

Minutes: Russell Township Zoning Commission
Russell Fire-Rescue Station
May 27, 2015

Present: Richard E. Snyder, Chairman
Bruce Murphy
Donna Weiss Carson
Ben Kotowski
Tom Warren (arrived at 8:05 p.m.)
Diana Steffen, Secretary

Also in attendance: Jen Dorka, Assistant to the Fiscal Officer, and Ann Mitchell, Geauga County Assistant Prosecuting Attorney.

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

MINUTES OF APRIL 22, 2015 – *Mr. Murphy made the motion to approve the minutes as presented, Mr. Kotowski seconded and the motion passed unanimously.*

LEGAL DESCRIPTION OF C-S, O-B AND LB DISTRICTS – The Chairman introduced Ann Mitchell, the Township's legal counsel, who was in attendance to provide advice on the appropriate way to define the boundaries of the commercial districts. Ms. Mitchell said that she spoke with David Dietrich of the Geauga County Planning Commission, who has recommended adding legal descriptions to back up the Zoning Map since the Commission is proposing to amend the commercial districts. She said that in the 1990's the legal descriptions were removed from the Zoning Resolution and map zoning was determined the best course to take. At that time it is understood that Judge Forrest Burt was the Township's assistant prosecuting attorney and he had recommended using map zoning only. Ms. Mitchell said she met with Judge Burt, but he does not recall the reason for that advice and he had not issued a written opinion on the topic. There is no case law that determines how this should be done, and the legal descriptions used in the Zoning Resolution dated 1978 used only north, south, east, west, and were therefore not specific. Mr. Dietrich indicated to her that the descriptions can be as vague or specific as necessary, and could be written by a surveyor using deed searches. This method would not require field surveys.

Ms. Mitchell said that if the district boundaries followed the center line of roads and along lot lines Judge Burt felt there was not an issue, but if the boundaries travel along the course of a river or something else, or if they cut through a property so that they divide it between one district and another, then there could be a problem. Someone could question the exact location of the boundary. She noted that Auburn Township did a deed search, and that it is within the Township's discretion how to determine the boundaries, but most of the townships do include legal descriptions as a backup in case of questions. Because Russell's boundaries are not arbitrary lines she agreed that map zoning may be easier for Russell.

Mr. Murphy pointed out that even if a parcel changes its configuration the existing zoning would be the legal description of the parcel at the time the amendment went into effect. On reading some of the legal descriptions used by other townships he found them not to be specific and to be weak compared to relying on those that are part of the parcel deeds. Mr. Snyder commented that the legal descriptions the Planning Commission is recommending are actually the weakest, and he asked why these are the standard being recommended for the townships. Ms. Mitchell said she does not think this is a legal issue unless there is a challenge, but it is a practical issue for each township; the Model Zoning Resolution provides for both the map and legal descriptions. Mr. Dietrich told her it is more accurate to use the legal descriptions that are in the deeds, and she found that each of the segments refers to the deed at issue to which it is easier to refer. Mr. Dietrich would like new surveys using degrees but he recognizes that this is impractical for townships. However, due to the Model Zoning Resolution language and the fact that so many townships are using this method, Ms. Mitchell said that Mr. Dietrich would no doubt prefer consistency through the county.

Mr. Kotowski asked if the Township could insist an owner split his lot into two lots if it had two types of zoning on it, which would allow the Township to retain its map based zoning without losing flexibility in the future. Mr. Snyder said the Trustees could address that at a later time. He also noted that the two previous chairmen of the Zoning Commission had recommended to him that the map zoning method be retained.

Mr. Warren arrived at this time.

Ms. Mitchell explained that Mr. Dietrich feels there is greater accuracy in using both methods. Mr. Murphy said that with legal descriptions being part of the record already there does not seem to be a compelling reason to do something else. Mr. Kotowski questioned the nature of a challenge, since the distances might be very small that were challenged. He also suggested someone could say that because the legal descriptions are weak they do not provide for a sound boundary and could challenge them on that basis. Ms. Mitchell said that by using a deed search the boundaries would be using the same legal descriptions as in the deeds, so there would not be an issue.

Ms. Mitchell said there is no legal opinion to be written on this, but she could research if there have been court cases involving challenges to district boundaries. She said she did not believe there is any case law that something was unconstitutional based on legal descriptions, but Judge Burt had said the Township will need a failsafe defense if there is a challenge.

Restaurants – With Ms. Mitchell in attendance the discussion moved to restaurants, and Mr. Warren explained that as they work on this topic and discuss buffers and noise buffers they want to find a way to protect residential property owners and yet permit the business owners to put in buffers that are cost effective for them. There followed a discussion regarding the food service amendment.

Permitted/Prohibited Uses – The Commission discussed with Ms. Mitchell the most effective way to regulate uses in the commercial districts, whether to list many specific permitted uses, whether to list mostly prohibited uses, or whether to list some permitted uses but add the phrase, "and similar uses."

As a result of the discussions with legal counsel it was agreed that Ms. Mitchell will research the following:

- 1) Map zoning versus legal descriptions – research lower level case law.
- 2) Retail food service – With the addition of general welfare authority to townships, research case law over the past seven years.
- 3) Permitted/prohibited uses – research which list should be more specific and also which uses should be prohibited.

Due to the late hour the Chairman said that he would like to postpone review of Land Use Guide Plan chapters until next month's meeting.

There being no other business, Mr. Kotowski moved to adjourn, Mr. Warren seconded and the meeting adjourned at 9:40 p.m.

Respectfully submitted,

Diana Steffen
Secretary

Date

Richard E. Snyder
Chairman

Date