

## Minutes of Zoning Commission

January 30, 2024

The regular meeting of the Bainbridge Township Zoning Commission was called to order by Ms. Lorrie Sass Benza, Chair at 6:00 P.M. Members present were: Ms. Kristina Alaei; Mr. John Lateulere; Ms. Stephanie Puzzo and Ms. Marlene Walkush; Ms. Laura Weber, Alternate and Ms. Jill Adams, Alternate. Also present was Mr. Dave Dietrich, Planning and Zoning Coordinator.

### PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

### PUBLIC COMMENTS

None.

### NEW ZONING COMMISSION MEMBER

Ms. Benza welcomed new Alternate Zoning Commission member Jill Adams.

### GUEST

Mr. Ken Radtke, Chester Township Trustee

### MINUTES

Ms. Alaei moved to adopt the minutes of the December 26, 2023 meeting as written.

Ms. Puzzo seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

### ORGANIZATIONAL SESSION

#### Sunshine Law

Mr. Lateulere made a motion to adopt and support the Sunshine Law as provided in the O.R.C.

Ms. Alaei seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

### Secretary

Ms. Alaei made a motion to reappoint Linda Zimmerman as secretary for the Zoning Commission.

Ms. Puzzo seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

### Meeting Schedule

Mr. Lateulere made a motion to hold the regular meetings on the last Tuesday of each month at 6:00 P.M. at the Town Hall.

Ms. Walkush seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

### Acceptance of Proposed Amendments

Ms. Walkush made a motion to retain the policy of accepting any proposed amendment applications on the last meeting night of each month. (Generally to be the last Tuesday of the month.)

Ms. Alaei seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

### Election of Officers

#### Chair

Ms. Sass Benza made a motion to elect Ms. Walkush as Chair of the Bainbridge Township Zoning Commission.

Ms. Puzzo seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

Ms. Walkush assumed the role of Chair.

Vice Chair

Ms. Sass Benza made a motion to elect Ms. Puzzo as Vice Chair.

Mr. Lateulere seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

NEW BUSINESS

Discussion of Adult Use Cannabis Operations

The Zoning Commission held a discussion on Adult Use Cannabis Operations.

OLD BUSINESS

Proposed Zoning Amendment Z-2023-2

Ms. Sass Benza made a motion to recess the regular meeting.

Ms. Puzzo seconded the motion that passed unanimously.

The regular meeting was recessed at 6:34 P.M.

PUBLIC HEARING

Ms. Walkush, Chair called the public hearing to order at 6:34 P.M.

Zoning Commission members present were: Ms. Alaei, Ms. Sass Benza, Mr. Lateulere, Ms. Puzzo and Ms. Walkush.

Proposed Zoning Amendment Z-2023-2 proposes to amend Chapter 101 – Purpose and Conflict; Chapter 109 – Zoning Inspector, Certificates and Enforcement; Chapter 113 – Zoning Commission and Chapter 117 – Board of Zoning Appeals.

Ms. Walkush noted that the public hearing was duly advertised in the News Herald on January 19, 2024 and has been available for public examination and review at the township office for at least ten days before today as required by Ohio Revised Code Section 519.12 (D, 5).

Ms. Walkush read into the record the recommendation of the Geauga County Planning Commission in a letter dated January 9, 2024 in which the Planning Commission recommended approval of the proposed amendment with modifications.

Ms. Sass Benza stated that as you all know at the last meeting we discussed the feedback that she and Mr. Lateulere got when they met with our legal counsel and when we initiated the amendment on December 26, 2023, it was forwarded up to the Planning Commission within five days and it was specifically mentioned in the email when it was submitted that Mr. Lateulere and Ms. Sass Benza had conferred with Assistant Prosecuting Attorney Ms. Linda Applebaum and that the recommendation of the Planning Director was that we confer with our Assistant Prosecutor. She said the first comment about putting “morals” back in, she and Mr. Lateulere discussed that with Ms. Applebaum and actually in the email that Linda Zimmerman conveyed up to the Planning Director, it was specifically said that Mr. Lateulere and Ms. Sass Benza discussed the legal issues and got the blessing of our APA. She said the second part is not in our amendment.

Mr. Dave Dietrich referred to the revocation statement that there was a case out in another appellate court district, not the eleventh district which we are in, indicating that only a CUP for a surface mining operation could be revoked by a board of zoning appeals. He said our court of appeals has never touched this topic and the opinion we had and the advice given to other townships and they followed it, we want to retain that authority that the zoning inspector has otherwise we might as well go out and buy a pair of handcuffs and handcuff the zoning inspector in his office.

Ms. Sass Benza said so essentially here is what we do, if there is a conditional use permit, a conditional use permit can only be approved by the board of zoning appeals. She said they establish conditions and once those conditions are established the zoning inspector issues the conditional use permit. She said if the next day the property owner disregards all of those conditions then what, do you have to wait until the conditional use permit expires five years down the road so you could always, whatever the approach is, you can file a lawsuit in court and you can try to get an injunction, the approach that we have taken is the zoning inspector who is the one who signed off, who issued the conditional use permit, simply revokes it and then if the conditional use permit holder disagrees they can allege error by the zoning inspector and go in front of the board of zoning appeals so that can happen right away.

Mr. Lateulere said who is the board that originally held the hearing for a conditional use anyway.

Ms. Sass Benza said exactly so that is the approach that we suggested, I don't know where this is coming from.

Mr. Dietrich said he doesn't know if there are any cases on that to look at.

Ms. Sass Benza said she has no idea.

Mr. Dietrich said we've got due process, that is what it is all about.

Ms. Sass Benza said absolutely and that is the recommendation and in November of 2016 when Bainbridge Township hosted the Geauga County Township Association and in having discussions about the authority of the county planning commission, we have to, when we initiate a zoning amendment, by law our process is we have to submit it to the county planning commission, they make a recommendation at their public meeting and we have to consider it which is what Ms. Walkush just read. She said our county prosecutor actually told all of us in attendance at that November 2016 GCTA meeting that the county planning commission is a "toothless tiger" and we can feel free to totally disregard their recommendation.

Mr. Lateulere said that is almost a direct quote.

Ms. Walkush said she was going to add that since we already discussed those amendments before they went up there, she thinks they are good.

Mr. Lateulere said the discussion on "morals", he will head that one because it was mentioned in here so everybody can understand what it says and why we have it in there and what the discussion with the APA was. He said "morals" are permitted to be in as part of our enabling statement of purpose, statement in the zoning. He said "morals" is a highly debatable, morals of the community right, like who said that, a judge ultimately will say it but our APA's response was you are allowed to have it in there and it could be used by you guys as an additional truss in any kind of a lawsuit for a use that would be objectionable so he is going to paraphrase, he believes, was she doesn't see a problem with it, in fact it is maybe not a bad idea.

Ms. Sass Benza said Ms. Applebaum said she was neutral on it.

Mr. Lateulere said he doesn't remember the exact conversation but it was yes.

Ms. Sass Benza said townships are creatures of statute and it can only do the things the Ohio Revised Code gives them the authority to do so forever, for the longest time, townships could zone on the basis of health, safety and morals whereas municipalities could zone on the basis of health, safety and general welfare so townships lobbied extensively to try to get some additional authority to zone on the basis of general welfare. She said the Ohio Revised Code was changed, it is not a blanket grant of general welfare but there is an argument to be made. She said they ditched that "morals" language out of the Ohio Revised Code but Ms. Applebaum said she was neutral on it because it would probably be linked with one of the other factors so we wouldn't hang our hat solely on "morals" it would be linked to health, safety or general welfare.

Mr. Dietrich said he likes it because he mentioned this before but he will say it again, if that Adult Business component, which everybody does in their zoning, just in case it is kind of a nice word to have in the book in the event we get into something with this Adult Entertainment stuff, why not.

Ms. Walkush said if she remembers her ancient history classes our law is actually based on morals, she likes the word, it is very strong.

Mr. Dietrich said you can go back to the 1940s when the U.S. Department of Commerce came up with the uniform zoning enabling provision which was then enacted by the various states so that provision actually had a very long history to it and it includes the word “morals”.

Mr. Lateulere said and upheld and struck down. He said redlining was if people hung their hat on “morals” they can redline it, that got struck down but it has also been upheld.

Mr. Dietrich said it was in the Ohio so-called general code for many, many years, the word “morals”.

Ms. Sass Benza said right, correct.

Mr. Lateulere said he just wanted to fill everybody in, they asked the question so this is what the discussion was.

Ms. Walkush summarized Chapter 101 – Purpose and Conflict; Chapter 109 – Zoning Inspector, Certificates and Enforcement; Chapter 113 – Zoning Commission and Chapter 117 – Board of Zoning Appeals. She said the Zoning Commission has had a chance to review the changes.

It was noted that the Board of Trustees requested that the word “Chairman” be reduced to “Chair” in Chapters 113 and 117 therefore “man” was stricken as a modification. Also Chapter 109 had modifications to pages four and six regarding Section 109.04 – Zoning Certificate Application changing the words from “two (2) copies” to “three (3) copies”.

Ms. Sass Benza said they are not terribly substantive adjustments and as we talked, about everything in this amendment is primarily cosmetic, there are a few things that she would consider to be minor substantive changes. She said there was some enhancement of the reference to “alternates” in terms of the composition of the boards.

Ms. Walkush said basically Chapter 113 and Chapter 117 just lists the duties of the Zoning Commission and the Board of Zoning Appeals.

Ms. Walkush solicited comments for the proposed amendment: None.

Ms. Walkush solicited comments against the proposed amendment: None.

Mr. Lateulere moved to close the public hearing.

Ms. Puzzo seconded the motion.

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye Ms. Puzzo, aye; Ms. Walkush, aye.

The public hearing was closed and the regular meeting was reconvened at 6:51 P.M.

Mr. Lateulere moved the adoption of the following motion:

That the Bainbridge Township Zoning Commission recommend the approval of the following proposed zoning amendment Z-2023-2 to the Bainbridge Township Zoning Resolution which is an amendment to Chapter 101 – Purpose and Conflict; Chapter 109 – Zoning Inspector, Certificates and Enforcement; Chapter 113 – Zoning Commission and Chapter 117 – Board of Zoning Appeals as initially initiated with the following specific amendments made since that time. Chapter 109.04 (c)(2)(i) – change two copies to three copies and in the same section, subsection (3)(iii) – change two copies to three copies for the record just so it is clear, everywhere in Chapter 109 the intent is to change the number of copies to be submitted from two to three. Additionally in Chapter 113 – modify the word Chairman to the word Chair as shown in Sections 113.02, 113.04 and 113.05 inclusive of any other location that that may be included in Chapter 113 and in Chapter 117 the specific amendments made since initiation of 117.02, Officers, again change those words to Chair from Chairman as well as 117.04 Meetings, inclusive of any other location in that chapter that the word Chairman may be included and 117.11 (c) inclusive of all locations in that chapter that may have that reference and make a recommendation to the Board of Township Trustees.

Ms. Sass Benza seconded the motion and the roll being called the vote of the Bainbridge Township Zoning Commission was as follows:

Vote: Ms. Alaei, aye; Ms. Sass Benza, aye; Mr. Lateulere, aye; Ms. Puzzo, aye; Ms. Walkush, aye.

The amendment will be submitted to the Bainbridge Township Board of Trustees for its action.

(Audio Recording of Public Hearing on File)

OTHER BUSINESS

Informal Review of Proposed Zoning Amendments

The Zoning Commission reviewed proposed zoning amendments for Chapter 140 – Active Public Park District; Chapter 142 – Passive Public Park District; Chapter 165 – Nonconformities and Chapter 186 - Wireless Telecommunications Towers and Facilities and held a discussion on the proposed amendments.

Mr. Dietrich explained that the proposed amendment would be a clean-up for Chapters 140 and 142, it would not be changing district boundaries but it would clarify the permitted uses in these two areas because they are publicly held parks by the township and the Geauga Park District.

Mr. Lateulere stated that the Active Public Parks are River Road Park, Settlers Park and Centerville Mills Park and the Geauga Parks and the rest of the public owned land throughout is generally speaking passive park.

Some of the Zoning Commission members will meet with Geauga County APA Linda Applebaum for a review of the proposed zoning amendments prior to initiation.

CORRESPONDENCE

1. Bainbridge Township Board of Zoning Appeals, dated November 16, 2023 and December 21, 2023.
2. Bainbridge Township Board of Trustees Meeting Minutes, dated December 4, 2023; December 11, 2023; December 18, 2023; December 29, 2023; Organizational – January 8, 2024; Regular – January 8, 2024.

Since there was no further business to come before this meeting of the Bainbridge Township Zoning Commission, Mr. Lateulere made a motion to adjourn.

Ms. Sass Benza seconded the motion that passed unanimously. The meeting was adjourned at 7:30 P.M.

Respectfully submitted,

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Linda L. Zimmerman  
Zoning Commission Secretary

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Marlene Walkush, Chair

Date Approved: February 27, 2024