

ORDINANCE # 04 OF 2005

AN ORDINANCE PERMITTING SETTLEMENT OF  
LITIGATION AND PERMITTING ERECTION OF A  
TELECOMMUNICATION TOWER.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY the Board of Supervisors of South Middleton Township, that the following ordinance becomes a duly enacted binding ordinance of South Middleton Township and the Board of Supervisors the terms of which are as follows:

SECTION I: INTRODUCTION AND BACKGROUND

WHEREAS, the Township is the named defendant in a Complaint filed by Shenandoah Mobile Company ("Shentel") in the United States District Court for the Middle District of Pennsylvania claiming violations of the Telecommunications Act of 1996 arising from the Township's denial of Shentel's application for a Conditional Use for a telecommunications tower ("Application"), which Complaint is docketed as Shenandoah Mobile Company v. Board of Supervisors of South Middleton Township and the Township of South Middleton, Civil Action No. 4:04-CV-1008; and

WHEREAS, the Application requested construction of a 190 foot lattice telecommunications tower ("tower") near Forge Road, the main road into and from the Village of Boiling Springs; and

WHEREAS, the Township denied the Application by Decision issued March 12, 2004 ("Decision");

WHEREAS, following the issuance of the Decision, Shentel commenced legal action against the Township in both state and federal courts; and

WHEREAS, Shentel and the Township have engaged in extensive discovery in the federal court action; and

WHEREAS, our judicial system favors and encourages amicable resolution of disputes; and

WHEREAS, resolution of the dispute without the need for trial and subsequent appeals which would be time consuming and expensive for both parties is desirable; and

WHEREAS, during the course of litigation, Shentel expressed a willingness to the Township to resolve the dispute by settlement; and

WHEREAS, members of the Board of Supervisors ("Board") engaged in discussions with Shentel for the purpose of obtaining a mutually desirable resolution of the litigation; and

~~WHEREAS, these discussions led to a recommendation to the Board to approve settlement of all pending litigation arising from the Decision; and~~

WHEREAS, settlement would permit Shentel to construct a less intrusive monopole tower in the Spring Meadows Township Park; and

WHEREAS, the courts have not established specific requirements governing this situation other than to say that amicable dispute resolution is strongly favored; and

WHEREAS, the Board's long standing policy is to promote public involvement period; and

The Board hereby enacts this Ordinance for the aforesaid reason and other important concerns. The Board feels that discussion and adoption of a settlement is best accomplished by way of an ordinance;

SECTION II:                    SETTLEMENT AGREEMENT

- 1)                    The Township and Shentel shall prepare a written settlement agreement satisfactory to both parties, which settlement agreement shall contain, among other things, the basic provisions set forth in this Section.
- 2)                    Shentel will be permitted to construct, erect and maintain a 155 foot monopole tower in the southeastern section of Spring Meadows Park.
- 3)                    In the construction of the tower, Shentel shall use methods and designs that are satisfactory to the Township intended to minimize the visual impact of the tower.
- 4)                    The Township and Shentel shall enter into a lease agreement for the tower site satisfactory to both parties.
- 5)                    Shentel shall access the tower site only by way of park roads that Shentel shall construct to Township requirements and at its own expense; among other requirements, the entrance to the tower site shall be across from Auburn Circle and shall follow the park development plan #03-40.
- 6)                    Shentel shall both fence and screen the tower site to the satisfaction of the Township.

- 7) The tower site shall be no larger than 100 feet by 100 feet.
- 8) Shentel shall be bound to such other requirements as required by the Township prior to execution of the Agreement.
- 9) The settlement agreement shall be jointly presented by the Township and Shentel to the United States District Court for the Middle District of Pennsylvania in the form of a Stipulation of Settlement, subject to the District Court's review and approval.

SECTION III: EFFECT OF OTHER ORDINANCES

- 1) This Ordinance recognizes and implements a negotiated settlement of the action pending before the United States District Court for the Middle District of Pennsylvania. To the extent the terms and conditions set forth in the settlement agreement and/or this Ordinance are inconsistent with existing Township ordinances, such modification is for the purpose of settlement only and subject to the review and approval of the United States District Court for the Middle District of Pennsylvania.
- 2) To the extent the terms and conditions set forth in the settlement agreement and/or this Ordinance are inconsistent with existing Township ordinances, such modification shall be applied only to the instant matter and shall not be construed as a general amendment to such ordinances or applied to any future or existing matter.

SECTION IV: CONTINGENT APPLICATION

- 1) The enactment and application of this Ordinance are contingent on:
  - A) Board approval of the settlement agreement with Shentel.
  - B) Board approval of a lease agreement with Shentel.
  - C) Approval of both state and federal agencies, as necessary.
  - D) Compliance by Shentel and its successors to all terms of the settlement agreement, lease agreement, and all applicable federal, state and Township laws.
  - E) Approval of the settlement agreement by the United States District Court for the Middle District of Pennsylvania.

- 2) In the event that any of the above contingencies occur or do not occur, this Ordinance shall immediately become null and void without further action by the Township or state or federal court.

SECTION V: SETTLEMENT FUNDS

- 1) Any and all revenues, whether such revenues be derived from leasing, subleasing, or contributions arising from the terms of the settlement agreement or lease ("Settlement Funds") shall be used for and only for the following purposes:
  - A) Improvements to existing or future Township parks;
  - B) Maintenance of existing or future Township parks; and/or
  - C) Acquisition of land for public parks;
- 2) The Township shall under the control and supervision of the Board establish an account for the above-stated purposes and all Settlement Funds shall be deposited into said account.
- 3) The Board shall have exclusive control over the disbursement and use of such Settlement Funds. The disbursement and/or use of Settlement Funds shall be restricted by the terms of this Ordinance and no other use or application shall be permitted.

SECTION VI: SEVERABILITY

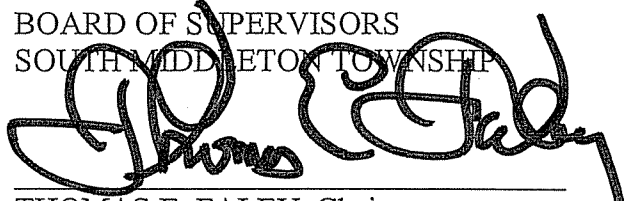
The provisions of this Ordinance shall be severable, and if any provision hereof shall be declared unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as the legislative intent of the Township that this Ordinance would have been amended as if such unconstitutional, illegal or invalid provision or provisions had not been included herein.

SECTION VII: EFFECTIVE DATE

This Ordinance shall become effective immediately.

ENACTED AND ORDAINED this 10th day of March, 2005.

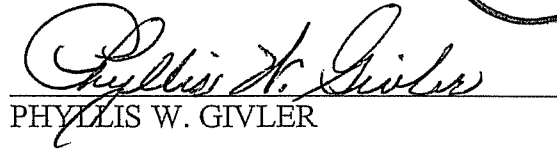
BOARD OF SUPERVISORS  
SOUTH MIDDLETON TOWNSHIP



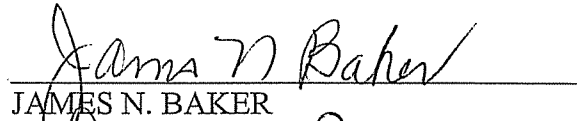
THOMAS E. FALEY, Chairman



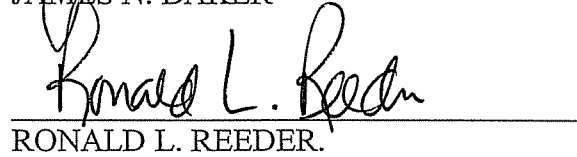
BRYAN A. GEMBUSIA, Vice Chairman



PHYLLIS W. GIVLER

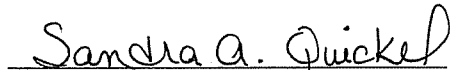


JAMES N. BAKER



RONALD L. REEDER.

ATTEST:

  
SANDRA A. QUICKEL,  
Secretary