CapCOG Board of Delegates

Hampden Township Building, Room 202

Monday, February 17, 2020 - 7:00 PM

M I N U T E S

**DELEGATES IN ATTENDANCE:**

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| Conewago Township, Gary PainterEast Pennsboro Township, Joe FidlerFairview Township, Mario PirritanoGoldsboro Borough, Robert CharlesHighspire Borough, Mark StonbrakerHummelstown Borough, Bradley MillerLemoyne Borough, Sue Yenchko Londonderry Township, Anna DaleLower Allen Township, Rick Schin | Lower Paxton Township, Robin Lindsey Middle Paxton Township, Jim FisherMonroe Township, Carl KuhlNew Cumberland Borough, Rob Kline North Middleton Township, Harry Kelso Penbrook Borough, Joe HogarthRoyalton Borough, Terry Watts | Silver Spring Township, Harry Kotzmoyer South Hanover Township, Stephen Cordaro Upper Allen Township, Ken MartinWormleysburg Borough, Sue Stuart |

**MUNICIPALITIES NOT IN ATTENDANCE:**

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| Annville TownshipCamp Hill BoroughCarlisle BoroughCarroll TownshipDauphin BoroughDerry Township Dillsburg BoroughEast Hanover Township | Hampden TownshipHarrisburg CityLower Swatara TownshipMarysville Borough Mechanicsburg BoroughMiddletown BoroughMonaghan TownshipPaxtang Borough  | Shiremanstown Borough South Middleton TownshipSteelton BoroughSusquehanna TownshipSwatara TownshipWest Hanover Township |

**NON-VOTING IN ATTENDANCE:**

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| --- | --- |
| Vince DiFilippo, Cumberland County CommissionersCindy Foster, Lemoyne BoroughAlbert Penska, New Cumberland BoroughKeldeen Stambaugh, Paxtang Borough Norm Zoumas, Lower Paxton Township | CapCOG STAFFGary Myers, Executive DirectorRhonda Campbell, Administrative Assistant |

Meeting was called to order at 7:01 PM by Anna Dale.

The Pledge of Allegiance led by Terry Watts.

**Presentation**

* Dan Cohen, Cohen Law Group presented on Small Cell/Wireless Facilities Legislation, HB 1400.
* Cohen is a former municipal official. His firm represents local governments in cable and broadband issues.
* There have been dramatic changes in regulation of wireless facilities. Municipalities' ability to manage their communities is the larger issue that is most important.
* Wireless data traffic has increased six-fold from 2016 to 2022.
* Traditional cell towers aren't able to meet the increased demand in coverage and capacity (voice/telephone). Increase in video and large amounts of data so capacity must increase.
* Distributed Antenna Systems (DAS) or "small cells" installed in public rights of way. Reality is we need these to provide high speed internet service. 800,000 residents in PA still have DSL. This isn't a presentation against wireless improvements.
* Estimated 150,000 DAS and small cell facilities were constructed by end of 2018. Expected to reach 455,000 by 2020 and 800,000 by 2026.
* T-Mobile and Sprint are merging so only three wireless carriers in US: Verizon, AT&T and T-Mobile/Sprint.
* Municipality has the legal authority: Federal law preserves the zoning authority of state and local governments over the "placement, construction, and modification of personal wireless service facilities." Federal Telecommunications Act of 1996.

*Limitations:*

* + May not “prohibit” or “have the effect of prohibiting” wireless facilities.
	+ May not unreasonably discriminate against providers of “functionally equivalent services.”
	+ Must act on a request for approval within a “reasonable period of time” after the request is filed.
	+ May not regulate wireless services based on health effects of radio frequency emissions.
* Hundreds of municipalities in PA that manage these facilities through zoning codes.
* FCC Third Report and Order of 2018 creates "shot clocks" for action - 10 days to say whether application is complete. If it is an incomplete application, the clock stops running. Once the carrier submits a completed application - 90 days for a new pole, and 60 days for antennas.
* FCC order also prescribes fees that municipalities can charge - application fee $500 for up to 5 facilities; $100 thereafter for antennas. $1000 for a pole application fee. Recurring annual fee $270 per node (either antenna on existing pole or antenna and new pole). You can charge higher but have to show your cost is higher than the presumptive fee.
* Even with the limitations, FCC still preserves local government's right to manage through zoning.
* Verizon and AT&T have pushed a bill since 2016 to take away municipal zoning authority for zoning of wireless facilities in the rights of way.
* Local government has opposed these bills over the years.
* HB 1400 does not preserve local government's authority.
	+ The bill allows municipalities to apply “applicable codes”, but defines “applicable codes” as “uniform building, fire, electrical, plumbing or mechanical codes adopted by recognized national organization or local amendments to those codes enacted solely to address imminent threat of destruction of property or injury to persons.”
* Cohen submitted suggested amendments to include "zoning codes" but the changes have not been made.
* That hasn't happened because the purpose of the bill is to remove municipal control.
* Biggest issue, by far, is taking away local zoning authority.
* But, the fees are also an issue. HB 1400 takes away $270 and brings it down to $220 but takes away municipalities' ability to charge a higher fee if you can show higher costs.
* Legislative status now:
* Last June, the sponsor (Frank ferry - Bucks County) tried to run the bill with little or no notice to municipalities or municipal associations by bill's sponsor.
* January 2020 tried again and pulled at last minute.
* Expectation is that in March there will be an attempt to get it passed in the House Consumer Affairs Committee. Representatives DeLozier and Mehaffie are members of this Committee.
* If those two don't want it to come up for a vote, it won't. So it is important to reach out now.

Q&A

* If a contractor comes in with multiple applications, you still have only 10 days, correct? Yes. And according to the FCC Order regarding the number of days which a municipality has to decide whether a wireless application is complete is simply listed as ten days, so we have to conclude it is ten calendar days. Municipalities have to notify them - in writing - that the application is incomplete.
* Carl Ruhl - has there been any change in technology. Cohen - The coverage area for an antenna is only about 1000 feet; less than a ¼ mile.
* Ruhl - Any different state is treating their ROW vs. our local controlled ROW? Technically, it doesn't apply to state road. UP to now, PennDOT has ceded to local ordinances.
* Stuart - what's best way to contact representatives? Cohen - I defer to you how to best communicate with your state rep. Would not be problematic to do now. Our firm sends out action alerts when it looks like it is coming up for a vote. You can contact now to say this is why we are opposed. But do it again when it comes up in March.
* Comment - Uncertain as to whom shared: We've had towers come through out township. We've looked for co-locations for Verizon/ATT on one tower. What is chance we could have three towers stuck in front of a house. Cohen -There is a decent chance of that. In your ordnance - say you have to co-locate and have a second/third attachment to the pole unless you can demonstrate that there are no other poles available. Co-location will reduce the number of new poles in your municipality.
* Ken Martin - Do you have a template of an ordinance or factors that may be important for us to consider. Dan works with municipalities to create ordinances that work with their municipalities. A number of municipalities have identified arterial roads that are available for placement of DAS.
* Martin -in past Cohen has put forth proposals for discounted pricing for joint work on ordinances. Would that work here? Gary - yes. Cohen - We are currently representing 3-4 municipalities. CapCOG will share an updated proposal with members when it is received from Cohen.
* Sue Yenchko - We need to get with our state legislators and tell them this isn't good for municipal government. Make sure they understand that the FCC gives local government the power over placement. Cohen - There have been some small improvements to the bill over time, but on the fundamental issue of taking away municipal zoning authority it hasn't changed. We need to do a better job of getting facts out. Yenchko -key is to keep hitting the message about local zoning control.
* Myers - similar bill years ago Act 1 - mineral rights. Which took away right of local government to govern their own zoning. It was found to be unconstitutional.
* Cohen - Residents will be upset especially where utilities are underground. If state is able to take away municipal control of ROW with wireless, it will start a snowball effect. Cable companies will likely ask for franchise fees to be appealed. Slippery slope.
* Fisher - PSATS is not mentioned as an organization opposing HB 1400. Cohen - For reasons I cannot say because I don't know, PSATS has been supportive or neutral on these bills. Cohen is hoping PSATS will join other associations to oppose. If that would happen, Cohen thinks the bill would die.
	+ Schin - Can't imagine why PSATS would not be just as concerned as the other municipal associations.
	+ Jim Fisher will look at upcoming resolutions for annual meeting to see if anything related to this is on agenda.
* Martin - If we don't have ordinances, we have no control. That's a sobering thought.
* Myers - if someone puts 50 of these applications on your desk and you have ten days to review them all; residents will be asking why you didn't do something to stop it.
* Comment - Uncertain as to whom shared: -this is a moving target. What you write today may not fit under state law tomorrow. Cohen - True. I do believe municipalities have raised their voice enough times. House leadership is getting tired of this Bill and the sponsor pushing it over and over. If it fails to come up for a vote this time, it may be enough to kill it.
* Fidler - What action we will take about sample ordinances? Is CapCOG going to provide? Myers: No, if you want to contract with Cohen Law, we can facilitate pricing discounts depending on number of members who choose to participate.

**Minutes**

Approve November 19 and January 2020 minutes - Fisher motion. Robert Charles seconded. Unanimously approved.

Approve Budget vs. Actual - January 2020 - motioned Schin seconded by Ken Martin.

* Fisher pointed out mistake on budget vs. actual. Rhonda Campbell will correct for March meeting.
* January - December 2019 - Assoc. Member Dues only show as 57.6% on income. Myers explained that because we are cash basis, income and expenses are reflected based on when received and paid.
* On public safety training income - budgeted 1000; spent 0. Nothing billed in that category.
* 400.421 QB upgrade.
* 489.00 unclassified operating expenses - $2808.95 expended - bonuses.
* Unanimously approved.

**Exeutive Directors' Report - Gary Myers**

* SW Strategic Planning Session -March 18 or 19 tentative.
* Annual Dinner - very successful. Report attached.
* Joint Bids - Opened on January 30. Myers and Campbell tabulated and reviewed thousands of lines of data. We've reviewed for compliance, bid bonds present, low-bids award. Need to ratify. Charles motioned. Schin seconded. Unanimously approved.

**County, Planing Commission, and Committee Reports**

Dauphin - no report

York - no report

Cumberland - Commissioner DiFilippo. Commissioner DiFilippo will be representing Cumberland County at CapCOG meetings.

* + Bridges - In about a month, four bridges in county will be under replacement/construction. Orrs Bridge is almost done. Sample Bridge in Silver Spring Township, Wolf Bridge in Middlesex and Kunkle Bridge.
	+ Voting machines purchased, tested and will be used for April primary.
	+ Electronics recycling has reached the 1M pound mark.

Public Safety Committee, Nate Silcox

* By Wednesday, every fire company in your service area, managers, and delegates/alternates will receive a letter regarding SAFER grant.
* Contracted with Jerry Brant, of Decoplan to write grant. We are applying for a 7-figure grant.
* Our firefighters and companies need this help. We don't have an equipment problem, we have a people problem. This isn't to take away autonomy, it's to share resources to get the job done.
* The fire companies who participate will be able to take advantage of grant. You cannot opt-in after the grant is awarded if we are successful.
* No cost to fire companies except for administrative time to keep track of what you are doing within the grant parameters (e.g., incentives, equipment, training, etc.).
* Grant cycle isn't open yet; expected within next 30-60 days. We will have 30-60 days to apply. Award time is undetermined.
* Robin Lindsey commented that since Lower Paxton Township just received a SAFER grant for recruitment and advertising, they would be excluded from our grant since they have their own.

UCC - Terry Watts

* No appeals.

Motion to adjourn: Martin. Seconded - Charles. Meeting adjorned at 8:07 PM.

** 2020 Annual Dinner Report**

**ATTENDANCE SUMMARY**

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| --- | --- |
| **Total Registered:*** 127 (record registrations)
 | **Total Attended:** * 116 (record attendance)
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**Municipalities Represented:**

* 25 registered

**State Elected Officials**

* Representatives Delozier and Mehaffie
* Senator DiSanto
* County Elected Officials: Cumberland County Commissioners Eichelberger, and Foschi; Delegate Emeritus, Jim Hertzler; Perry County Commissioner Bryan Allen;

**Sponsors**

|  |  |
| --- | --- |
| **Total Sponsors:*** 16
 | **Total Sponsorship Amount:** * $11,775
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| Premier Highmark/Penn State Health |  |
| VisionaryHRG PennoniPennsy Supply | LeaderBarton & LogudiceCohen Law GroupComcast |
| EntrepreneurGHAR HRC/CREDCRettew | PartnerCAEDCC.S. Davidson, Inc.Little Ikes AuctioneerMaher DuesselPFM/PLGITPPL |

**FINANCIAL SUMMARY**

Annual Dinner Registration Income Received: $1,502.47

Annual Dinner Sponsorship Income Received: $11,775.00

Refund Bartender Fee: $75.00

*Sub Total Income: $13,352.47*

Expenses: $6,313.54

**TOTAL NET INCOME: $7,038.93**