

Minutes: Russell Township Zoning Commission  
Russell Town Hall  
April 21, 2008

Present: Richard E. Snyder, Chairman  
Bruce Murphy  
Donna Weiss Carson  
Ben Kotowski  
Diana Steffen, Secretary

Betsy Rader was absent with apologies.

Also in attendance: Ric Machnics – Zoning Inspector, Jim Dickinson – Chairman of the Board of Trustees, and residents as shown.

The Chairman called the meeting to order at 7:36 p.m. and deferred approval of minutes to later in the meeting. He welcomed guests and introduced and welcomed new Zoning Commission member Ben Kotowski.

**TAKE OUT FOOD SERVICES** – David Dietrich and Heather Bickenheuser of the Geauga County Planning Commission and legal counsel Rebecca Schlag from the Geauga County Prosecutor's Office were in attendance.

Mr. Snyder explained the background to this issue. He also explained that research of earlier township zoning resolutions shows that in 1967 the C-S district was formed with similar permitted uses as today but including "restaurants, drinking and eating places." There was a drive-in pizza restaurant at that time. In the 1970's this wording was removed and the following added to the list of prohibited uses: "No restaurants, carry-out food services or bakeries shall be permitted within the Township." Mr. Snyder said he asked former Trustee Chris Livers why these items were prohibited, and she had explained that it was a health and safety issue because the C-S lots were too small to handle the septic systems required for restaurant businesses.

Mr. Snyder asked how the Township can be less restrictive and permit some food service without having to allow formula fast-food restaurants that may create more traffic and noise etc. Mr. Murphy mentioned that distinctions in Ohio are only based on the type of service provided; in other states franchise operations have been restricted. However, Chagrin Falls only allows carry-out food as an accessory use, which effectively prohibits fast-food restaurants. Rebecca Schlag answered that municipalities are different, and there is nothing to support a township allowing restaurants but not fast-food restaurants. She mentioned a 1991 court case in Woodmere Village where the court ruled that a general prohibition against fast-food restaurants was unconstitutional, but the court of appeals said that the court could only rule on the specific issue and not the general rule. She felt the lower court ruling was significant anyway. She said her research did not produce anything to support prohibiting fast-food restaurants. David Dietrich agreed.

Mr. Dietrich said the Geauga County Department of Water Resources runs the sewage plant and controls tie-ins. He suggested placing a condition in the Zoning Resolution that would restrict restaurants to within the 208 Plan area. Mr. Murphy asked, if they included restaurants as a conditional use, could the Township regulate the type, and would listed conditions be enforceable at the township level? Mr. Dietrich said that in Geauga County other townships do not break out the type of restaurant. Ms. Schlag said there does not appear to be any basis to allow one type and not another, unless possibly drive-in and drive-through restaurants are tied into traffic studies that show the traffic impact. She also said the Township cannot restrict the hours of operation to limit traffic and noise. Mr. Dietrich said noise is difficult to regulate, may only be done through the Board of Trustees, not zoning, and requires considerable training and equipment.

Mr. Snyder asked if it would be possible to draw a distinction between carry-out and dine-in restaurants. Ms. Schlag said she had not researched that but it may be possible. Mr. Dietrich said that the Commission would need to be careful with the conditions since they would not be the same for each. He thought it would be difficult to allow one but not the other.

Mr. Snyder asked if they could differentiate between carry-out food prepared on the premises and pre-packaged food that is brought in. Ms. Schlag felt it would be hard to make the distinction. Mr. Dietrich said that convenience stores sell heated hot dogs, coffee and sub sandwiches because it is very profitable. Mr. Snyder asked if a coffee shop could be defined as "no food prepared on site". He asked if this would be enough to distinguish a coffee shop from a restaurant. Ms. Schlag said she believed this would still be considered a restaurant.

Mr. Kotowski asked about selling food in individual portions, and at what point it would be considered a retail grocery store, which is permitted, rather than a restaurant. Ms. Schlag said that a convenience store selling hot dogs, coffee and muffins is a typical use that does not change it to a restaurant. She felt it is accepted practice that such stores do sell these types of foods.

Asked by Mr. Murphy if they could prohibit restaurants or not, Ms. Schlag said they can prohibit certain types of businesses, since the Township does not have to allow all commercial businesses. She said they do not have to allow restaurants just because Circle K and the gas station sell food. However, she said that selling "heat and eat" pizza sounds more like a restaurant. Mr. Dietrich said that for a service station food and related items are an accessory use, and Ms. Schlag said the trend is for gas stations to have food, and consumers now have an expectation that they can purchase pizzas or subs at them. Mr. Dietrich suggested one option may be to prohibit stand-alone restaurants but allow the sale of food as an accessory use.

There was discussion about the O-B district at S.R. 306/87 acting as a buffer between the C-S district and residential, whereas at Music Street/S.R. 306 there is no buffer. Mr. Snyder asked if they allow restaurants in the C-S district at S.R. 87, could they prohibit them at Music Street because of the lack of a buffer? The questions was also raised

whether only areas within the 208 Plan should be permitted to have restaurants. It was agreed that sewers should not be the only criteria used since that would encourage someone to force a sewer line to be extended to Music Street from South Russell. Mr. Dietrich said that the O.R.C. states that all uses permitted in a zoning district must be allowed in all locations with the same designation. He said the Township cannot allow restaurants at the C-S district at S.R. 87 and not at the C-S district at Music Street. Ms. Schlag suggested creating a new district at Music Street. Mr. Snyder mentioned that the two Northstar studies have recommended that the Music Street district should move towards Light Business and Office Building. Because of the O-B buffer at S.R. 87's C-S district, it was suggested that additional impacts could be permitted at S.R. 87 that would not be allowed at Music Street, where there is no buffer. Mr. Dietrich suggested creating two C-S districts, C-S 1 and C-S 2 where restaurants are allowed at one and not the other.

Mr. Dickinson asked if Russell is the only township in the County that prohibits restaurants, and Mr. Dietrich said that might be so. Mr. Dickinson asked if they may prohibit restaurants based on health and safety, due to traffic flow and waste disposal. He asked if it would be legally defensible to create two C-S districts based on the 208 Plan. Mr. Dietrich said they could distinguish between uses so that they are not identical uses in each district. Ms. Schlag agreed that downgrading permitted uses in a district might be difficult.

Mr. Snyder moved on to deal with the sale of alcohol in the Township. Research shows that in 1967 the Zoning Resolution allowed the sale of alcohol. In the 1970's it changed to prohibit the sale of alcohol "by the drink", and in 1977 it changed again to prohibit all sale of alcohol. If they wished to allow the retail sale of beer and wine at the convenience store or gas station at the S.R. 87 C-S district, he asked if the procedure would be to amend the Zoning Resolution and then put it on the ballot in that precinct. Mr. Dietrich explained that licensing for the sale of alcohol is at the State level and he was not aware of any townships that prohibit it through zoning. Russell is a "dry" township, but neither he nor Ms. Schlag knew the process required to change that. The Commission agreed they needed to find out if there was a referendum vote to prohibit the sale of alcohol by checking with the State Liquor Board and the County Board of Elections, or whether the Township Zoning Commission made that decision. If there had been a vote then another vote would be necessary to make any change.

Mr. Snyder asked, if the retail sale of alcohol was permitted, could they prohibit bars where drinking was the primary use. Mr. Dietrich said he had never seen that regulated through zoning. The State handles all licensing. Mr. Kotowski asked if zoning can regulate the density of the retail establishments that sell alcohol, and Ms. Schlag said that would be possible. Mr. Dietrich agreed that anywhere a restaurant was allowed, they would also have to allow a bar. Mr. Murphy commented that he understood they would have to write definitions very carefully, but the business model changes so quickly that the definitions may not fit after a short period.

Mr. Snyder said the Commission will compile a list of questions that need to be considered, and will send them to Mr. Dietrich and Ms. Schlag.

