

XENIA TOWNSHIP ZONING COMMISSION
MEETING

October 27, 2015

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 October 27, 2015 at 6:00 p.m. at the Xenia Township Trustees' Office, 8 Brush Row Road, Xenia, OH 45385.

Chairman Jeffrey Zweber called the meeting to order at 6:30 p.m.

Roll Call: Virgil Ferguson, Kent Harbison, Alan King, Willie Washington, Jeffrey Zweber, Donna Randall, and Alan Stock.

Mr. Zweber presented minutes from September 22, 2015 for approval. Mr. King made a motion to accept the minutes as presented, seconded by Mr. Washington. All voted aye.

Mr. Zweber spoke about the joint meeting with the Zoning Commission and Township Trustees held on September 29, 2015. He said the Trustees really want them to work on mining text and they have valid reasons. He said a lot of things people are concerned about might not be zoning. Mr. King said a lot of it is legislation. Mr. Zweber would like to know what powers the Township has in terms of conditions on mining--Mr. King added in terms of operations instead of placement. Mr. Zweber said he is confused with the reclamation bond process. Mr. King said when they worked on adult entertainment text the permit process was to come from the Trustees. He wondered if mining permits would be similar to that. He did not think zoning would be controlling blasting or fly rock. Mr. Stock said zoning basically revolves around "use" and "area". The Trustees have no power to create an ordinance, but they can create and maintain a Board of Zoning Appeals as well as a Zoning Resolution. What they determine is not operational within zoning but in order for them to get the additional permit from the Township they have to meet the parameters set forth in the Zoning Resolution. The Trustees set up all fees and the Zoning Commission sets up the conditions as a recommending board. The Trustees can deny the recommendations, make minor changes or approve them. Mr. Stock said the Trustees were asking if the setbacks are still relevant today. He said fly rock has to do with ODNR, not with zoning. Mr. King said when Cemex requested the rezoning, the Zoning Commission asked for higher berms and further setbacks. The Commission also wanted property owners that were within a certain distance of Cemex property lines to have Cemex check their wells, determine the current condition, check again and pay for repairs if necessary. He said this would be part of the permit process. Mrs. Randall said there could be other factors in having problems with wells. Mr. Zweber asked about the reclamation bonds. Mr. Stock said reclamation bonds are demanded by ODNR. He said every time Cemex wants to blast they have to go to ODNR. Mr. Stock said the Zoning Commission has authority to go beyond the minimums set forth by ODNR. Mr. Zweber said the Trustees have nothing other than zoning text and district maps to deal with mining. There was discussion about creating a permit for mining and setting up fees.

Mr. Zweber started the topic of cell phone towers. Mr. Stock said the working copy dated 9/22/2015 should have R-2 and R-3 removed as the Township no longer has R-2 and R-3 districts. He also said the Commission wanted to change “siting” to “site” or “location” under Section 518, point 3. Mr. Stock said Stephanie Hayden advised looking at p. 5, points 9-19 as it seems to fall under public utilities. Ms. Hayden also suggested deleting all of 518.7 Public Utility Exemption and stating public utility exemptions exist in ORC 519.02. Mr. Stock asked Stephanie Hayden about airport, bungee, diving, internet, ham radio, microwave and laser towers. Stephanie Hayden said airport, bungee and diving towers would be considered structures because of their use. Mr. King asked if a bungee tower would have to go to the BZA because of height. Mr. Stock answered yes. He said ham radios are covered in the ORC. The Zoning Commission asked what stipulates a public utility and can a privately-owned for profit become a public utility. In 2012 Ohio Supreme Court, Hamilton County vs. Rumpke, the court said “privately-owned for profit” can become a public utility. Mr. Stock said there have to be rules in the Residential District to be able to regulate. Mr. King suggested using the same verbiage as in the Notification text regarding several lots owned by same owner would be considered one parcel. Mr. Stock said that was stated for notification purposes only so could probably not be used in this case. Mrs. Randall asked about Mrs. Spradlin’s comment about distance between signs when parcels are on two sides of a road. Mr. Stock said the Trustees discussed it and they were satisfied with the text the way it was. Mr. Zweber talked about the three billboards north of Old Town which are on both sides of the road on property owned by the same owner. He said the billboards are treated as if on the same lot. Mr. Zweber said with new regulations they could not put that many signs that close together; however, these signs are grandfathered in. Mr. Zweber said with cell towers, unlike everything else, zoning only applies if the Township says it does on a case by case basis. He feels this is a loophole where the tower people don’t have to play by Township rules. Mr. Zweber said the Township has put in residential rules and they all apply without anyone saying they apply, except regarding cell towers and if the Township forgets to say the rules apply within 15 days the zoning rules do not apply. Mr. Zweber feels there is enough non-residential land in the Township for towers to be constructed on. Mr. Stock said a land owner can make around \$12,000 a month if a cell tower is constructed on their property. There was discussion about towers that are considered structures. Mr. King asked about putting up a 120’ bungee tower. Mr. Stock said he would guide the applicant to the closest zoning district where it would fit and advise them that a BZA hearing might be needed. Mr. Zweber said structures for recreational use are limited to whatever height restrictions are in the Zoning Resolution. Mr. King pointed out Section 510 Exceptions to Height Limitations and suggested changing the first sentence under 510 and 510 (2)(a) “television towers” to “wireless telecommunication towers”. The Commission determined the first sentence under Section 510 is quantified by numbers 1 and 2. There was more discussion about Section 510.

Mr. Miller stopped in to thank the Commission for all their hard work on the Sign text language. He wished them a good night and left.

Mr. Ferguson said there is a radio tower in Miami Township, on Clark Run Road, and they could check with the property owner about it. The Commission looked through the Zoning Resolution for areas where towers could be allowed. Mr. Zweber said a commercial television tower would only be allowed a height of 35' without going to the BZA. Mr. King asked if television towers were classified as telecommunication towers. Mr. Stock will check with Stephanie Hayden. Mr. Stock said the OS&S Home has a radio studio with a tower co-located on a cell tower in another location which is run from fiber optics. He said many cell towers have television repeaters on the towers. Mr. Zweber does not think all FCC licensed radio and television towers are public utilities. Mr. Stock summarized the things he would ask about: 1) Is television a public utility; 2) What can be brought into zoning; 3) What can be allowed with towers; 4) What can be prohibited with towers.

Mr. Zweber said they will go back to Section 510, Section 518 and Definitions. Mr. Stock will do a search of "towers" in the text. Mr. Zweber said he did not think all of Section 519 on working copy page. 9 should be crossed out. Mr. Stock said that was supposed to be removed from the working copy as it did not pertain to this topic. He will also remove the text before Section 518 from the working copy. Mr. Stock will also add Section 510 to the working copy.

The next meeting will be November 17 at 6:00 p.m.

Mr. King made a motion to adjourn the meeting, seconded by Mr. Ferguson. All voted aye. Meeting adjourned at 8:30 p.m.

ATTEST:

Alan D. Stock, Zoning Clerk