

XENIA TOWNSHIP ZONING COMMISSION

MEETING

September 25, 2018

THESE MINUTES ARE A SUMMARY OF THE EVENTS OF THE MEETING AND ARE NOT A WORD FOR WORD ACCOUNT OF THE DISCUSSIONS WHICH TOOK PLACE.

The Xenia Township Zoning Commission held a meeting on September 25, 2018 at 6:00 p.m. at the Xenia Township Trustees Office, 8 Brush Row Road, Xenia, OH, 45385; this meeting was advertised on the Xenia Township website within 24 hours of scheduling the meeting.

Jeffrey Zweber called the meeting to order at 6:15 p.m.

Attendees: Jeffrey Zweber, Chair, Virgil Ferguson, Kent Harbison, Donna Randall and Roy Colbrunn and Alan Stock. Alan King was absent.

Mr. Zweber advised there were a few guests tonight, John and Linda Fedarko. Mr. Zweber stated they would start with the questions from the Fedarko's.

Mr. Fedarko stated this was his first time attending a township meeting so he was not familiar with any procedures or protocols. He stated they have a few questions about how certain things are handled and a few problems they were having and were looking to get resolved.

Mr. Fedarko stated the first issue was with the permit process and stated he thought some of the processes were lacking in his opinion. He stated his first issue was with fence permit process. He stated he looked into the Zoning Resolution regarding fences. He stated he was told Xenia Township recommends placing a fence inside the property line by one foot for maintenance and access. Mr. Fedarko stated this was not in the zoning resolution that he could find. He stated they built accordingly. Mr. Fedarko explained a situation his neighbor was dealing with regarding the rear fence of her yard. Mr. Fedarko reported that Mr. Stock had been in contact with the new fence owners and to try to get a resolution to this issue. Mr. Fedarko stated the person he has been helping stated that she wants the fence gone. He stated he understand her position. Mr. Fedarko reported on a letter his neighbor wrote to the new fence owners and what she wanted.

Mr. Fedarko reported his other issue he had been dealing with for over 16 years and had been through three Road Superintendents and he wonders if this would be the last one. He stated his problem stems from when Amlin Heights roads were paved back in 2000/2001 and that his yard is now a flood plain. Mr. Fedarko explained the water runoff situation on his property and what he had done to try and help the issue. Mr. Fedarko stated when Mr. Pile, Road Superintendent, came out to his address, he measured and marked the street and told Mr. Fedarko that he would take care of it. He stated nothing had been done and the rainwater is still coming in the yard.

Mr. Zweber stated that unfortunately only one of the issues was a zoning issue and that was sadly the fence and not the drainage. He stated the Zoning Resolution does mention nuisances with drainage when a neighbor builds a large building that changes the way water runs off. He stated the repaving that caused the problem and did not fix the problem he lost track on what the repaving did to effect the situation. Mr. Fedarko stated before the repaving was done he did not have a

problem with the water coming across the road because the water used to come down the hill to two drains. There was discussion about the flow of water down the road and how it had changed. Mr. Zweber stated he did not think this was zoning issue. Mr. Stock asked Mr. Fedarko if he knew when the driveway was done. Mr. Fedarko stated they had done the driveway at least once since the repaving. Mr. Zweber stated this issue needed to go to the Road Superintendent, since driveway permits were part of the road department. Mr. Zweber asked if Mr. Fedarko had anything else. Mr. Fedarko stated he was trying to figure out where he needed to go with the driveway issue because this has been going on for too long, so what should he do next if he cannot get this done. Mr. Zweber stated he thought he would need to go to the Township Administrator who oversees all Departments and then the Trustees.

Mr. Zweber stated the Zoning Commission had recently discuss fences and they were ok with fences on the property line. Mr. Fedarko advised state law says fences can go to the property line. Mr. Zweber agreed and stated if a property owner wants the fence inside the property line they were good with that as well. However, putting a fence on someone else's property that he was not fine with and stated it just did not go as the permit said. There was discussion about the fence issue. Mr. Fedarko stated the permit does not stipulate that anything needs to be in writing. Mr. Zweber stated he did not think it would be a valid permit if a person built on someone else's property without their permission. Mr. Fedarko stated if the Township would require having the other property owner's permission in writing it would keep this from happening. Mr. Fedarko stated the other states that he has lived in they want property owners to build indie the property line and that this was for upkeep and maintenance. Mr. Zweber stated that if he were to build a fence to the property line then he would know that he would not be able to maintain the side of the fence without going onto his neighbor's property and he could not do that without their permission. Mr. Zweber stated that he could not see the second fence having a valid permit for what they built. Mr. Stock asked if Mr. Zweber wanted more of the story and Mr. Zweber stated he would like to hear more. Mr. Stock stated no one from the office would say a fence has to be built back one foot and if the applicant has to go onto the neighbor's property in order to build then the applicant would need permission. He stated it was very interesting that the couple that built the first fence, built it against his recommendation because there is an easement on the back of the property for natural gas. He stated he explained this easement to the property owner's and what the ramification could be for putting the fence in the gas line easement. Mr. Stock asks if the property owner knows exactly where the pins or property lines are located.

Mr. Stock stated he explained to the property owner's that they could not put a post on someone else's property because it would be a structure. Mr. Stock reported about his conversation with the property owners who had extended beyond the property line. Mr. Stock advised that the second property owner was now waiting for the first property owner to come over and have a conversation home owner to home owner. Mr. Stock advised that the Township does not check property line pins because many places in the Township do not have the pins. Mr. Stock stated if someone else proves another person built on their property it is their responsibility to say where the pins are located and it would be this property owner, who encroached, costs to move the structure. There was discussion about the fence in question. Mr. Zweber added he did not think the Township gave them permission to put the fence overhanging the property line. Mr. Fedarko stated the permit was issued. Mr. Zweber stated the Township issued a permit for a fence and he did not think the permit would allow them to put a fence overhanging the property line. Mr. Stock stated what was needed was for one neighbor to talk to the other neighbor.

Mr. Fedarko stated he still did not understand how the permit got issued. Mr. Zweber stated he did not think the Township would issue a permit to build a fence over hanging a property line if they

had clear knowledge that it was overhanging the property line. He added he felt the fence as built was in compliance with the permit as issued. Mr. Fedarko asked since the permit was issued for this particular designed fence and the fence exceeded what the permit allowed, then why does it default to the encroached upon neighbor to correct it. He asked if a permit is violated, what is the action taken against the person who violated it. There was discussion about zoning enforcement in the Township.

Mr. Fedarko stated when a person applies for a permit they must submit a plot plan. He stated this was required so that the details of where the fence was being built could be seen. Mr. Zweber stated if the plot plan comes in and shows they are building on the neighbor's property then his expectation would be that this would trigger discussion with neighboring property owners. He stated if the plot plan correctly described an as built configuration it would have required the involvement of the neighbor at the permitting step. Mr. Zweber stated what he thought was the plot plan did not accurately represent the as built configuration and the plot plan that was submitted showed the fence being built on the builder's property, but then it was not built as approved. Mr. Zweber added if the fence that was built does not match the fence as approved then resolving it amongst neighbors would be the preferred resolution. There was discussion about the fence and how it was installed. Mr. Colbrunn asked if the encroaching neighbor refused to move the fence and then a person had to take action, how long would that take, would it involve the court system. Mr. Stock advised to put everything in black and white would be thick, the power from the Ohio Revised Code only gives Townships so much latitude but then it was up to the local jurisdiction. Mr. Stock stated the City of Xenia Prosecutor would have to be willing to prosecute this case, but if the Prosecutor decides to not to prosecute, then it becomes a civil matter between the two neighbors. He stated as frustrating as this is for all involved, most zoning disputes happen as a civil matter from one land owner to the other. Mr. Stock advised how he explained adjoining fences when speaking with home owners. Mr. Fedarko stated his issue with the permit part of the process and the guidance given had to come from somewhere. Mr. Stock advised that most people he has spoken with decided to build inside the property lines because they did not want to encroach.

Mr. Fedarko asked if there was anyway a modification could be made to the permit so that it says if a fence is going up to a neighbor's fence the applicant must have something in writing from the neighbor. Mr. Zweber stated he had been here six years and had never had this situation and the text does not say anything. He stated he understood where Mr. Fedarko was coming from, as for changing the form that would be an administrative thing, and the Township looks to improve the form based on information gathered. There was discussion about changing the application. Mr. Fedarko stated he wanted to eliminate this problem going forward. Mr. Zweber stated he agreed and anything they can do to help people that come in for permits is what they want to do. Mrs. Fedarko thanked the Commission for taking the time to listen to his issues. There was discussion about enforcement and inspection after things were built. Mr. Stock stated the Township does not check property lines and applicants are told that the Township does not check property lines. He stated the Township tells applicants to be sure they know where the property lines are because if the applicant goes over the line it would be their responsibility to correct it. Mr. and Mrs. Fedarko thanked everyone for taking the time to listen to them.

Mr. Zweber asked if everyone had a chance to read over the minutes from the last meeting on August 28, 2018. Mr. Colbrunn stated he found an error and he explained what he found. There was discussion about corrections for the minutes. Mr. Ferguson asked if the Trustees had waived the fee for the rezoning application. Mr. Stock stated they waived the fee. Mr. Zweber continued the discussion about corrections for the minutes. Mr. Zweber moved to approve the minutes from August 28th.with discussed corrections. Mr. Colbrunn seconded the motion. All voted aye.

Mr. Zweber stated they had been working on the language that talks about central sewer and water. He asked if this was still the goal. He wanted a consensus of whether they wanted to try to do something small to just clear up the language or take a while longer to look at it more in depth. There was discussion about upcoming topics for the Zoning Commission. Mr. Zweber advised the next meeting would be the week before the Joint meeting and asked everyone to think about topics for that meeting. Mr. Colbrunn asked if meeting dates could be modified, because he would be out of town for the October 23rd meeting. Mr. Zweber stated they can modify a date as long as everyone agrees on a date. Mr. Zweber suggested October 16th for the next meeting and that day worked for the majority. Mr. Zweber moved to change the next meeting to October 16th and Mr. Ferguson seconded the motion. All voted aye.

Mr. Zweber moved to adjourn, Mr. Colbrunn seconded the motion. All voted aye. Meeting adjourned at 7:45 p.m.

ATTEST:

Alan D. Stock, Zoning Inspector