

**XENIA TOWNSHIP ZONING COMMISSION**

**MEETING**

August 23, 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 August 23, 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, Donna Randall, and Alan Stock, Zoning Inspector/Clerk.

Chairman Jeffrey Zweber called the meeting to order at 6:10 p.m.

Jeffrey Zweber stated that all members should have copies of the minutes for approval at next month's meeting. If anyone had minutes that needed to be sent out to do so, in order for everyone to be prepared for next month's meeting.

Jeffrey Zweber advised that there was a request to change the meeting dates for the coming months due to the upcoming holidays. The question is to move the dates from the 4th Tuesday to the 3<sup>rd</sup> Tuesday for the Zoning Commission meeting only. New date would November 15<sup>th</sup>, instead of the 22<sup>nd</sup> and the December meeting to Dec 20<sup>th</sup>.

Mr. King moved to change the Zoning Commission meeting dates as stated. Mrs. Randall seconded the motion. All voted aye. Motion passed by vote 5-0.

Jeffrey Zweber advised next was the update on Agritourism Text amendment/Rezoning of parcel on 68 south.

Alan Stock advised that the Agritourism Text was unanimously agreed to by the three trustee's, currently waiting on the 30 days. Alan Stock received a call from Ken LeBlanc, the Regional Planning Director referencing a meeting LeBlanc had with a lobbyist of the Farm Bureau. The lobbyist stated the local agency couldn't limit anything having to do with Agritourism. LeBlanc informed the gentleman that in fact local could & discussions were had between LeBlanc & the lobbyist.

Alan Stock stated the rezoning on US 68 South was turned down unanimously by the trustees; however, Mr. Stock has not read the results of the actual voting and therefore has no additional information on the subject matter. Ms. Randall then asked why the zoning had been turned down by the trustees. It was stated that the trustees believe that there is enough B-3 in the area and that the business could have gone somewhere else, plus the trustees were concerned about giving up prime agricultural land.

Jeff Zweber stated that this concluded topic number two, but topic number three was related it. Number three being the topics for the meeting next week and then again in November with the trustees; there are a couple of topics listed on the agenda. The first being that of land use plan that is currently sitting idle. There are currently two plans regarding the land use, the first one was already approved by the zoning commission, the second being the counter offer. It is unclear if the counter offer was an entirely new offer or just a revision of the previous one. Donna Randall stated she thought it was an entirely different one, however it was said during a previous meeting (unknown if Zoning or Trustee Meeting) that it was just a revision. Alan King asked who it was submitted by. Jeff Zweber stated it was done by a group of citizens. Alan Stock confirmed it was a Farmer's Group. It was stated that what was submitted was either a substitute plan or a list of revisions.

Jeff Zweber stated that he wanted the Zoning Commission to talk with the trustee's about the vision for the township. Jeff wants a very comprehensive plan that covers the entire township, although it could be smaller but needed to include details. Jeff is more interested in what the trustees thought would be an appropriate plan.

Alan King thought the plan appeared as though it was done by a professional planner; people talked about what was purposed but it was very organic for the township. Alan stated this was just his opinion. Someone had to have gotten a grant or something to propose to write it. Donna stated that 68 & 42 were incorrectly marked on the map and stated these types of errors shouldn't be made when spending money to have this type of document written. Alan King would also like to question the trustees if there would be funding for another professional presentation. Jeffrey Zweber agreed with question. Alan King then questioned Alan Stock if this was something that he would be responsible for. Alan Stock stated that it would be his responsibility to help make the changes. Alan King questioned if it was something that could even be done in house. Jeff Zweber stated that it would depend on how comprehensive it is and he wasn't sure what kind of resources planning has in house for that.

Donna Randall stated that she has not seen any other plan, except the original. Alan Stock stated there was a single page paper that was given to them with about a 20-25 minute explanation. Jeffrey Zweber stated that document would need to be found again. Jeffrey Zweber commented that this is also something to know if the Trustee's think is important. In order to determine a plan, even if the plan is having no plan at all. Donna Randall questioned if the new Trustees have seen the plan(s). Alan Stock stated that Susan has, but doesn't believe that Steve has. Donna stated it would nice if Steve would be able to see it before next week, since they were planning on asking him about it. Alan King stated he would at least like to make Steve aware of it prior to the meeting. Alan King also asked if was still on the website and if Steve could be asked to take a look at it. Alan Stock confirmed that it was still on the website and that it was a good idea.

Jeff Zweber brought up the next topic to be brainstormed on was that of mixed use zoning, stating that residential & business are what people typically think about when using the term of mixed use. His example was that of apartments above stores, which is currently not allowed in the township.

Alan King stated that some zoning commissions use the concept that lesser restrictive zoning is permitted in more restrictive areas. Meaning you could have business with residential, but you could not have residential with a business. But that is not how Xenia Township's is written. It was also questioned about having both on the same parcel. Meaning a building with a business on the first floor and a resident on the second floor or having two buildings on the same parcel, a business and the other a single family house, both are considered mixed use. Currently neither are allowed, and are considered nonconforming uses. Jeff would like to know what people think about this concept.

Alan King stated that the City of Xenia gets into a lot of trouble, because they are very specific about certain businesses. The City of Xenia is so specific that if someone wanted to put in a massage place next to a dental office, a lawyer's office, and a hearing aid office but they didn't have a massage business on the list, they would have to get a variance, spend a few hundred bucks & have a public hearing. Some parcels, do have similar lists, maybe 45 different specific things having to be the same or similar, but considered this as just something that could be looked at.

Jeff thinks there are three business zonings. The first one is neighborhood businesses, along with roadside & highway businesses. B3 is where the box stores & the big hotels go, along with the car dealership. B1 is not supposed to be a gas station, a junk yard or dealership. Jeff doesn't believe that it's supposed to be a McDonald's either. Alan King thinks that the laundry lists are there to show the things they had in mind, but he's not sure that it's an effective way of conveying that information. Jeff Zweber stated that some of them do and he thought that might be the more important part of the zoning.

Alan King stated that the master plan is the kind of thing that should be discussed there. Jeff Zweber expected the land use plan would be where the township envisions which type of zones and which type of development and would expect it to work in concert with the zones that are defined. Alan King stated that the way it was set up before was if the land use plan was passed and someone wanted to put a hotel in an area that was zoned agricultural, it was the land use plan that showed industrial or highway business, then that would be a point in favor for rezoning.

Jeff Zweber referenced comments earlier regarding agricultural land, that if the plan to keep all the agricultural land that the township has, because we like having all the agricultural land that we have, then that's a really short plan but a pretty good plan. Since the township doesn't like rezoning agricultural to anything else. Alan King stated that the land use plan actually categorized the quality of farm land too, adding that there are low lands, forest lands, and wet lands. Those were more likely to be allowed to change to something else, instead of rezoning the agricultural land.

Jeff Zweber asked the group if they wanted to create a long laundry list for the upcoming meeting, or have just one or two topics to go over with the trustees. Alan King stated that he would like a list created for the Trustees to look at beforehand to give them some kind of the idea of what was wanting to be discussed, but also ask where they would like to start. He wasn't expecting to get thru the entire list. Alan Stock reiterated the need to keep the meeting to one

hour in length. Alan King stated he thought that two topics could be covered in an hours' time. Jeff Zweber stated that if the three zoning commission members had a preference and the trustees didn't care, then they should talk about what the commission wanted to discuss. The topic that had come up in reference to the meeting was enforcement mechanisms for zoning. There aren't many enforcement options and Jeff is unsure of what additional enforcement mechanisms they are allowed to have. It was asked if fines were allowed.

Alan Stock stated that they are only given authority from the ORC. If it were a home rule, like a village or a city, then fines would be allowed. Xenia Township is therefore limited. Alan King questioned then what authority was there other than going to the individual and stating that they were violating their zoning and then asking them to stop. Alan Stock stated that he cannot do a cease and desist, that has to come from a court. Alan King asked if the trustees could ask for a cease and desist order form the courts if they wanted one. Alan Stock confirmed they could. After the cease and desist is issued, it would cost \$150/daily, up to \$500. Assuming one could get a judge to allow it, but that's an entire area of enforcement in itself.

Alan King asked what types of things would they really go thru this process for, because of the costs. It was suggested that some Nuisance stuff would be a reasonable cost. Jeff would like to hear what the trustee's perspective if for enforcement of these rules that the zoning commission has spent so much time putting together.

Alan King would like to add to the list, the fact that they have not done anything in regards to adult entertainment regulations, licensing or anything along those lines. As nothing has been done since it was originally brought up to them the last time that the two groups met. Alan Stock had done some research and found that it could actually be put in a B3, M1, M2, or an M3; not just the M3 as originally thought. Alan King stated they should also have restrictions regarding signage, setbacks, and such. The original was too restrictive in regulating just the mining district, in regards to the acreage within the township, as it would probably just have been thrown out of court. At one point in time, legal advice was obtained about this issue and being less restrictive, due to it being limited to B1 & B2, maybe B3. Since the township has such limited areas zoned B1 & B2.

Alan King stated he would like to look at mixed usage and zoning enforcement with the trustees. If not resolved, he would like to at the least bring attention to the issue, so that something can be started to correct the issues.

Alan Stock stated that he could probably take care of most enforcement issues, by just asking. Alan King stated there's no miracle hammer; just Alan's ability to say to them that something is an egregious violation of zoning. Jeff Zweber thought it was more about the trustees' willness to spend money.

Alan King stated he wasn't sure if the trustees were aware how much or how little enforcement ability Alan Stock actually has. It says in the papers, what Alan is supposed to do and what the people are supposed to do, and if they don't do it what happens. Alan Stock stated he has recently spoke with two people that didn't get a fence permit prior to putting up a fence. Their response to Alan asking why they didn't get a fence permit and if they were planning on getting

a permit was that they didn't have to and Alan couldn't make them. Which is a true statement, he can't.

Jeff Zweber stated that the trustees could vote to tear the fence down, but it would be at the township's expense. The township could try to collect, but he was very doubtful that would happen.

The rezoning of US68 was given as example. People have asked why Reed was allowed to put in the junkyard down the street. Driving by the lot, it appears as though it's a car lot, but there are a bunch of cars behind it with parts missing that aren't serviceable. But that's a zoning question.

Jeff Zweber stated that in regard to the area itself, a used car lot is allowed. People would have been upset even if it were put in correctly as a used car lot. Having the cars that would make it a junk yard would make it unallowable. The cars there that run make it a used car lot, with screening, coverage, signage and such. It is allowable as a used car lot, but you cannot put a junk yard there. The fact the last use was a nonconforming use as a single family home and that the car lot is a conforming use is what people are surprised about. People believed that the parcel was in a state district, and had it been in the state district, the single family home would have been a conforming use. The impression was that they thought it was being changed from a conforming use to nonconforming, when in fact it was going from nonconforming to conforming. They were just unaware of how the area is actually zoned. The house located just to the north, could also be used a car lot, but it's unsure if they are aware of that.

Alan Stock reiterated that since it was being used as a single family home, what power and authority do you think I have to go to the real estate agent and say you can't sell that as a home. You can sell that, but a person can't move in because that home has been vacated for over two years.

Alan King stated that banks have become more skittish over the past 7 or 8 years. We look up zoning a lot more to see what it is. If someone wants to buy that as a residence, and it was zoned business and non-compliant as residential, they probably wouldn't have been able to get a residential loan there. So the banks are friends when it comes to that sort of thing. Alan Stock agrees that he does get banks calling on behalf of their clients wanting to buy properties i.e. car lots, but it's because they want to have horses there. He doesn't ever get calls asking if this was residential, and if it's still residential.

Jeff Zweber digresses, states that he is happy with those two topics to take to the trustees. Alan Stock confirmed, mixed use & enforcement as the two issues to bring to the trustees. Donna Randall stated she was interested in to many different uses as the primary principle. Jeff stated he thought could be classified under the mixed usage idea.

Alan Stock advised that one thing he would do when opening this up at the meeting, is share that this is a sharing idea and that no one involved would violate the ORC by suggesting text changes, or map changes. This is all very discussion oriented, not decision oriented. This is simply a list that the zoning commission came up with to discuss. Then he asked what other

issues would be interesting to the trustees? They are being given a big list, because the next item would be one that the trustees would like discuss. The next meeting, they can take their top two. Present it all as this is what the zoning commission would like to talk about, what more can be done, as we'd like to do this, next meeting what's important to the trustees. Alan King stated he liked the idea. He'd like to get a better understand where everyone is.

Alan Stock asked if the zoning commission wonders what zoning the trustees would consider changing. So far, they haven't approved any changes. Under what circumstances would they change zoning? Would this be something the commission would like on the list of topics to be addressed?

Jeff stated he would put that in under the land use plan, because that's what the land use plan is supposed to do. Yes, it's something that he personally would like to know, however he really wants to stay away from the three that they just went through as that could cause a discussion. Prejudging cases will lead to trouble. So land use plan is the allowable plan for that discussion. Jeff also stated that if that's where the trustees want to start, that's fine with him. The list is full of things that need to be discussed, and it will take several meetings to get through all of the topics. It doesn't necessarily matter in what order the topics themselves are discussed. Jeff stated that he wants to know what the trustees vision of US68 South is, and he'd be happy to share his, and to hear others as well, because that's the kind of stuff that goes in the land use plan. Jeff would also like to hear from Wilberforce folks as to what their vision for Wilberforce is, because they probably don't match each other.

Alan King brought Wilberforce, 68 South & 42 South by the Bypass & Bickett Rd up as well, stating that all should be discussed at some point. Jeff stated the City of Xenia would like to know where the Urban Service Boundary will go. The City of Xenia would like to know where the township would like to draw the line, because when they see that line they will be able to see all the land the township is planning to develop, which is all the land the city wants to annex. So they are very interested in where we want to draw that line. Jeff believes that they would be happy if the township wanted to draw that line at the township & city limits. Central State would also be interested in where the township wanted to draw the line. It took Jeff reading the reports to determine that this was a very important line to Ken & the city.

Donna Randall stated that sometimes planning goes too far in reading into the future, forecasting when setting everything up. She feels like there should be an interest in something from the people that want or own the land, or live around it. There should be something to ignite the development of any given area. Jeff stated that this has been seen over the last six months with the AdHoc & Germain use. With people coming forward in regards to what they want to do with their land and it only resulting in "No's". He was unsure of the future if a different set of trustees would have a different idea regarding the use.

Alan King stated that the last time there was any success, outside of the Agritourism, was when they changed the text for the conditional use of the school. Jeff stated that there has always been good success has always been with the changing of the definitions/texts, however the only change in the map that has occurred was a change up on 235, when it changed to an R, from an E.

Flemming at 235, made the request for an addition to the house, but it couldn't be done because it would have encroached on the setback. So there was discussion on the zoning of the land for that house & the house next to it because of the involvement of the mining. With mining, you can't live in the residence, however if mining purchases the land, when the current tenants move out, mining can raze the house. This is what required a change to the map and has been the only change to the map in the last five years. Prior to that, the land directly across from Kil-Kare was to be rezoned for expansion of the mine, in approximately 2012.

Donna asked if it was actually wrong that there was nothing done during that length of time. Were there other groups that were involved that might have been against the other changes that were brought forward that didn't get approved? Jeff was unsure, stating that the 235 project was one that no one really seemed to care about. The Kil-Kare mining was one that brought more out just to vote against it. Alan King stated that the people who came out against the Kil-Kare Rezoning, were not Xenia Township residents, they were from Beavercreek & the City of Xenia residents. Jeff stated that they were at least neighborhood residents from the area. Alan Stock pointed out however, that there were closer residents from Xenia Township that didn't come out against it, then those from the adjoining areas that did, who just had farmland around the area.

Jeff Z requests to skip to number five on the agenda, due to there being upcoming events related to it.

Alan Stock was unsure if the trustees are going to want to do this, as what right do they have. He's unsure if the Trustees can have a resolution stating that they do not want to have a class 1 drug being grown or sold in the township. Also, he was unsure if the Trustees have the right to say this or if they have to go through zoning for the text changes.

This all stems from the governor passing the medical marijuana act that goes into effect sometime in September. Even though it did not pass at the polls, the governor signed an act stating that in the state of Ohio, medical marijuana can be grown and sold in the state. There have been other jurisdictions that have done six-month moratoriums; some even said "no" flat out. With this being said, it is believed that if the trustees don't have the authority to come to a resolution about this issue, they will send exact language to the zoning commission to consider. This will make it a priority for the zoning commission as there will then be a 30-day time frame.

Alan King asked if this was a topic that could be discussed at the combined meeting. Alan Stock advised it was not. He advised the commission to remember not to make public statements, regarding what they would allow or not allow based on personal beliefs. This is one of those topics that requires an open mind.

Alan King asked if it was an expectation that the trustees would send something to the commission regarding this language. Alan Stock stated that this is a hot button and the trustees would like to get something done very soon. The Trustees would like to do a resolution that would not allow growing, even though the marijuana plant is an agriculture product, it's a class one controlled substance so therefore they can't. So the question is can they do something by resolution or would it be zoning. Since this is so new, the safe thing to do is a moratorium,

because it's so new there's currently nothing written in legislature. Nothing stating, what amount is considered medical, how far it has to be away from schools, or even if a permit is going to be required, to date it's all legal, with no regulations.

Alan King asked if this was intentional, being made legal with no regulations. Jeff Zweber stated that his understanding was this was written after the voting knocked it down at the ballots, in order to make the parties pushing the constitutional issues of the vote go away or back off.

Alan Stock informed the commission that if the trustees send this as a request for them to consider, there would be no time limit, however if it was given to them as exact language, they would have a 30-day time frame. Alan King asked if there would be a required public hearing. Jeff confirmed there would be a public hearing, and it would go just as any other issue that the commission handled.

Donna had to leave and therefore meeting was placed into recess due to being below quorum. Donna returned and the meeting continued.

Jeff stated the next topic was that of the cell tower text changes, which most have already been done and all members should have a working copy, all marked up. The issues highlighted in yellow are ones that need to be talked about.

Alan King stated highlighted area number three could be deleted, as it was covered by somebody else. Alan Stock confirmed that it would start with "Towers shall not encroach upon the minimum yard requirements." Jeff Zweber confirmed.

Alan King stated, the non-highlighted portion of three should still be three.

Alan King stated that previously it had been the responsibility of the land owner, if they felt the need for a fence to be built.

Jeff Zweber reminded the group that this section has now been labeled, towers in general, and is not specific to wireless communication towers. He also reminded that pools are required to have fencing.

Alan Stock reminded group that a lot of times these wireless communication towers will also have a fuel source & a generator along with them. It can be either inside or outside of the structure at its base.

Jeff Zweber considers these attractive nuisances, same as swimming pools, people are attracted to them. Looking at swimming pools, it states "Above ground pools must have a fence completely surrounding the pool & deck area not less than five ft. in height, with a lock or a top rail five ft. above the ground with steps that are removable or have pool safety cover. In ground pools can have the fence or the approved safety cover." This being an example of what was used for pools, as an attractive nuisance, which both pools and towers can be considered.



Alan King requested to verify that Jeff is proposing to change the term “wireless communication facility” to “towers”?

Alan Stock re-read with changes “fully enclose the base of the tower” instead of wireless communication facility.

Jeff would like to use “towers must have a fence completely surrounding the tower not less than five ft. in height with a locking gate.” Using the pool item as reference, he would concede to a six ft. fence, but not higher since it’s not something that needs to send over to BZA.

Alan King asked about the fencing as it related to the guide wires; are the wires included inside or outside of the fencing. Jeff stated that the guide wires were not included within the fence, leaving it ambiguous and if a problem arises a person can be directed to the zoning inspector. Alan Stock stated the only concern he had with the wires would be people running into them. However on the same note, telephone poles have guywires with no fencing. Donna was concerned about the kids using them to climb the fence. Jeff stated the fence shouldn’t be that close to allow that. Alan King stated that the height of the fence wouldn’t make that much of a difference as far as intent unless it had something on the top like razor wires to keep people out. Jeff entered that it should be high enough that it’s not an accidental climbing. If you’ve gone over the fence, there was intention, which in the end is what the insurance companies would argue if something came to that. Jeff stated by putting up the fence around the tower, one would have to climb the fence in order to get to the tower. So any one that goes over the fence, knows what their intentions were up to no good.

Jeff stated that he doesn’t think zoning is the place to tell people to protect their own property. If they are placing a tower in an area where vandalism would occur, then it should be on them to get a fence permit and place the fence accordingly. Zoning would come into play if it were an area where fencing was prohibited and Zoning would be the one to correct that issue. The subject matter at hand is mandating a fence, however he does think it’s appropriate when comparing the tower to the pool as an attractive nuisance.

Alan King asked for how Jeff wanted it written. Jeff read “Towers must have a fence completely surrounding the tower (page 98)”. Alan King verified that this would be all towers, not just by definition. Jeff continued “not less than five feet in height (cont. on page 99) with a locking gate. Page 98 states the fence must have a lock.” This is what is being suggested to replace the working copy highlighted on page six... This would be a requirement for all towers, which are “free standing things”

Alan King verified that there would be nothing related to the steps. Jeff confirmed that B was specifically for above ground pools.

Replace so that this becomes the only thing in 5.18.2.

5.18.1 is that the tower itself may exceed the height of buildings.

Alan King asked if the fence would be appropriate under section 5. Jeff stated that by moving it down there it would read as though towers that are less than the height of other buildings wouldn't require fencing. He was unsure if that's something they want to do or not.

Alan King asked if three only applied to towers higher than the buildings. Jeff confirmed and stated that it could be removed.

Alan Stock to confirm numbers; 5.18.1, 2 & 3. Jeff stated 2.1 would be fencing & towers would be .2 towers shall not encroach upon the minimum yardage. Alan Stock so let it be written.

Definition versus 5.18 Section seven describes how to calculate building height. This is the model being used to create the new definition of tower height

Tower definition accepted.

New definition being added to section 200: Tower height. Tower height is the vertical distance measured from the established grade to the highest point of the tower including all attached equipment in any operating configuration. Where the tower is located on sloping terrain, the height shall be measured from the average ground level at the base of the tower.

Mr. Zweber move to adjourn, Mr. Ferguson seconded the motion. All voted aye. Motion to adjourn passed by vote at 7:55 p.m.

ATTEST:

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Alan D. Stock, Zoning Clerk