

Minutes: Russell Township Zoning Commission
Russell Fire-Rescue Station
August 24, 2011

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

The Chairman called the meeting to order at 7:38 p.m.

MINUTES OF JUNE 22, 2011 – *Mr. Murphy moved to accept the minutes as written, Mr. Madden seconded and the motion passed unanimously.*

REPORT ON N.E. OHIO PLANNING & ZONING WORKSHOP – Mr. Kotowski and Mrs. Steffen reported on one session of interest that explained the technology for MBR's, Membrane Bio-Reactor process, a wastewater treatment process that utilizes a porous membrane to filter contaminants from the wastewater. Planner George Smerigan warned of the zoning consequences of this newer technology and the importance of no longer relying on soils when planning zoning districts. He recommended communities use other reasons too, and that comprehensive land use plans and 208 plans be in sync and be reflected in the zoning regulations. Mrs. Steffen reported on a session on internet cafes, where attorney Todd Hunt advised that the Ohio Attorney General is working on legislation that may be effective by the end of the year. He said that there will be a system of licenses based on population, so that many licenses may be issued in Cuyahoga County but only two or three in Geauga County. Mr. Kotowski spoke about a session for boards of zoning appeals, where planner David Hartt recommended not putting time limits on conditional use permits. This is in conflict with the County Prosecutor's office, which does recommend doing so.

RECENT CHANGES TO THE COUNTY MODEL ZONING RESOLUTION – Mrs. Steffen has received from the Geauga County Planning Commission a redline version of changes made on 07/01/11. She summarized the changes that may require examination by the Commission. The "Purpose of Zoning Resolution" has some language changes that will need to be reviewed. Revocation of Conditional Zoning Certificate has been changed to reflect the Ohio Revised Code, which states that a conditional zoning certificate may be revoked "for the extraction of minerals" only. There is a procedural change for the Zoning Inspector regarding review of proposed divisions of land not subject to platting. There is a suggestion to have a cross reference in the regulations for each zoning district to the riparian setback section. Other changes include the deletion of sections for architectural review boards, landscaping, and planned business development conservation open space districts.

Action Item: Mrs. Steffen will email the redline version to the Commission.

RETAIL FOOD SERVICE OPERATIONS – Mr. Murphy said that he and Mr. Snyder obtained answers to the remaining questions at their recent meeting with David Dietrich and assistant prosecutor Sheila Salem.

The Commission can write stringent buffer regulations into the paragraph permitting outdoor dining.

Mrs. Steffen mentioned that the 1990 Ohio Supreme Court decision in *Board of Township Trustees of Bainbridge v. Funtime, Inc.* stated that R.C. 519.02 does not include the authority to limit hours of operation of commercial enterprises. Mr. Snyder said that in 2006 the Commission had included hours of operation in the amendment that created the new L-B (Limited Business) zone and that the Prosecutor's Office was 'on board' with that decision, as was the applicant, The Pattie Group. Mr. Snyder recommended leaving the paragraph regulating hours of operation in the amendment for now, and the Commission agreed.

Mr. Murphy said they were advised that the Township cannot prohibit drive-through windows.

During the same meeting, Mr. Snyder and Mr. Murphy had discussed with Mr. Dietrich and Ms. Salem if it might be best to go forward with the food services amendment rather than to have it fully prepared and then to "shelve it" until it was needed. Mr. Snyder had pointed out that setting aside such an amendment now would place the burden of due diligence on the Commission that may consider the amendment at some point in the future. Mr. Snyder and Mr. Murphy decided to move forward with the amendment, subject to approval by the entire Commission. Mr. Dietrich and Ms. Salem agreed that was the best course of action. The Commission agreed to initiate the amendment once it is finalized rather than putting it aside until a request for food service is received.

Action Item: Mr. Kotowski will review Chester Township's new regulation for outdoor dining, work on strengthening the buffer requirement, and update the proposed amendment to include other suggestions from the Planning Commission and the County Prosecutor. Mrs. Steffen will email to the Commission the proposed amendment dated 08/25/10 showing the Planning Commission's recommendations dated 09/15/10.

DEFINITION OF FAMILY, DWELLING AND IN-LAW SUITES – Mr. Snyder said he had discovered a contradiction in the Zoning Resolution, where a sentence in Section 5.2.A.2 Accessory Uses, "Other uses customarily incidental to permitted principal uses on the property or lot," appears to conflict with Section 4.7. Prohibited Uses, U: "All other uses not specifically permitted in each of the zone districts as a regular or conditional use are hereby prohibited." Since in-law suites and custodial suites are incidental uses in the residential district they would be included under Accessory Uses, but because they are not specifically mentioned they would be prohibited per 4.7.U. Mr. Dietrich has recommended either deleting 4.7.U or modifying it. The Commission will also need to work on other parts of Section 4.7 as part of the food service amendment. Mr. Madden suggested adding in-law suites to Section 5.2.

Mr. Snyder said that the Zoning Resolution does not define dwelling but does define dwelling unit, although the only place dwelling unit is used is Section 4.9 Floor Area of Dwellings. Section 5.2 Residential Zones permits "a single one-family dwelling..." but there is no definition for this. Therefore if in-law suites are included there could be two dwelling units in a dwelling. The 1967 Zoning Resolution defined "dwelling unit", "dwelling, one family", and "dwelling, two family". Mr. Dietrich and Ms. Salem felt it is too cumbersome to try to define in-law suite and caretaker suite, and recommended addressing in-law suites within the definition of family. When Mr. Snyder asked if they would be creating two dwelling units, Ms. Salem had said not, since they would have only one electric meter and one gas meter, as well as a common water source and septic treatment, and no firewall separating the living areas. Therefore per the Building Code they would not be creating two separate dwelling units.

Mr. Madden discussed the revised definition of family he had sent to the Commission prior to the meeting. He felt the revised definition captures the consensus reached by the Commission at the last meeting, it complies with case law, gives reasonable notice to residents, and is flexible enough to address all the permutations of living arrangements of a family. He had also defined "functional equivalent of a family" by using four criteria that according to legal opinions and case law are pertinent for people to prove.

There followed a lengthy discussion. Mr. Snyder said that if an elderly mother with an unmarried partner moves in with a family, they would not fit the definition. Mr. Murphy suggested allowing one family plus two more unrelated people to still be defined as one family. Mr. Madden said the big picture is to stop large groups of unrelated people, such as college students, living together in a single-family dwelling. In reality the Zoning Inspector is not going to pry into people's living arrangements, but he felt this definition encapsulates other communities' efforts at a definition. They can raise from five the number of unrelated people defined as the functional equivalent of a family if the Commission wishes to do so. Unrelated foster children or custodial care providers are already allowed per this definition. Upon a suggestion to add a third scenario of two unrelated people living with a related family within the definition of family, Mr. Madden said he would not recommend it since there are too many scenarios to allow for all of them. Mr. Snyder said he agreed, but asked how to accommodate a family living with one unrelated person, if a

