

**RECORD OF PROCEEDINGS
MEDINA TOWNSHIP PUBLIC HEARING
APRIL 10TH, 2014**

The Medina Township Board of Trustees held a Public Hearing continuation on April 10th, 2014, regarding four (4) proposed Zoning Text Amendment Changes. Chairman Todd called the meeting to order at 6:35pm with the following Trustees in attendance: Michael D. Todd, Ken DeMichael and Ray Jarrett. Also in attendance were Fiscal Officer Linda DeHoff, Zoning Inspector Elaine Ridgley, Police Chief David Arbogast and the general public.

Roll Call

Mr. Todd asked for a roll call of all members present. Trustees present were Mr. Todd, Mr. Jarrett and Mr. DeMichael.

Public Hearing Continuance

Mr. Todd asked Mr. DeMichael and Mr. Jarrett if they had read the Prosecutors answers regarding the Public Hearing that was cancelled due to the illness of two Trustees. The Prosecutors answer was that just because the Trustees didn't have a formal meeting it is still continued until they no longer continue it. Also, even if the trustees do not take action the recommendation of the Zoning Commission does not automatically go into effect because the Zoning Commission does not have the authority or power to do that and as such, it is still appropriate for the Trustees to continue to determine what is going to happen to the four (4) proposed text amendments. The four (4) text amendments are before the Trustees today. Mr. Todd had one other thing he wanted to look into. Mr. Todd opened the floor for comments from the public.

Reina Calderon (209 S. Prospect Street, Bowling Green, OH) discussed her concerns regarding the proposed zoning text amendment for the contiguous lots which would be the new Section 706. She has been reading the text of the proposed amendment in balance of the zoning code. She started at the back of the book with Article X. Validity. There is a section that indicates that the interpretation of a provision is independent. Ms. Calderon looked at the language that is under consideration, knowing she had to read it independently and not assume by context of what it means, she is concerned that you may actually have, by the literal wording of the language, inadvertently created a moratorium on subdivision in your code.

Her reason is that it is because the provision reads in the affirmative. It seems to allow for permission to be given for a single family dwelling to be permitted in any district that is already residentially zoned. The language is in the affirmative, "The single family dwelling and customary accessory buildings may be erected on any legal lot of record at the effective date of the adoption or amendment of this resolution". That is the first phrase of the language. The problem as she sees it is you're interpreting it to tie the permission allowed to erect, which doesn't really belong in this kind of provision as to those legal lots of record that exist at the time that this amendment is adopted. She gets there because of the section in the code dealing with how you interpret provisions and that they are independent. She is concerned at how the first sentence really functions inside your code, given that you've got that interpretation provision.

The other concern Ms. Calderon has is with the language that it is replacing. The existing Section 706 is not written to single family or to single family use. It is written to all uses. It is a general provision about non-conforming lots. That raises a question that whether this is inadvertently tying the ability to subdivide property or to build to a specific kind of use or with a specific kind of sewer service. She is concerned that it could be taken out of context.

Mr. Todd said we generally want things to be interpreted independently so that if there is a problem with one it doesn't cause problems in other places. Paragraph definitions or section definitions or titles are not part of the actual code itself they are just there fundamentally to the extent that it does not mention that in 706A. He stated it is not referring to it specifically; it is broader than it is probably intended to be. Ms. Calderon said it comes under validity. The other thing that caused her concern was when she read through the minutes that supported this and it said it was patterned after Lafayette Township provision. She looked at the Lafayette Township Provision and it had several sections and not just addressing what happens with single family but they also have other uses addressed. She is just concerned that if it is not finely analyzed and constructive it could be interpreted as a moratorium.

Public Hearing Continuance

Jim Apana (3993 Dogleg Trail) speaking as a resident he asked about the inflatable issue. He asked if he is correct in assuming the Zoning Board and the Zoning Board of Appeals have not approved the amendment. Mr. Todd said the Zoning Board of Appeals would not make that recommendation because it is not their job and the Zoning Commission has recommended denial of the amendment. Mr. Apana asked if it is true that seventeen (17) out of eighteen (18) governmental bodies in Medina County do not permit inflatables. Mr. Todd said there may be more than seventeen (17) governmental bodies and there are a few that do allow them. Mr. Apana said he read a letter from the law director of Medina City said they do not allow inflatables. Mr. Todd said he has seen inflatables in the city. There was an inflatable pumpkin on the empty K-Mart building roof (identical to Bill Doraty's) after that letter was sent. It is against their rules and he wondered the validity of that letter and whether they actually enforce their own code or if the letter was just something they said. Mr. Apana asked if that was for some special occasion and Mr. Todd said he did not know. Mr. Apana stated that the Circuit Board of Appeals has said that the Township can prohibit inflatables. Mr. Todd said the Circuit Court said it is not a violation of freedom of speech against commercial speech. Mr. Apana was not sure what Judge Kimbler said. Mr. Todd stated that Judge Kimbler said that our statute is ambiguous the way it reads as it relates to temporary signage and whether or not inflatables are included in it under state law interpretation. Under state law interpretation because of ambiguity it is always to be found in favor of the lot owner. Because of the ambiguity Judge Kimbler said that our restriction on it for at least the reasons that were enumerated by Elaine (Ridgley, Zoning Inspector) in the original letter were inappropriate. Mr. Todd said there may be other reasons to restrict it but the reasons we restricted it, in our letter, there was ambiguity, it was inappropriate to restrict it in its entirety. Judge Kimbler's opinion generally says inflatables are temporary signage and should be allowed as temporary signage. There may be other reasons why Mr. Doraty's permit was denied. Mr. Apana asked if Judge Kimbler left it open and Mr. Todd said no he didn't leave it open, he left it pretty clear that it was temporary signage, in his interpretation. What he left open was whether or not it was proper to deny his permit. Mr. Apana asked how that would be resolved through Judge Kimbler. Mr. Todd said Judge Kimbler sent it back to the Zoning Board of Appeals and the Zoning Inspector to make a decision consistent with his opinion and at that point the new decision or opinion has been made by Elaine, went to the Zoning Board of Appeals and has sat there and has not been decided. Mr. Apana asked if the final decision is with the Board of Trustees and if the decision can be postponed indefinitely and Mr. Todd said yes. Mr. Apana asked what happens if the Trustees don't make a decision. Mr. Todd said the Zoning Board of Appeals can make a determination that can go to 2506 appeal similar to what happened originally and we can get another opinion from Judge Kimbler. Mr. Todd said it hasn't stopped. There is no reason they couldn't continue to move forward. We haven't given them guidance not to move forward, the Board of Zoning Appeals is well within their rights to make a decision. Mr. Apana asked if the Board of Zoning Appeals is sitting on it right now. Mr. Todd said he would have to ask them. Mr. Apana asked when this was going to be resolved and Mr. Todd said hopefully soon. Mr. Todd said his biggest concern is the safety side of inflatables. Mr. Todd said one thing he needs to ask is to what extent they can go to regulate or to put things in because generally he would allow some usage. How much usage he is not sure of. He needs to discuss this issue with his fellow Trustees. Mr. Todd said people who keep coming in and saying it is against the law need to understand that it's not clear cut and the last court decision says inflatables are temporary signage and permitted under the Medina Township Zoning Code. Mr. Todd said the 6th Circuit Court did make a determination but that had to do with the Constitutional right of Freedom of Speech, but that is not the State Constitution it doesn't have to do with statutory interpretation under the State. They are really different Courts of Jurisdiction and that was a Declaratory Judgment Action and this was an Administrative Appeal Action which is the ORC 2506 appeal. The BZA would have to decide whether the temporary sign permit was properly requested and denied by Elaine. If they rule in Mr. Doraty's favor it would end it. The Trustees have no authority over the Board of Zoning Appeals.

Mr. Todd motioned to close the floor for public comment. Mr. Jarrett seconded the motion. Mr. Todd motioned to withdraw his motion. Mr. Jarrett seconded the motion. Voting aye thereon: Mr. Todd, Mr. Jarrett and Mr. DeMichael.

Mr. Todd wants to ask the Prosecutor about The Trustees ability to put restrictions for safety in the inflatables text amendment.

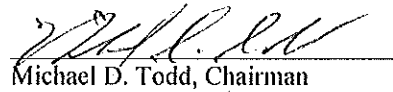
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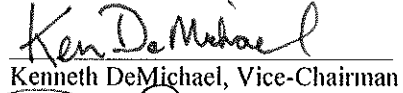
Continuance of Public Hearing

Mr. Todd motioned to continue the Public Comment (Hearing) for four (4) weeks and schedule it at 6:30 pm on May 8. Mr. Jarrett seconded the motion. Voting aye thereon: Mr. Todd, Mr. Jarrett and Mr. DeMichael.

Mr. Todd said the Medina Township Board of Trustees meeting has been continued at 6:54 pm until May 8 at 6:30 pm to discuss the four pending text amendments before the Board.


Linda DeHoff, Fiscal Officer


Michael D. Todd, Chairman


Kenneth DeMichael, Vice-Chairman


Ray Jarrett, Trustee