

RECORD OF PROCEEDINGS
MINUTES OF THE XENIA TOWNSHIP TRUSTEES: PUBLIC HEARING
HELD ON: May 12, 2011 6:00 PM

Notes: These minutes are a summary of a public hearing and are not a word for word account of the discussions which took place. Also noting the electronic recording machine failed to record the complete meeting; electronic minutes are only in part.

At 6:08 PM on Thursday, May 12, 2011, Chairman Scott Miller called to order the Xenia Township Board of Trustees. Those attending were Trustees Scott Miller, Jim Reed and Amy Lewis, Fiscal Officer John Faulkner and Zoning Inspector Rhonda Painter. This was a continued public hearing dealing with adult businesses.

The Xenia Township Zoning Commission has recommended approval of the amendments to the Xenia Township Zoning Resolution, Sections 201, 408, 409, 410 and 411, and recommends a new Section 527 – Adult Business.

The public hearing left off with Reed trying to resolve an issue—if the Township still has enforcement powers if an adult entertainment business goes private. There has been no answer yet from Stephanie Hayden (Greene County Prosecutor's Office).

Miller said the draft amendment addresses what the State has asked each township to put in place. Painter said the zoning text was drafted and created by the Zoning Commission, with the help of Jay Stewart—it is totally separate from what Miller has from the State. Reed said 3% of the Township is being designated as open to adult oriented business under these certain restrictions or guidelines. He referenced Washington Township, Montgomery County, saying they had parameters in zoning, but when a private club, opened none of them applied. They can't even enter the premises without a court order. Reed's concern is if a private club can operate without any restrictions, we have to think twice about approving it until that aspect is further investigated and we have a definitive answer. The last thing he wants to see is all areas open with parameters in place and if they go the direction of a private club, none of parameters apply.

Painter said zoning is about land use, so for zoning purposes, it doesn't matter if it is a private club or a public club—it is about the use and that is what the zoning addresses. When they had Jay's assistance (from an attorney's side), he never said anything about a private club being different than one that is open to the public. Reed said if you open this up it doesn't matter for either one, the only problem is Jay didn't address the control that would be available to you in a private club vs. not. The zoning is identical. Painter asked if they should insert private clubs into the text. Reed would like an opinion from the Prosecutor's Office. His concern is if you open to private clubs and they are not controlled. Painter asked if Reed is saying if we adopt the zoning, the private clubs will have their way no matter what the Township does. Reed says right now they cannot come in—his position is if we open door to private clubs, he would rather fight them in court. He doesn't want any of the Township open to adult entertainment. Painter said if you don't have your regulation in place, adult entertainment clubs can go anywhere they want and you will never win in court. The way the zoning is now they can say we zoned them out and they can locate anywhere, even around a school, a church, etc. because our zoning is not giving them their freedom. There is established case law--so much percentage of your land has to be available, it can't be out in the middle of nowhere (it has to have the same availability of electricity, water, sewer, etc.), it has to have the same advantages of any other business, otherwise they will win. They will bankrupt the Township in trying to fight them. They have the power and money of huge corporations behind them. Lewis added we would not have the assistance of the Attorney General's office either. Painter said if you don't adopt regulations the way they provide them, they will not support you. Reed wanted the name of one adult entertainment in Greene County. Miller answered Kil-Kare Speedway. Reed remarked that if the adult business text had been in effect, it would not have made any difference in what took place at Cruisefest. They were told by the courts not to do it. They were essentially in contempt of a court order. Painter said at this time there are no adult businesses, or any desire of any, in Greene County. Reed insisted somehow up to this point Greene County has managed to keep adult entertainment out of the County, otherwise it would be here. Painter disagreed saying it is not here because there is not a market—by highways,

interstates, etc. Miller disagreed saying there are different adult establishments usually located in remote, rural areas. Reed said the city of Dayton only allows adult entertainment in I-1 and I-2 and they have certain parameters, such as you cannot be within 1,000 ft. of residential, school, or church. Miller said in looking at demographics of who will patronize an establishment like that it is usually younger males, often college students. We are the hub of 4 metropolitan areas—Cincinnati, Dayton, Columbus, and Springfield. He really thinks the big money in that business is the demographics of the young males that have some money to spend and are going in to do it. So we are not immune to that in this area. Miller said they may not have found us yet. Reed disagreed, he feels like there is such opposition to those types of businesses that public opinion has kept them out. Lewis said it goes back to what Painter said about there may not be the market for it here. She asked when has there ever been a fight for that kind of establishment in the County. She can't think of any. Reed believes most of those places go to areas of least resistance, so they locate north on Dixie in Harrison Township. Miller wonders if Cruisefest was a test for Greene County. He thinks there will be business entities that are looking and following what happened here in the courts in the next weeks and months to see how we deal with that. Reed said when you look at the numbers, what actually took place at Kil-Kare, what the Township did, the publicity they got, and the sheer show of law enforcement kept a lot of people away. He asked a lot of people if they were going, and they replied no because there were too many cops. Miller would like to believe the decisions we made entered into a lower turn out. He said weather entered into it terrifically. Reed said he had seen it when the weather was a washout and still 20,000 people attended a Cruisefest. He thinks people realized it wasn't welcome and the economy probably played a part of it with \$4.00 for a gallon of gas. The City of Xenia already has put something like this in place--they already have some place for those types of establishments. He asked what keeps us from partnering with the City, similar to a JEDD, where we could put adult establishments in their determined areas. Miller seriously doubts they would want to partner on that. Reed said if there is only going to be so much available and it is under certain restrictions, it might be an idea. He doesn't want to open the door and have no control. Painter said we have no control now—by putting the regulations in place it will give us some. Lewis asked what the harm of putting the regulations in place is. Reed asked where they were allowed to be. Painter answered they are only allowed at Carboline which is zoned M-3; however, it would be too close to a church and a park down the road so they would not be allowed anywhere in the Township. With new text amendments, adult businesses would be allowed on area Cemex with mineral extraction on it, area on U.S. 68 South where Quality Farm & Fleet was for retail only, Hawkins Rd. where auto body shop is, a small area on U.S. 42 South, and part of Phillips Sand & Gravel on the other side of the bypass. Reed does not have a problem with Phillips or Cemex areas, but not the U.S. 68 South area or across from Wright Cycle Estates. Realistically, he could see the area at U.S. 42 and U.S. 35 becoming a place with adult business because of thousands of dollars involved and its proximity to be seen from the freeway. Painter said it would not be for dancing, it would be for adult bookstores. Reed said no one wants an adult bookstore near them. Faulkner asked what the difference is in having a convenience store/gas pump with magazines. Reed would still rather take his chances in court rather than just let them open up their businesses. Painter said they have kept it out of the agriculture district, residential district, and anywhere close to those, but if you don't adopt some regulations, the agriculture and residential districts are going to be open to it. They would be protected by the First Amendment—freedom of speech. Reed asked why all of Phillips was not included to get percentage. Painter used part of Phillips that is in M-3 (Mineral Extraction) the rest of Phillips is in Beaver creek. The gravel pit on U.S. 68 North is Agriculture. Reed said it seems we are trying to get the worst possible places for them to locate to meet the percentage. He said we should rezone the gravel pit on U.S. 68 North as M-3 and include it as a place for adult business. Painter said if we had one of those places that wanted to come to one of those areas in Agriculture, they could request rezoning to M-3 so they would be in the proper zoning district. Reed would like to see the gravel pit rezoned and used as part of the percentage instead of the U.S. 68 South area. The likelihood of adult business coming to the gravel pit is almost 0, whereas the likelihood of it happening at U.S. 68 is 100%. Miller said in taking all the land masses, there would factors that could not be met in putting in adult business. Reed wondered about working with Cemex to encompass the current agricultural property they have into mining because eventually that is what they are going to do with it, then enter it into the 3% rather than the other locations. The likelihood of adult business acquiring any Cemex property is zero. Painter said that is a possibility because Cemex has filed for a rezoning

of 289 acres from A to M-3. Reed said that is the direction he wishes to go. Miller said at some point Cemex is going to walk away from that property. Reed said the Cemex property has been in place over 50 years and they have never sold. Lewis said look at Kil-Kare--when they got the right offer, they were willing to risk everything. Painter cautioned there will be a lot of opposition to the rezoning request from Cemex. Miller said we don't know how the rezoning request will go at the moment—that may change things. Reed said if we have 2% and if we get into legal action, the Attorney General will lend their support. Painter answered the Attorney General doesn't have anything to do with it. She said if you meet this model regulation they provide for you, the Attorney General will provide for licensing and employee background checks. Zoning violations are criminal actions. Lewis added case law says a good faith effort is around 3%. So if the Trustees vote to approve it right now as M-3, at least something will be in place. Painter added you would still have the text and definitions—you just would not have the changes that were submitted for definitions for B-3, M-1, M-2, and M-3. You would be approving just the M-3 in definitions. Miller asked if this zoning was basically putting at the “bottom of the lake” type thing. Painter said no, they have a lot of road frontage. There are other viable businesses nearby that you could say you are not that far from a viable business. There is no public water or sewer in most places in the Township so we are not putting them in a place where they are deprived of that. Lewis said the 3% has one criterion, but the ones you described make it a more viable, economically feasible option. Painter agreed it would be a good start. There is more of a risk because of making it 2% instead of 3% but are we willing to assume that risk rather than the risk of having retail near residential areas. Reed thinks there is hardly any risk between the two. Miller asked if we put in the private clubs--as far as a definition and verbiage what would you call it. Painter answered there is a definition for adult cabaret that includes a number of clubs. Lewis read the definition: nightclub, bar, restaurant, bottle clubs, or similar commercial establishment, whether or not alcoholic beverages are served.... Under the definition of Adult Cabaret public or private nightclub needs to be added. Miller said there may be other places in the text that need to be amended to get the verbiage in. It would also have to be put under M-3 where it is a permitted use.

Zoning areas other than M-3 will be taken out. The definition will be expanded to include the private type of business. On the exhibit page 2, #3, #4, and #5 will be taken out. A new section 527 Adult Business will be added and definition for Adult Cabaret will be modified. B-3, M-1, M-2 of Zoning Commission's resolution will be denied. Painter asks if the Trustees are ready to make the motion, refer to secondary effects in your motion. That's been another case law, if you don't justify why you want to pass this because of the likelihood of the secondary effects in the community, then it becomes prejudicial to that type of business (these are referred to on pages 1 and 2 of the Zoning Commission resolution).

Reed moved to approve the Zoning Commission's recommended amendment as modified in the discussions. Lewis seconded the motion.

Roll Call: Ayes: Lewis, Reed and Miller Motion passed, resolution #2011-106

The public hearing began at 6:08 p.m., recessed at 7:00 p.m. for the regular Trustees' meeting and reopened at 8:50 p.m.

There being no other items for the public hearing, Jim Reed moved to adjourn @ 9:05 p.m. Amy Lewis seconded the motion and all Trustees voted aye.

Scott Miller, Chairman

Jim Reed

ATTEST:

Amy Lewis

John Faulkner, Fiscal Officer