

GENOA TOWNSHIP ZONING COMMISSION MINUTES

DATE: April 10, 2017
TIME: 7:00PM
LOCATION: Genoa Township Hall, 5111 S. Old 3C Hwy., Westerville, Ohio 43082

AGENDA ITEMS: Zoning Resolution Assessment Presentation
Article 18, Signs Amendment Draft - Discussion

STAFF PRESENT: Joe Shafer, Director of Development and Zoning

CALL TO ORDER (00:00:02):
Bill Jackson called the meeting to order at 7:04 p.m.

ROLL CALL (00:00:16):

MEMBERS PRESENT		MEMBERS ABSENT
Shawn Priebe	Jo McIntosh, Alt.	Mark Antonetz
Bill Jackson, Vice Chair	Tara Paciorek, Alt.	Sandra Faulkner

MINUTES (00:00:30):
The Commission decided to defer consideration of the March 13 meeting minutes to their next meeting as only two of the three members in attendance at that meeting were present this evening.

PUBLIC HEARING (00:01:26):

Mr. Jackson noted that there were no public hearings this evening as no applications had been made.

OTHER BUSINESS

- **Zoning Resolution Assessment presentation by Peter Griggs of Brosius, Johnson, and Griggs, LLC (00:01:43):**

Mr. Griggs presented his legal review of the Genoa Township Zoning Resolution (attached). The Zoning Commission and staff engaged in discussion with Mr. Griggs about several items during the course of the presentation. In addition to the written review, Mr. Griggs specifically mentioned the following during his presentation:

1. Improvements to the style and structure of the Zoning Resolution could be made to centralize some items and make them easier to find and digest; a “one stop” shop concept. An example provided was re-organization and updating of the township’s zoning provisions for agriculture, agritourism, and farm markets.
2. Medical marijuana will become legal in September 2017. The Trustees have the ability to adopt a resolution that would establish a one year moratorium on any development of businesses related to medical marijuana so that the township may have some time to update its zoning resolution to address these businesses. Mr. Griggs noted that the law

does give the township authority to prohibit all such businesses from within their borders.

3. Re-writing the section that discusses variances to include the Duncan v. Middlefield standards and remove the provision that prohibits use variances as such a prohibition is not permitted.
 4. Refreshing an updating the township's telecommunication provisions. Mr. Griggs noted that he could provide sample language to help clean this section up.
 5. Adding provisions to exempt zoning for public utilities, railroads, liquor sales, and oil and gas production per state law. Mr. Griggs stated that he could provide such language to the township.
 6. Numerous items related to the planned districts were discussed. Of particular note was the need to distinguish and identify the process an individual homeowner within a plan must go through when they are seeking relief to the zoning requirements of their plan (final plan amendment or variance). Mr. Griggs suggested looking at Berkshire Township's new P-MUD regulations as this very topic had been addressed.
 7. Revising the special use standards for churches to ensure that they do not violate the Religious Land Use and Institutionalized Person Act of 2000 (commonly known as RLUIPA). Mr. Griggs noted that such uses can be regulated so long as similar, non-religious uses are regulated in the same manner as well. Revising the term "Churches" to another term was also suggested.
 8. Mr. Griggs stated that the Temporary Uses section of the zoning resolution needs to be completely re-written to address legal concerns.
 9. Mr. Griggs stated that townships cannot proactively re-zone properties to planned districts as suggested in Chapter 5, item IV.A.2 of the 2016 Comprehensive Plan.
 10. Mr. Griggs stated that while the dual-zoning of properties on Freeman Road was not necessarily illegal, it was not ideal. Mr. Shafer asked if the township could create a standard requiring any future subdivisions follow existing zoning district boundaries. Mr. Griggs responded that they could not.
 11. Mr. Shafer asked if the recommended changes to the zoning resolution would require a vote by the general public on the changes before they took effect. Mr. Griggs replied that they did not but that any adopted changes would be subject to referendum.
 12. Mr. Shafer asked how long it could possibly take to incorporate all of the suggested revisions in the assessment. Mr. Griggs replied that changes of this scale and number would likely take a year (from the time the process is put into motion).
- **Recess (01:25:50):**
The Commission went into recess at 8:30 p.m. and re-convened at 8:39 p.m.

- **Article 18, Signs Amendment Draft – Discussion (01:26:08):**

Ms. McIntosh mentioned that there were pending appointments for the Zoning Commission and questioned whether or not discussion of the signs amendment should proceed this evening given the possibility of potential changes to the Commission's membership in the near future. Mr. Shafer was asked if he knew when the Board of Trustees would be making their decisions. He responded that he was aware of the interview dates but did not know when the Trustees would be making their final decisions. Mr. Shafer was also asked about the temporary term extensions granted by the Board of Trustees for the two members whose terms expired on March 31, 2017 (Sandra Faulkner and Jo McIntosh). He responded that those terms had been temporarily extended by the Trustees to April 15, 2017.

The Commission temporarily tabled discussion of the draft amendment to discuss upcoming meetings. Mr. Jackson noted that the April 24th walkabout meeting was canceled. Mr. Shafer informed the Commission that he would not be able to attend the Commission's May 8th meeting as he had made vacation plans for that week in August 2016, prior to the Commission's decision in the fall to change their meeting dates back to the second Monday of the month. The Commission held a brief discussion and decided to re-schedule their May 8th meeting to Monday, May 15th at 7 PM in the Genoa Township Hall so that Mr. Shafer could attend.

The Zoning Commission began to discuss the draft Signs Amendment document that staff had previously provided in February. The following topics were discussed as part of this review:

1. The large number of new definitions under signs. The Commission generally agreed that future reviews would need to determine whether or not all the definitions were necessary and/or if some definitions could be combined.
2. The Commission expressed concern over the fact that the draft did not contain any provisions to limit the amount of overall signage that could be installed on a non-residential property. It was agreed that additional research and discussion on this matter was needed.
3. The Commission expressed some concern about the length of the Intent and Purpose section in Article 18. Mr. Shafer agreed to confer with the Prosecutor's Office on this matter.
4. The Commission generally agreed that the layout and formatting of the draft signs article, as well as the utilization of tables, were agreeable.
5. The Commission agreed that a page by page review would be necessary at their next meeting.

NEXT MEETINGS (02:33:27):

- Mr. Jackson mentioned again that the April 24th walkabout meeting had been canceled since no requests were received.
- Mr. Shafer noted that no new applications for the Commission were received by the April 10 deadline and, as of this meeting; there will be no hearings on the agenda for the Commission's May meeting. He also noted the signs amendment will be the only item on

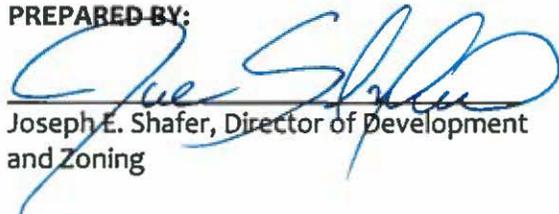
the May agenda. *EDITOR'S NOTE: Following this meeting staff confirmed the change in date of the Zoning Commission's next meeting from Monday, May 8, 2017 at 7 p.m. to Monday, May 15 at 7 p.m. in the Genoa Township Hall.*

ADJOURNMENT (02:35:33):

Jo McIntosh moved to adjourn this meeting at 9:49 p.m. Motion was seconded by Tara Paciorek. All voted yes. Motion carried.

Meeting was adjourned at 9:49 p.m.

PREPARED BY:


Joseph E. Shafer, Director of Development
and Zoning

April 20, 2017
Date Prepared

ZONING COMMISSION APPROVED:


William Jackson, Vice-Chair

5/15/17
Date Approved by the Zoning Commission

OTHERS PRESENT AT MEETING

Connie Goodman
Pete Griggs
Karl Gebhardt
Kenneth Davis

Genoa Township Trustee
1600 Dublin Road, Columbus 43215
Genoa Township Trustee
8343 Oxbow Road, Westerville 43082

Audio of this meeting is available at www.genoatwp.com



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Donald F. Brosius
Calvin T. Johnson, Jr.
Peter N. Griggs

Jennifer L. Huber
Julia E. Donnan

April 11, 2017

Genoa Township Board of Trustees
c/o Joe Shafer, Director of Development and Zoning
Westerville, Ohio

Subject: Legal Review of Zoning Resolution

Dear Board of Trustees:

As you may know, our office conducted a legal review of the Genoa Township Zoning Resolution (the "Resolution"). As part of our review, we also reviewed the 2016 Genoa Township Comprehensive Plan to gain an understanding of the current status of land use issues in Genoa Township. Our recommendations are primarily based upon updated or new state and federal statutory provisions, relevant court cases, as well as experience in representing townships throughout the State. Based upon our review, we are recommending the Board and the Zoning Commission consider the following revisions/updates to the Resolution:

1. **Agritourism.** Adding text to address Agritourism. In August of 2016, Senate Bill 75 became effective and expanded Ohio's "agricultural exemption" from local zoning authority to include agritourism activities. Although townships may not prohibit these activities, they may regulate certain factors such as setbacks, egress/ingress and size of parking areas.
2. **Agriculture.** Reorganizing regulations concerning Agricultural into one section. Revisions also need to be made to reflect the current status of the law as it pertains to the exceptions to the agricultural exemption. Section 1712 appears to violate current law and we recommend deleting the provision. In addition, we found no regulations concerning farm markets. We recommend adopting such regulations. Also, the definition of Agricultural needs to be revised to reflect current law. Lastly, any regulations concerning Large Feed Lots have been stricken down by courts as a violation of the agricultural exemption.
3. **Signs.** Updating and revising Article 18 Sign Standards to address the U.S. Supreme Court Case *Reed, et al. v. Town of Gilbert* ruling on content-neutral sign regulations.
4. **General Authority.** Revising Article 1 to reflect the Township's zoning authority based upon general welfare legislation and case law in 2006.

5. Medical Marijuana. Add provision either regulating or prohibiting medical marijuana cultivators, processors or retail dispensaries. Administrative rules implementing HB 523 (Ohio's Medical Marijuana Control Program) should be effective around September of 2017.
6. Conditional Zoning Certificate for Surface Mining. In 2007, ORC 519.141 became effective and provided townships with the ability to treat surface mining as a conditional use. The statute also provides a process of haul routes as other factors that a board of zoning appeal may consider during their review of an application.
7. Architectural Review Board. In 2004, ORC 519.171 was adopted and provides that a board of township trustees may create an architectural review board to enforce compliance with any zoning standards it may adopt pertaining to landscaping or architectural elements. The oversight of those regulations may either be assigned to the Zoning Inspector, Zoning Commission or a newly created entity. Although not legally required, we wanted the Board to know that this authority exists.
8. Variances. Revise Section 307 variance provisions. Case law requires townships to allow for use variance applications. In addition, we recommend inserting the *Duncan v. Middlefield* standards that a board of zoning appeals is required to consider when hearing area variance applications.
9. Public Schools. The Resolution treats public schools as a conditional use in several zoning districts. Although public schools and other public institutions are not exempt from zoning, case law has generally held that schools and other public institutions need only make a good faith attempt to comply with any applicable zoning requirements. Consider public schools as a permitted use.
10. Adult Oriented Business. The Resolution prohibits Adult Oriented Businesses in all zoning districts, which violates the 1st Amendment of the U.S. Constitution. The Township should treat Adult Oriented Businesses as a permitted use in at least one zoning district and provide for regulations.
11. Small Wind Farms. Does the Board want to allow small wind turbines (at 125') as a permitted use in all zoning districts?
12. Telecommunication Towers. We recommend revising the telecommunication provisions in Article 22 to more accurately reflect the requirements of Ohio and Federal law.
13. Add a provision to Article 22 providing an exemption from Township zoning for public utilities, railroads, liquor sales and oil and gas production.
14. Amateur Radio Tower. Section 2202: addresses the operation of ham radio services which is governed by ORC 519.12, ORC 5502.031 and the Federal Communications Act of 1996 and FCC regulations. The Board may want to consider revising this provision to, among other

items, provide an exception to the area requirements in the event that such regulations impair the ability to operate.

15. **Planned Unit Development Issues.** Several inconsistencies between the Planned Districts. For example, the PRD language regarding the ability to grant divergences differs from PRRCD. The PRRCD does not allow the Zoning Commission to grant divergences for density and open space but in the PRD such a divergence is permitted to be made. In addition, we recommend considering a provision to the Planned Districts that determines whether or not an individual is seeking a variance or a modification to a Final Development Plan. Also, clarify the process that an applicant must follow once the Final Development Plan has been voided for lack of construction. Lastly, we also recommend including language distinguishing between what acts are legislative (rezoning to a PD) and what acts are administrative (final development plan approval and modification of the same).
16. **Churches.** Generally speaking, our advice is to treat churches as permitted uses in all zoning districts. Although not exempt from local zoning regulations, churches do receive some protection under the Religious Land Use and Institutionalized Person Act of 2000 ("RLUIPA"). RLUIPA contains three general prohibitions, one of which prohibits laws that treat religious assemblies or institution on "less than equal" terms with non-religious assemblies or institutions. We have some concerns with Section 1706 as the Resolution singles out and places regulations specific only to churches.
17. **Residential Care Facilities.** Section 1704, as well as the applicable definitions, needs to be revised in order to comply with ORC 5119.341 and ORC 5123.19(M) and (N).
18. **On-Street Parking Regulations.** We recommend deleting all on-street parking regulations contained in the Resolution. Authority to regulate on-street parking is provided by ORC 505.17 and is determined by the Board of Trustees. In other words, enforcement is done through resolution adopted by the Board and not through zoning.
19. **Temporary Uses.** Section 1702.01 requires that 51% of certain owners approve of a special event prior to the granting of a conditional use permit. We have concerns that this requirement could be argued as an improper delegation of authority. We would recommend deleting this requirement as well as establishing criteria for such events. Ultimately, the Board of Zoning Appeals determines whether or not to grant a conditional use permit. We have also found that many townships provide for some regulation of personal storage units in a Temporary Use Section. We would recommend adding such language.
20. **Neighborhood-Scale Commercial Development.** Several sections in the Comprehensive Plan discuss establishing standards for such uses. We would recommend creating a planned district, possibly an overlay district, over several areas in the Township where such a use may occur.
21. **Rezoning Issues.** One issue raised in the Comprehensive Plan is whether the Township has the authority to rezone straight zoned commercial and/or industrial properties into planned

districts. Unfortunately, ORC 519.021 does not permit a township, on its initiative, to rezone property into a planned unit development. Only a property owner has the right rezone property into a planned district. One other rezoning issue raised in the comprehensive plan concerns split zoning of certain properties located along Freeman Road. Although split zoning is legally permissible, we strongly encourage against such a practice and recommend that the properties be rezoned into an appropriate (single) standard zoning district.

22. Comprehensive Plan Recommendations. Chapter 5, Article IV. A. provides several suggestions for future revisions to the Zoning Resolution. Some of the issues raised in this section concern Resolution formatting and organizational issues. We generally agree with the non-legal recommendations contained in this section that would help make the Resolution a reader-friendly document.

Very truly yours,

BROSIUS, JOHNSON & GRIGGS, LLC

By _____
Peter N. Griggs, Member

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