



Land Use and Zoning Meeting Minutes

May 26, 2011

STAFF:	David Radachy
DATE:	May 27, 2011
APPROVED BY:	<i>jr3</i>

The Land Use and Zoning Committee hereby finds and determines that all formal actions were taken in an open meeting and that all deliberations of the Land Use and Zoning Committee, which resulted in formal action, were taken in a meeting open to the general public, in full compliance with applicable legal requirements of Section 121.22 of the Ohio Revised Code.

The meeting was called to order at 6:28 p.m. by Vice Chairman Welch.

Attendance was taken by sign in sheet. The following members were present: Messrs. Kenyon, Klco, Morse, Terriaco and Welch, and Mmes. Malec and Ross. Audience: Richard Constantine, nominated to replace Lee Bodnar. Staff: David Radachy.

Mr. Welch asked for any comments from the public. No comments were made.

Mr. Welch asked staff to discuss member issues. Staff stated that Mr. Bodnar resigned from the committee and the Painesville Township Trustees recommended Richard Constantine, Painesville Township Zoning Inspector, to replace him. Mr. Radachy introduced Mr. Constantine to the Committee members. Mr. Radachy then stated that Mr. Bodnar has resigned as Chair and the rules of the Committee does not allow the Vice Chair to become Chair automatically. A new Chair has to be elected.

Mr. Welch asked for nominations for Chair. Mr. Welch was nominated for Chair.

The Committee all voted "Aye".

Mr. Radachy stated now we need a new Vice Chair.

Mr. Klco was nominated for Vice Chair. The Committee all voted "Aye".

Mr. Bodnar came into the meeting and explained why he was leaving and why Mr. Constantine was taking over. He thanked everyone. He also stated he enjoyed his time on the Committee.

Mr. Welch asked Mr. Radachy to present the cases. There were two cases on the agenda.

Painesville Township Case #1 – Definitions Section V

Staff stated that they received an e-mail from Ken Fitzsimmons stating that they cancelled the public hearing and no longer needed the recommendation from the Planning Commission. The committee questioned the legality of this action. Mr. Constantine and Mr. Radachy explained that the zoning commission opted to not change the definition of carport at their April meeting, but changed their mind at the May meeting. They took the conservative action of setting another public hearing. After the meeting was closed, it was discussed with legal counsel who determined all they needed to do was go to the Trustee's Public Hearing, state the change and allow the Trustees to make it. This action was taken and a public hearing was no longer needed, so it was cancelled.

Staff stated the process required in ORC 519.12. Mr. Radachy stated that normally an application or text change is accepted at a Zoning Commission meeting and a public hearing date is set. The item is forwarded to the Lake County Planning Commission for recommendation within five days of that meeting. The Planning Commission sends a recommendation back to the Township Zoning Commission to be considered at the public hearing.

Zoning Commission closes the public hearing. Then they have to take action at a meeting within 30 days of closing the public hearing. If accepted, the item is sent to the trustees for a public hearing and action at their meeting.

Concord Township Case #1 – Sections V, XIII, XXII, and XXIII, Sexually Oriented Business Regulations (SOB)

Staff stated that the Zoning Commission was removing definitions on, Adult Arcade, Adult Bookstore/Video Store, Adult Cabaret, Adult Hotel, Adult Motion Picture Theater, Escort, Escort Agency, Establishment (sexually oriented businesses), Licensee, Nude Model Studio, Nudity/State of Nudity, Semi-nude, Sexual Encounter Center, Sexually Oriented Business, Specific Anatomical Area, Specific Sexual Activities, and Substantial Enlargement of Sexually Oriented Business and replacing them with definitions in Section 23.

Staff stated the old practice on SOB allowed them as a conditional use. Staff stated there are prosecutor opinions that state this is against the 1st Amendment, Freedom of Speech and recommend they be allowed as permitted uses. Concord Township is removing Section 13.09, SOB as a conditional use. This would include all references and the conditions for Sexually Oriented Businesses from the Conditional Use, Section XIII. They are also removing Sexually Oriented Business as a conditional use in B-1, Restricted Retail District and changing Sexually Oriented Business from a conditional use to a permitted use in B-2 with a note that they are subject to Section XXIII.

The State of Ohio has added ORC 503.51 and 503.52 to allow townships to administer SOB through licensing requirements. Concord is using this section of law to create a new Section XXIII with licensing requirements, new definitions and zoning requirements.

Staff was concerned that Section 23 was based on ORC 503.51 and 503.52 and not 519, the zoning section. The Concord Township Zoning Resolution was adopted under ORC 519, which gives townships the ability to regulate location, size and use of buildings and lands in unincorporated territory. Licensing does not regulate location, size, or use of the building or land.

Staff stated that they reviewed the other communities' regulations and they had these regulations as a stand alone resolution and not part of the zoning regulations. Staff stated that these model regulations were developed to be a stand alone resolution and should not be part of the zoning resolution. This is similar to the junk motor vehicles resolutions that can be adopted under ORC 505 or to Concord Noise Resolution, 2000-10 or to Concord Curfew Resolution 2000-09.

Staff recommended that:

1. Definitions from Section XXIII should be added to Section V.
2. Sections 23.01 to 23.13 and 23.15 should be adopted by the Concord Township Trustees as a separate resolution and not added to the zoning resolution.
3. Section 23.14 could either stay separate as Section XXIII or it could be added to Section XXII. If it stays as Section XXIII, it will need a purpose statement.

Members of the Committee did not like the fact that SOB is to be allowed as a permitted use. They believed if the community did not want it, they should be allowed to outlaw it.

Mr. Welch made a motion to recommend the zoning text change with staff's suggestions.

Mr. Terriaco seconded the motion.

Five voted "Aye", two voted "Nay"
Motion passed.

There was no public comment
The meeting adjourned at 6:54 PM