

JULY 16, 2008
WAYNESBORO, PA 17268
PUBLIC HEARING RE: ELECTRONIC MESSAGE
BUSINESS SIGNS ORDINANCE

Council President Craig Newcomer called the hearing to order at 7:00 p.m. with the following in attendance:

Borough Council Members – Benjamin Greenawalt, C. Harold Mumma, Craig Newcomer and Charles McCammon (*Jason Stains arrived late; Ronald Martin recused himself from his Council seat and joined the audience)

Mayor Richard Starliper

Borough Staff – Lloyd R. Hamberger, II, Borough Manager
Denny Benshoff, Maintenance Superintendent
Dan Sheffler, Zoning-Code Enforcement Officer
Kevin Grubbs, Head of Engineering Services
Sam Wiser, Borough Solicitor (Salzmann Hughes, PC)

President Newcomer noted that the purpose of the hearing was to receive input on a proposed ordinance amending Ordinance No. 937, the Waynesboro Zoning Ordinance, by revising and adding thereto provisions relating to the chapter on zoning as it relates to electronic message business signs. The hearing was duly advertised in *The Record Herald* on June 24, 2008. The oath was administered to those individuals indicating they wished to comment during the hearing.

Kevin Grubbs testified to the following:

- June 11, 2008 - Received revised ordinance via e-mail from the Borough Solicitor.
- June 13, 2008 - Delivered a copy of the revised ordinance to the Franklin County Planning Commission for their review and comments.
- June 18, 2008 - Borough Council approved advertisement of the proposed ordinance and public hearing scheduled for July 16th.
- June 24, 2008 - Advertised the Notice of Public Hearing and proposed ordinance in *The Record Herald* and posted a copy in the lobby of Borough Hall.
- June 26, 2008 - Received proof of publication from *The Record Herald* newspaper.
- July 14, 2008 - The revised ordinance was reviewed by the Waynesboro Planning Commission, who stated they were not in agreement with the ordinance. They went on record approving the previous ordinance which included the four (4) original locations.
- July 16, 2008 - Received comments from the Franklin County Planning Commission, who recommended approval of the revised ordinance.

Comments were then requested from the public.

Frank Bittner, 842 Anthony Avenue - Mr. Bittner stated that the “blinking light situation” has been quite a controversy for several months. In January of 2007 he addressed Borough Council about issues that appeared in the *Borough Council Handbook*. There were items in the handbook which he felt were very important, including reports by various department heads and officials, as well as six (6) principles for better models of development in Pennsylvania: (1) conserve Pennsylvania’s farmland, natural areas and scenic assets; (2) maintain a clear edge between town and countryside; (3) build and maintain livable and attractive communities; (4) preserve historic resources; (5) respect local community character in new construction; and (6) reduce the impact of the car and promote walkability. Mr. Bittner reported on improvements in the downtown made by the Design Committee of Main Street, Inc., including hanging flower baskets, cleaning up around the “Doves”, planting trees, new light poles, etc. Mr. Bittner noted that electronic signs then came under discussion, and a councilman “threatened, coerced or forced” the issue by threatening to sue. An in-depth report will be given later in the meeting regarding flashing signs in other communities, and he commended the author (Richard Rose) for his efforts. He feels that the report resounds the input given at a meeting several months ago when people in the audience noted they were not in favor of flashing signs. Mr. Bittner added that the Planning Commission made a proposal to Council and Council voted it down ... he wondered if that “was by general decision, was coerced or forced, or was by intimidation”. He stated he hoped it was their own free choice and free will to do so.

Amos Miller, 309 W. Sixth Street - Mr. Miller noted that he has expressed his concerns in the past regarding pedestrian accidents, which have been abnormally high lately. He sees the electronic signs as a major problem for drivers of vehicles (as a distraction), which has the potential to lead to ongoing pedestrian accidents. He feels that what is driving the issue is a threatened lawsuit. He suggested that Council let the public know what it would cost to go to court over this matter; and maybe a lot of people who feel strongly against these signs would be willing to try that challenge to see where it goes. Mr. Miller commented that the majority of the Borough residents are against these signs; and since Council represents them, they should honor that position. He added that a meeting should be held to determine if the Borough is willing to sacrifice those dollars to litigate this matter in court.

Dick Rose, 118 W. Fifth Street - Mr. Rose noted that Council members should have received a copy of his report and had a chance to read it. He explained that he reviewed approximately 120-130 codes online, and called many municipalities to talk with their managers and zoning officers to validate information. He requested that Council reconsider some of the provisions in the proposed ordinance. He noted that the Planning Commission recommended something which was very conservative; however, this is the other extreme and is very liberal (particularly when you compare it to other Borough Codes in Pennsylvania). 90% of other municipalities don’t allow any electronic signs, so he concentrated on those which did allow them and got a sense for how they restricted them. Virtually every one, with the exception of maybe two or three, restricted their use in areas with residential properties that are adjacent to, abut or face any of the locations where there are flashing signs. Mr. Rose noted that the Borough’s proposed ordinance, as written, “leaves it completely open” with no restrictions except for the 7-second change. He feels that the chosen locations are appropriate, but added that “this will creep” (as there are many other GC locations in the Borough).

Mr. Rose noted that, based on information contained in other codes, he is recommending that the following restrictions be imposed: (1) respect neighboring homes (by shielding the signs); (2) respect the colors (i.e. dark background with red scrolling messages); and (3) reconsider the frequency (the average is 21 seconds, except those which only allow changing once/day). Mr. Rose also added that Lower Pottsville Township has limited the signs to the inter-change districts only. In fact, their ordinance contains a statement about the danger/safety aspect of blinking, flashing and scrolling signs. Mr. Rose commented that he included their terminology in his report for Council’s review. He requested that Council consider reviewing this matter further prior to making a decision.

Suzanne Trinh, 257Lincoln Way East, Chambersburg, PA - Ms. Trinh, counsel for Ronald Martin, brought several ideas to Council’s attention. Locally, she noted that Washington Township is an

example of how the signs can be managed. In 2007, Washington Township modified their ordinance to allow electronic message signs - and there is not a proliferation of signs. In addition, Chambersburg adopted an ordinance allowing electronic message signs in 2006 (with restrictions) - and the signs in Chambersburg can be counted on one hand. She provided Council with a copy of the ordinances from both municipalities for reference (copies are attached hereto and made a part of these minutes). Ms. Trinh noted her appreciation for the amount of work that went into Mr. Rose's report, but she submitted that 100 municipalities in Pennsylvania is not a representative sample (as there are several thousand municipalities in the state) and all of those 100 included have restrictions. Ms. Trinh noted that Borough Council is limited in what they can do to ensure it has taken steps that are reasonable to protect the health and welfare of its citizens. The ordinance proposed is limited in the areas where the signs can be placed, it restricts how close they can be to intersections, and it restricts the intervals of how often the signs can change. The signs have been in Chambersburg for two (2) years, and there have been no statistics to support any traffic issues or other problems related to the signs. They have been in Washington Township now for a full year; and again, no statistics or concern noted that the signs are causing a safety issue. The Borough's ordinance proposes two (2) very small areas where the signs could be located and the intervals within which they could change. She added that, in order to make the signs useful, they need to change more often than (for example) 24 hours. The sign companies themselves have made certain recommendations about how quickly the signs should change.

(* Jason Stains arrived at 7:21 p.m.)

Ms. Trinh noted that seven (7) seconds seems like a reasonable time for someone to read more than one message as they are drive by at approximately 35 mph (which is the speed limit where the signs would be). Finally, she stated that if the signs truly presented/created a traffic hazard, there would be a statute in Pennsylvania prohibiting them across-the-board. Instead, the State of Pennsylvania puts them on the highways with messages about construction and other issues. In the Borough itself, the Chamber of Commerce and CVS already have electronic message board signs – and the Chamber sign changes every three (3) seconds. Ms. Trinh urged Council to take a position that will allow the signs, with reasonable restrictions; and she believes that the ordinance being proposed certainly has reasonable restrictions contained within it.

Richard Rose - In response to Ms. Trinh's comments regarding his report, Mr. Rose stated that he reviewed a lot more ordinances than what are listed in his report. He believes it is a fair sampling, as he discarded approximately 50-70 that didn't allow the signs at all. Secondly, he noted that he took a count on S. Potomac Street (between Madison Avenue and Third Street) and found there to be five (5) potential locations where these signs could be erected. Within those areas, there are 33 residential homes in view of those five locations. He feels that the signs are not just a distraction to motorists, but to the residents as well. In addition, Mr. Rose noted that rapidly changing background, colors and message characters can present a distraction to motorists. In fact, he noted that the Pennsylvania Department of Transportation recognizes this and states the following on their website in regard to electronic signs: "Signs which contain illumination that flashes or moves are prohibited with the exception of public service signs with time, date and temperature. Electronic message signs are very distracting to motorists."

Suzanne Trinh - Ms. Trinh noted that she is not sure what this PENNDOT regulation governs, but it is not true that signs that contain illumination that flashes or moves are prohibited in Pennsylvania – they may be prohibited along interstate highways – but she is not sure where this statement came from. At the same time, on the highways specifically there are messages telling motorists about construction, delays, etc. where people are traveling at least 55 mph. She added that a PENNDOT regulation that (she assumes) governs highways really shouldn't color what happens on the streets in Boroughs such as this where the speed limits are much slower and where businesses are located.

President Newcomer commented that the proposed ordinance is on Council's agenda for a vote this evening, however he is recommending that it be moved to the agenda for their next meeting (August 6th), in fairness to the people who spoke this evening (Councilman Stains had a time restraint at work and arrived late for the meeting). This will allow him sufficient time to gather and review the notes from this hearing in order to make a decision based on the witnesses' statements.

Solicitor Sam Wiser commented that the reason municipalities have to have some type of reasonable regulations for flashing lights is from a Supreme Court case in Pennsylvania. The holding in that case states that "the prohibition of all flashing signs throughout the Township is patently unreasonable, unjustified and invalid". Therefore, the Township had to come up with some type of reasonable regulation for message (flashing lights) signs. That is why the municipality (Waynesboro) needs to take some type of action and come up with reasonable regulations. He further explained that the current regulations excluded all flashing lights, and that is not a valid regulation (as viewed in light of the Supreme Court case quoted). Even though Council had advertised one version of an ordinance and canceled it, no official action had been taken to amend the Zoning Ordinance. Mr. Wiser also explained that the PENNDOT regulation mentioned falls under the Outdoor Advertising Control Act, which gives PENNDOT the ability to regulate advertising signs along highways, but it doesn't at all affect what is done in a municipality (unless it is along a state highway). He added that Route 16 which runs through Waynesboro isn't subject to that regulation.

Hearing no further comments, the hearing was closed at 7:30 p.m.

Respectfully Submitted,

Melinda S. Knott
Administrative Assistant