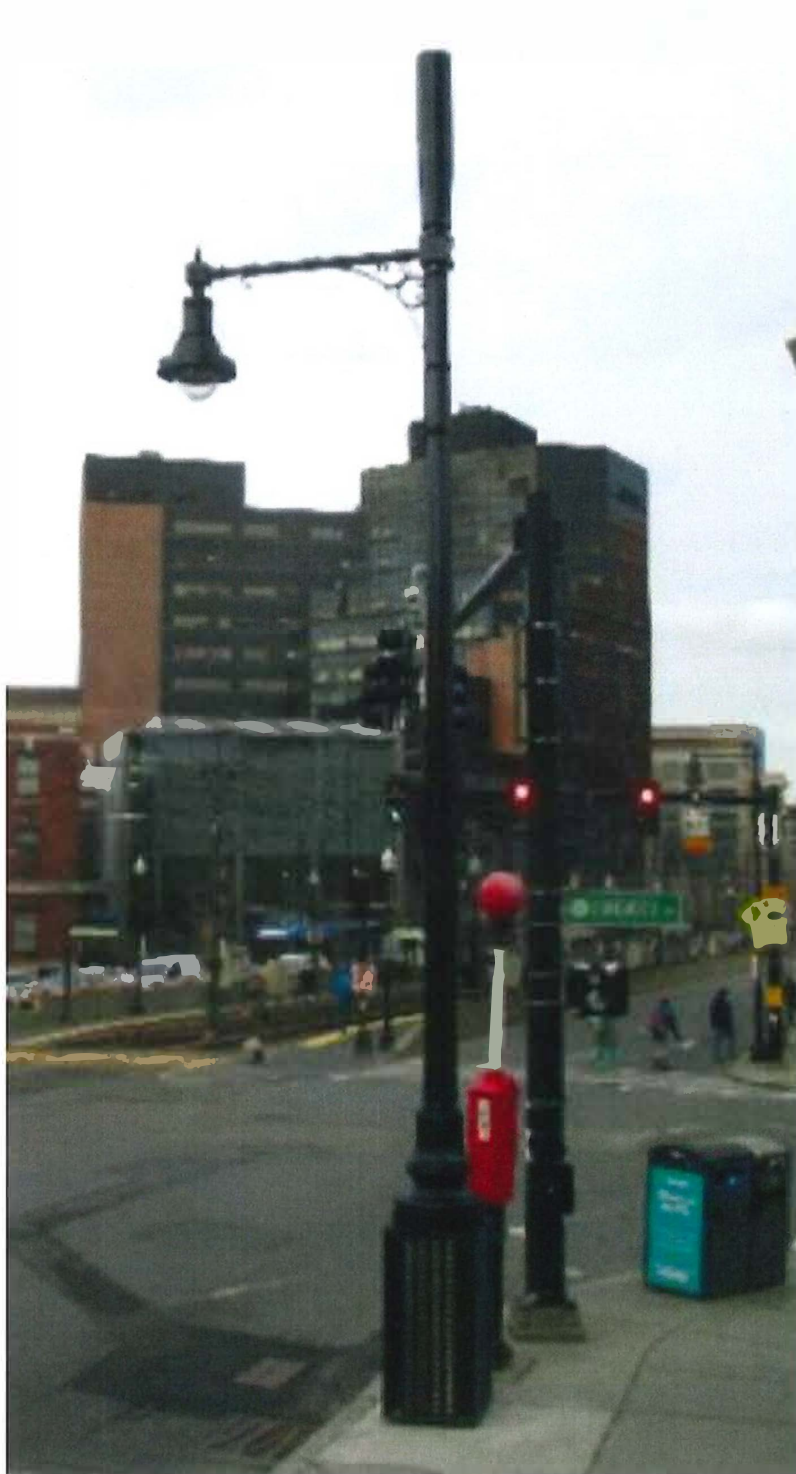
Figure 4

Examples of Acceptable New Wireless Support Structures

New Pole on Major Roadway



New Pole with Street light



Decorative Pole in Town Center/Business District



Decorative Light in Town or Residential



New Pole on Major Road



New Pole with Street lights in Corporate area or larger venue



**New Pole in Residential Districts
(subject to further design discussion)**

