

Minutes: Russell Township Zoning Commission  
Russell Fire-Rescue Station  
February 28, 2011

Present: Richard E. Snyder, Chairman  
Bruce Murphy  
Ben Kotowski  
Justin Madden  
Diana Steffen, Secretary

Donna Weiss Carson was absent with apologies.

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:44 p.m.

**MINUTES OF JANUARY 26, 2011** – *Mr. Murphy made the motion to accept the minutes as submitted, Mr. Madden seconded and the motion passed unanimously.*

**PUBLIC HEARING – AMENDMENT 2011-1**  
**Section 4.7.T Delete prohibition on sale of alcohol**

Mrs. Steffen announced that legal notices for all four public hearings tonight were published in the News Herald and the Chagrin Valley Times on 02/10/11. The legal notices for Amendments 2011-3 and 2011-4 that relate to rezoning of land were sent to all neighboring properties on 02/01/11.

Mr. Murphy moved to open the public hearing for Amendment 2011-1, Mr. Kotowski seconded and the *motion passed unanimously.*

The Chairman stated that the Township has been advised by the County Prosecutor that it cannot prohibit the sale of alcohol, and recommended this paragraph be removed. Recently one precinct voted to permit the sale of alcohol by the package and Circle K is now selling beer and wine. There were no comments from the audience.

*Mr. Murphy moved to close the public hearing for Amendment 2011-1, Mr. Kotowski seconded, and the motion passed unanimously.*

*Mr. Murphy moved to reopen the public hearing, Mr. Madden seconded and the motion passed unanimously.*

The Chairman stated the hearing was reopened in order to consider the comments of the Geauga County Planning Commission, which sent a letter to the Zoning Commission on 02/09/11. In the letter David Dietrich said that the G.C.P.C. voted to recommend approval of the proposed amendment, and had no other comments.

*Mr. Murphy moved to close the public hearing, Mr. Kotowski seconded and the motion passed unanimously.*

*Mr. Murphy moved the adoption of the following motion: That the Russell Township Zoning Commission recommend the approval of the proposed amendment to the Russell Township Zoning Resolution, Mr. Kotowski seconded and upon roll call the vote was Mr. Murphy – yes, Mr. Kotowski – yes, Mr. Madden – yes, Mr. Snyder – yes, and the motion passed unanimously.*

**PUBLIC HEARING – AMENDMENT 2011-2**  
**Section 11.8 Amendments – Adoption by Trustees**

*Mr. Murphy made the motion to open the public hearing, Mr. Kotowski seconded and the motion passed unanimously.*

The Chairman stated that there has been a change in legislation adopted by the Ohio state legislature affecting Section 11.8. Currently a unanimous vote of the board of trustees is required to deny or modify a proposed zoning amendment, but HB 562 requires a majority vote to deny or modify. The G.C.P.C. had advised the Township to amend the Zoning Resolution to reflect existing law.

David Dietrich sent a letter to the Zoning Commission dated 02/09/11 in which he said the G.C.P.C. voted to recommend approval of the proposed amendment, and had no other comments. There were no comments from the audience.

*Mr. Murphy moved to close the public hearing for Amendment 2011-2, Mr. Kotowski seconded and the motion passed unanimously.*

*Mr. Murphy moved the adoption of the following motion: That the Russell Township Zoning Commission recommend the approval of the proposed amendment to the Russell Township Zoning Resolution, Mr. Kotowski seconded and upon roll call the vote was Mr. Murphy – yes, Mr. Kotowski – yes, Mr. Madden – yes, Mr. Snyder – yes, and the motion passed unanimously.*

**PUBLIC HEARING – AMENDMENT 2011-3**  
**Zoning Map Change – Rezone 6 Park Commission-owned properties from R-5 to Passive Park District**

*Mr. Murphy moved to open the public hearing for Amendment 2011-3, Mr. Kotowski seconded and the motion passed unanimously.*

The Chairman explained that the Russell Park Commission has requested that six lots it has obtained be rezoned to Passive Park District as another layer of protection. Mrs. Steffen described the location of the parcels for the benefit of the audience. Mr. Snyder stated that there are also two small parcels owned by the Township Trustees that were rezoned to PPD many years ago, but were omitted as PPD from the Zoning Map when it was reproduced by the G.C.P.C. a few years ago. According to David Dietrich, G.C.P.C. Director, this error is beyond the statute of limitations for a challenge to the Zoning Resolution, and so the lots are subject to another amendment in order to correct the error. This will prevent any dispute as to the correct zoning in the future.

There were no comments from the audience.

*Mr. Murphy moved to close the public hearing for Amendment 2011-3, Mr. Kotowski seconded, and the motion passed unanimously.*

*Mr. Murphy moved to reopen the public hearing, Mr. Kotowski seconded, and the motion passed unanimously.*

The Chairman stated that the hearing was reopened in order to consider the comments of the G.C.P.C. A letter from Mr. Dietrich dated 02/09/11 stated that the G.C.P.C. had voted to recommend approval of the proposed amendment. The G.C.P.C. had no other comments.

*Mr. Murphy moved to close the public hearing, Mr. Kotowski seconded and the motion passed unanimously.*

*Mr. Murphy moved the adoption of the following motion: That the Russell Township Zoning Commission recommend the approval of the proposed amendment to the Russell Township Zoning Resolution, Mr. Kotowski seconded and upon roll call the vote was Mr. Murphy – yes, Mr. Kotowski – yes, Mr. Madden – yes, Mr. Snyder – yes, and the motion passed unanimously.*

**PUBLIC HEARING – AMENDMENT 2011-4  
Zoning Map Change – Rezone 8 Township Trustees-owned properties from C-S to O-B**

*Mr. Murphy moved to open the public hearing for Amendment 2011-4, Mr. Kotowski seconded, and the motion passed unanimously.*

The Chairman explained that Northstar Planning & Design, Inc. recommended in its 'Commercial Districts & Public Facilities Study' in 2001 that Township-owned properties in the C-S Commercial & Services district at S.R. 306/87 be rezoned to O-B Office Building. This study was adopted by the Township Trustees and made a part of the Russell Township Comprehensive Land Use Guide Plan in 2006. The Township follows the recommendations of the Guide Plan, and at previous Township zoning workshops it has been agreed this rezoning would be in the best interest of the Township. The old BP lot was obtained by the Township Trustees since this study, and has been included in the proposed amendment.

Resident Richard Yoe stated he has owned a lot west of the Shell station on S.R. 87 for 12 years that is zoned O-B and is still vacant, as are Dr. Kinstle's lots to the south of the Shell station on S.R. 306. He questioned whether rezoning the Township-owned lots to O-B is the right thing to do. Mr. Snyder said the Zoning Commission had asked Northstar Planning to review the two commercial intersections to determine whether there was too much or too little C-S and O-B. Northstar found there were many commercial opportunities in nearby communities and little demand in Russell. When the BP lot was for sale potential buyers lost interest once they found few uses were permitted there. Mr. Yoe said that there will be too many O-B zoned lots and no activity on them. He mentioned that coffee shops were discussed a few years ago. Mr. Snyder said the Commission is working on a food service amendment for the C-S area and if someone wished to have food service on an O-B zoned lot they could request a rezoning. Mr. Yoe commented that the Township is rezoning to O-B rather than allowing more uses in the C-S and O-B districts. Mr. Kotowski said that the study had found there was more commercial development in Bainbridge and Chester, so there was less demand in Russell. Mr. Snyder asked the Zoning Inspector how many applications he had received to develop C-S properties, excepting the BP lot, and Mr. Machnics replied none.

Mr. Murphy said that there is no demand for C-S in Russell. He said one of the goals of the Guide Plan and the Northstar study is to increase the buffer between intense C-S uses and the residential zone. Since Russell is primarily a residential community the Trustees can reduce the commercial impact by rezoning their properties to O-B.

Resident Charles Butters questioned whether the rezoning of the old fire station property would devalue that property, and said it should be left as C-S. The Commission explained that there has been little to no demand for the purchase or development of property zoned C-S in the S.R. 306/87 district and that they are following the recommendations of the Land Use Guide Plan.

Trustee Kristina Port asked about the logic of rezoning the old fire station to O-B if the Northstar study recommended rezoning S.R. 87 lots to O-B and concentrating the C-S on S.R. 306, since the old fire station is on S.R. 306. Mr. Snyder said that Northstar recommended that the entire southeast quadrant be rezoned to O-B. In particular, the old fire station property fronts on S.R. 87 and it abuts a residential zone. Each of these conditions meet the Township's goals found in the Land Use Guide Plan and in Northstar's recommendations. Prior to the Northstar reports, the Land Use Guide Plan included the goal of using O-B zoned properties between C-S properties and Residential properties. The Trustees have asked that their properties be rezoned following the Land Use Guide Plan. The Trustees have the control to change the zoning of township owned property at any time if they wish. It is easier to rezone privately held property from O-B to C-S, for example, than the other way around, thus the rezoning gives the Township more control over the types of uses that may be permitted at the busy intersection.

Ms. Port said that if safety is a factor due to the crest of the hill on S.R. 87, and if the logic is to keep C-S on S.R. 306, then the old fire station and park should remain C-S, and the Administration Building, Town Hall and old BP lot should be rezoned to O-B. Commission members explained that the reasons for the rezoning are to reduce the potential impact of commercial zoning in this district, to be defensible in court the Township must follow its comprehensive land use guide plan, and the Trustees asked the Commission to do this, and the Commission agrees with the Trustees. The Trustees have the authority to change the Commission's recommendation as they wish.

The Chairman noted that the Commission received a letter from Mr. Dietrich dated 02/09/11, that stated the G.C.P.C. had voted to recommend approval of the proposed amendment. The G.C.P.C. had no other comments.

There being no further comments from the audience, *Mr. Murphy moved to close the public hearing, Mr. Kotowski seconded and the motion passed unanimously.*

*Mr. Murphy moved the adoption of the following motion: That the Russell Township Zoning Commission recommend the approval of the proposed amendment to the Russell Township Zoning Resolution, Mr. Kotowski seconded and upon roll call the vote was Mr. Murphy – yes, Mr. Kotowski – Yes, Mr. Madden – yes, Mr. Snyder – yes, and the motion passed unanimously.*

**FOOD SERVICE** – Mr. Murphy said he has still not heard back from Assistant Prosecuting Attorney Sheila Salem regarding case law that would not allow limiting hours of operation or drive-throughs. He conducted his own search of legal databases but did not find any such case law; however, there may be unpublished case law to which Ms. Salem has access. Mr. Murphy found one incident of a city changing its ordinance to ban drive-throughs, which it was not able to do as it was trying to do so for a particular restaurant. Regarding hours of operation he found some clear case law that said restrictions can be placed during the conditional use process. For a permitted use the hours can be restricted only if there is a regulation in the Zoning Resolution prior to a use being in operation. Mr. Murphy suggested meeting with David Dietrich, Sheila Salem and Rebecca Schlag to discuss these points.

**WIND & SOLAR ENERGY** – Mr. Kotowski said he has not yet spoken to his friend regarding visiting a wind tower site. The Commission discussed wind energy with Ms. Port, who mentioned that the Geauga County Commissioners have completed a study of wind in the County.

Action Item: Mrs. Steffen will contact the Commissioners to ask for a copy of the report. Mr. Kotowski will ask his friend for some dates to choose from for the Commission to visit a site.

**IN-LAW SUITES** – The Chairman said that the Township Land Use Guide Plan mentions the aging population in Russell Township and the possible increased demand for other types of housing. Mr. Snyder said that there are prefabricated units, 'granny shacks', that can be attached to a residence for elderly relatives to live close by but not with their family. The units are removed once there is no longer a need. They are popular in Scandinavia, Australia, New Zealand and Canada. There has been a test program in a few states in the United States, but usually in-law suites are utilized and there are many in Russell Township. Mr. Snyder said he had asked Mr. Madden to perform a preliminary research study of the issues involving in-law suites and the definition of family for discussion at the Zoning Workshop. Mr. Madden produced a short report on his research that had been distributed to the Commission.

Mr. Madden said that the 'granny shacks' appear to be used in those countries that have a different health care system than the United States. In the U.S. a typical case with an older relative is to put them in some type of retirement home and then spend down their assets so that they qualify for Medicaid. One issue would be whether a structural modification would constitute an in-law suite or a duplex, neither of which is defined in the Zoning Resolution. It could become a multi-family home. The current definition of family in the Zoning Resolution is difficult, if not impossible, to interpret, resulting in the need for a new definition which would be a difficult challenge given all the different types of families nowadays.

Another issue to resolve would be the concerns of the Geauga County Health Department regarding the septic system if there are more occupants in the residence. The Board of Zoning Appeals dealt with a case where there was a separate unit above a detached garage that had a microwave and mini fridge. There is the question as to where it crosses the line to being a separate dwelling. If one of the defining additions in an in-law suite is a kitchen, that would appear to make it a second dwelling. If the Commission does look into granny shacks and in-law suites, Mr. Madden recommended that 'kitchens' be defined in the Zoning Resolution.

With regard to the definition of 'family' Mr. Madden said this is very difficult. The Commission discussed the history of this. In Ohio it no longer means related by blood but a residential unit, or a 'social and economic unit,' including servants and family, live-in care givers, group homes. Mr. Madden said there are separate units permitted in Lancaster, Pennsylvania, for 'grandmother housing', which accommodates the Amish population there.

Mr. Madden said that there would be many questions with separate living units, such as age criteria, how to have them removed after the use is no longer needed, extra emergency services needed so would the family pay extra taxes, septic questions, treating the unit as a special use with regard to zoning regulations, who would have the authority to enforce and inspect, and would it be a rental opportunity when the relative is no longer there. Mr. Murphy said he understood some communities allow in-law suites by not allowing a separate egress than through the main house, the house must be owner-occupied, and there must be no economic benefit gained.

Mr. Madden said he believed that with the population living longer and a generation that did not save for its old age, Medicaid cannot take care of this aging population, so there will be a big push to allow people to bring relatives into their homes to decrease Medicaid costs.

Due to the late hour, Mr. Snyder said discussion of Board of Zoning Appeals' issues would be postponed until the next meeting.

Mr. Murphy moved to adjourn, Mr. Kotowski seconded and the meeting adjourned at 10:27 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary

Date

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Richard E. Snyder  
Chairman

Date