

XENIA TOWNSHIP ZONING COMMISSION

MEETING

December 20, 2016

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 December 20, 2016 at 6:10 p.m. at the Xenia Township Trustees Office, 8 Brush Row Road, Xenia, OH, 45385 with the following members present:

Attendees: Jeffrey Zweber, Alan King, Virgil Ferguson Donna Randall, and Alan Stock, Zoning Inspector/Clerk.

Chairman Jeffrey Zweber called the meeting to order at 6:30 p.m.

Jeffrey Zweber stated that the agenda in front of the commission tonight is the marked up working copy of the Towers, Exemptions to Building Height dated November 16, 2016, the agenda for the Public Hearing, scheduled to begin at 7:00 p.m., minutes from August 23, 2016 meeting, and the report from Regional Planning.

Mr. Zweber discussed the procedure for the Public Hearing scheduled later that evening. He discussed the procedure to properly get a motion on the floor. Mr. Zweber suggested that the Chair will make the motion, he will ask the Vice Chair to second it, and then have a roll call of the commission. If it passes the text changes will then be passed on to the Trustees.

Mr. Zweber suggested the commission look over what Regional Planning sent as recommendations for the text changes. Mr. King stated that he saw that Regional Planning recommended was regarding duplicate language, and to reference one section in the other. He stated that he would like to keep it as it is and not follow this recommendation from Regional Planning. Mr. Ferguson agreed that the Commission had written it this way for a purpose. There was discussion about how this language could help in the future to make revisions or amendments to these sections.

Mr. King started discussion regarding the second recommendation from Regional Planning, which was in regards to whether Towers were to be considered principal accessory or conditional use within residential zoning districts. Mr. Ferguson stated that he did not think towers were called out as permitted or conditional use any time. Mr. King suggested that someone could argue a point for accessory use. Mr. Ferguson stated that according the Ohio Revised Code outside of residential districts that this could not be controlled anyway. Mr. Zweber stated if it were a cell tower. Mr. Stock stated that he had looked at one and stated that it does not state that a person can have an accessory structure, Mr. Zweber asked whether that meant a shed or detached garage. Mr. Stock stated that the structures are already defined and he did not see the

need to change. Mr. Zweber stated that by definition the Zoning Inspector would have to inspect and see if the request is reasonable. There was discussion about what would be considered accessory use. Mr. Stock stated that there is no control over cell towers except if they are in a residential zone and a tower is a tower whether it is a cell tower or other kind of tower. Mr. Stock believes the restriction that is in place is going to apply to all towers not just cell towers. Mr. Ferguson agreed and stated that he thought the language should be kept as it is and not make any more changes.

Mr. Zweber moved on the third recommendation from Regional Planning, which was in regards to screening landscaping, outdoor storage and other provision should be left in for residential zoning districts. Mr. Zweber stated that he thinks that as this applies specifically to towers this should not be regulated by the commission but to allow the land owner to make that decision. If you are looking at a cell tower, almost always has a backup source of energy, so most of them have a small building that will house a generator. They will also have some apparatus on the grounds like fuse boxes, so perhaps this is what this recommendation is gearing towards. Mr. Stock asked them to note that Regional Planning has always aired on protecting residential above all other zones from interferences from neighbor to neighbor. Mr. Ferguson stated that he believed that setbacks cover screening and landscaping, but what one person puts up and thinks is nice the neighbor may not think the same thing. So if you do not have to landscape around one ugly thing then why would you have to do it for this, and stated this is what setbacks are for. Mr. Zweber believes this is already covered and should not be changed at this time, and that there is an avenue to take of any issues if anything were to become a nuisance.

Mr. Zweber asked if there were any more concerns regarding the Public Hearing, there were none so he moved on the minutes from of August 23, 2016. He stated that there are some corrections to be made. There was discussion about the changes that needed to be made, Mr. Stock made note of the changes so that the correction s could be done.

Mr. Zweber moved to accept the minutes with the discussed changes. Mrs. Randall seconded the motion. All voted aye. Motion passed by vote 5-0.

Mr. Zweber moved to recess this meeting, so the Public Hearing could be started, and will reconvene after the Public Hearing. Mrs. Randall seconded the motion. All voted aye. Motion passed by vote 5-0.

Motion to recess 7:00 p.m.

Mr. Zweber moved to reconvene the meeting at 7:20 p.m. and started the discussion on medical marijuana. He stated that most of the commission had benefited from the meeting held by Regional Planning, and a few went to the marijuana section of the zoning seminar. Mr. Zweber stated that he learned that there are four types of land uses that are covered for different things. There are four different things that need to be discussed and decide what needs to be done. There is Cultivation, which is an indoor growing facilities, Processing which is turning the plant matter into consumables, Laboratory which is testing and does research, and Dispensary which is the retail portion of the business. The law allows us to prohibit, limit the amount of locations in any way the Township sees fit.

Mr. Zweber stated that one of the issues that had come up was that this was an all cash business for the dispensary side. There was discussion about how the Sheriff's Office would be impacted by these businesses. Mr. Zweber stated that Mr. Stock had discussed the idea of annual permits and annual reviews. That might be worth considering if this commission decides to allow these in the Township, and allow a type of annual review other than if they become nuisances. This would allow away to regulate these in another way other than as a nuisance. He thought an annual permitting license/certificate would be a good thing. He had read that in the mining section recommended bond in place amongst other things. He stated that he thought if the bond is not in place then the zoning permit could be pulled in the case of mining. So coming up with some type of regulatory thing that is not a nuisance or a way to determine that it is a compatible land use, and this could be checked every year.

Mrs. Randall spoke about the session that she attended at the seminar; it seems to her that there are many unanswered questions and unanswerable questions at this time by those who are "in the know" that are presenting their information. She feels like they are sticking their head out and it could get chopped off. She can see dispensing it if it is regulated a lot by doctors, but the rest is going to be like opening a can of worms. Mr. King asked if the Trustee would want everything prohibited for six months. Mr. Stock advised that the Trustees had already passed that. Mr. King asked if the Trustees wanted this Commission to give them some type of reasonable thought about it, and then make a recommendation.

Mr. King asked if the Trustees had come to their final decision on the matter. Mrs. Randall asked how long it had been for Colorado, and Mr. Zweber said about a year. Mrs. Randall thought we usually waited two or three years to see what happens elsewhere and how it has affected their communities. Mr. King stated that about half of America has passed similar laws. Mr. Ferguson stated that they could look at the states that had passed similar laws 10 years ago. Mr. Stock asked by the time the American Medical Association and legislature, how much time do you think the Trustees have realistically. Mr. Zweber stated that his understanding is that the law went into effect in the middle of September, two years after that so September of 2018 the scheme is supposed to be fully operational. So if he assumes based on this that the first dispensary could open its door in September of 2018; therefore, a person could show up to get zoning permits three to five months before that, the cultivation operations are probably nine to twelve months before that, so he could expect cultivation regulations need to be in place a year from now. Mr. King stated that cultivators are not more than 240 days after the bill's effective date. That would be this coming summer like June or July. The State has the authority to suspend or revoke licenses for any reason. Mr. Zweber stated that his preference is to not have to make the Township have to go to the State if the Township thinks it has a problem. Mr. King agrees with him and understands where he is going, but stated that there is already a provision for suspending and revoking the license, and all four are going to be licensed activities and regulated by the State. He thinks that the general philosophy is if the County or the State is determining whether something is in compliance then it is not our place to interfere with that. He agrees that there probably should be something but then this could be referred back to the adult entertainment. It was stated that we had been given the option to mandate and regulate adult entertainment in Xenia Township and have not done so. He does not think that is any less of a public nuisance than a marijuana dispensary would be. He stated that he thinks that the

commission should be consistent and not treat this any different than any other potential public nuisance. Mr. Ferguson agrees that adult entertainment and marijuana dispensaries and bars should all be treated the same. He thinks that the work that had been done on adult entertainment is the place to start with dispensaries and keep it the same as adult entertainment that would be okay or the Commission could make changes from there. There was discussion regarding the work done regarding past decisions that were similar to the medical marijuana.

Mr. Zweber stated that he does not think that Cultivation, Processing and Laboratories have the same issues as the Dispensaries. Mr. Stock advised the Township does not have any legal right to put any restrictions on Laboratories or Research. There is only ability for Cultivation, Processing, and Dispensaries. Mr. Zweber stated that he thought this only dealt with laboratories and research at State Universities or higher education. Mr. Stock stated that the Township cannot regulate any research regarding medical marijuana. There was discussion about where research could take place. Any private research would have to be approved by the State.

Mr. Stock stated that he would start working on Section 528 and redlining it for future discussions. Mr. King stated that he would not be opposed to thinking about all three that can be regulated and treating them as they have treated other businesses. As far as keeping them out of residential areas and out of the high population areas/high density districts. Mr. Ferguson stated that they cannot be so close to public schools and things. Mr. King stated that they already have stated that these businesses must be a certain distance from schools, residential districts, dwellings, parks, churches, or another like business. As a good starting point we could treat all three like we have treated adult businesses. Mr. King stated that the cultivation is going to be indoor, and be able to supply year-round. Mr. Zweber stated the cities should be able to make some money from this in ways that the Township cannot, like sales tax and income tax. Mr. Ferguson stated that he thought that the processing place would probably be located close to the cultivation, because would be practical.

Mr. Zweber stated that they added the same regulatory scheme that alcohol distribution has, no person can own more than one cultivator and a person can only own one of the three. These are the same as production, distribution and sale of alcohol regulations that are in place. In a practical point of view, Mr. Zweber thought you would not want to transport the product a long distance between the cultivator and the processor. So from this view, our approach could be to not allow cultivation or processing, but may allow dispensaries under very limited regulations. There was discussion about the election process on this issue. There was discussion regarding how much space could be used to grow, possibly a third of an acre. The State has an application fee of \$180,000.00. It was stated that there is potential for a lot of cash to come from this business.

Mr. Stock stated that as he was looking through some of the resolution regarding adult entertainment, like signage, setbacks and others, these are already determined by the State. However, we can go more restrictive if we choose. Mr. Zweber suggested that the homework be done to find out what the State has done about things like signage, setback, local licensure requirements for employees, and such. Mr. Stock stated that he thought what he could do was to change all the words that would be appropriate for dispensary. Also, he said he would work on

the other documents from the workshop that had requirements for distances. The interesting fact is that the distance is not from building to building but from parcel to parcel.

Mr. King stated the taxes that could be collected by cities and counties, and this could benefit the Township through property taxes. There was discussion about what taxes could benefit the municipalities.

Mr. Ferguson stated that the lead of the Township was that Cultivation and Processing was more controversial and be less likely to be accepted than the dispensaries. There was discussion about the regulations for the dispensaries and who might be using them. For example, an injured veteran with a prescription for medical marijuana to help him with his PTSD; if this helps him to not go out and shoot people due to his diagnosis who are we to say no. If it is for medical use and it is helping people how can this be a bad thing. There was discussion about what employers can and will do. The other two, cultivator and processing, seem to be less likely to become nuisances compared to the dispensaries.

Mr. Zweber stated that the Commission give their best judgment to the Trustees and let them decide what they want to do.

Mr. Stock advised that Commission will be looking at this issue from a Zoning text perspective, and the Trustees have the authority not to look at his as a zoning they have the sole right to say yes or not to medical marijuana and they do not have to give a reason. So the Ohio Revised Code says the responsibility lies with the Trustees and they can say yes or no to each of the three types we have been discussing tonight. Mr. Zweber asked if this commission should have more guidance from the Trustees, if they are going to say no then why should we be discussing it. Mr. Stock suggested that adding one topic at the next joint meeting should be medical marijuana to answer that question. He will also put this on the next Trustees agenda regarding this issue to give them the heads up on this discussion.

Mr. Zweber moved to adjourn, Mr. King seconded the motion. All voted aye. Meeting adjourned at 8:06 p.m.

ATTEST:

Alan D. Stock, Zoning Clerk