

**Planning Commission  
Minutes of April 8, 2019 Regular Meeting**

**Council Chambers 7:00pm**

**Monday, April 8, 2019**

**CALL TO ORDER**

The meeting was called to order at 7:00 P.M.

**ROLL CALL**

Planning Commission members present were Frank Doden, Chair, Council Representative Marianne MacQueen, AJ Williams, Susan Stiles and Ted Donnell. Also present was Denise Swinger, Zoning Administrator.

**REVIEW OF AGENDA**

Doden reviewed the agenda. There were no changes made.

**REVIEW OF MINUTES**

Minutes of March 11, 2019 Regular Meeting. Doden MOVED and Stiles SECONDED a MOTION TO ADOPT the Minutes as written. The MOTION PASSED 5-0 on a voice vote.

**COMMUNICATIONS**

There were no communications.

**COUNCIL REPORT**

MacQueen reported that Council passed the PUD for Millworks upon its second reading and public hearing. MacQueen noted that the Electric Utility text amendments were given a first reading. She noted that Council had asked that Transient Guest Lodging (TGL) come back to PC for review.

**CITIZEN COMMENTS**

There were no citizen comments.

**PUBLIC HEARINGS:**

There were no public hearings.

**OLD BUSINESS**

**Review of Planning Code Subdivision Regulations (Chapter 1226).** Swinger introduced the topic, stating that the code currently requires that subdivisions gain both preliminary and final approval from first PC, and then from Council. Swinger expressed concern as to what might happen to a proposed development if there is a political shift on Council at some point in the process. She noted Beaver Creek as an example of a municipality in which neither the preliminary nor the final approval pass through Council, but are handled entirely at the PC level.

Swinger noted also that other communities require more information regarding storm water runoff and mitigation, commenting that this would be a good direction to look at for the Village code. Swinger went on to add that Greene County is the default for the village code, if not specified, yet Greene County is also attempting to update and improve their code, acknowledging that the effort is overdue.

Swinger stated that she would like a civil engineer to look at the village code as a start at updating storm water regulations.

PC discussed the issue of Council's involvement in both the preliminary and the final plan approval.

Donnell opined that the final plan approval was merely a compliance check on the part of Council to the conditions which were set during the preliminary approval process.

Swinger disagreed, reading the code section as giving Council "final action".

Donnell differentiated between the plat and the final plan.

Conard opined that his reading of the code indicated to him that to disapprove or to attach further conditions at the final plan hearing would necessitate "an extraordinary set of circumstances". That said, Conard acknowledged that this is within Council's purview. Conard noted that potentially substantial development is being contemplated within the Village at this time. This is a good time to review the code, he said.

Donnell noted that the code was developed around a suburban model, and that it is likely that Greene County's model, once updated, will continue to reflect the suburban model for growth.

Donnell opined that design parameters are village standards, while the specs around, for example, road beds and storm water are more in the purview of the County.

Stiles asked how to include the desire for more affordable housing stock in this section.

Conard noted that this is an aspect of the Comprehensive Plan and is being worked on at the Council level.

MacQueen noted that this is something she is working on, and will be contained in the Housing Plan for the Village.

Donnell noted that a developer can be asked how they will be responsive to Village Goals, and commented that if the goals are “cherry-picked” it can skew development.

Donnell noted that the storm water calculations would be contained in the state code, rather than the county code.

Swinger asked that PC members asked that members e-mail her their thoughts and edits, and she will return with a recommendation to PC.

Donnell asked that incentives to development be carefully considered, particularly with regard to new urban design, focus on the pedestrian and cyclist rather than motor vehicles. He asked that intent in welcoming a developer be made clear at the start of each code section.

Donnell iterated the following points: That the Planning Code does not currently reflect the values and community standards contained in the zoning code, and should. He asked that major and minor subdivisions be more clearly defined.

Conard commented that the ORC has changed in this regard (plat definitions), and should be reviewed for any need to update the Village code.

**Review of Planning Commission Duties in Planning Code.** Swinger explained the matter as follows:

At the last Board of Zoning Appeals (BZA) hearing, there were a total of three members in attendance. When the vote was taken, two members voted in favor and one member voted against. It was decided at the meeting that staff and the Village’s solicitor would need to review the BZA’s code against the charter to see if the case passed or failed.

In the zoning code for both the Planning Commission and the BZA, it states that the concurring vote of three members shall be necessary. In the charter for BZA it says that appeals shall be decided by a vote of the majority of the quorum. The charter also says that three BZA members constitute a quorum. The charter is silent on the Planning Commission’s voting process. After reviewing the zoning code and the charter, the solicitor determined that the motion to approve the variance passed. As a result of this, it was suggested Planning Commission review the voting process.

Swinger suggested the following options for the Planning Commission to consider: recommend to Council to align voting process for BZA in the zoning code with the charter. PC can recommend that the voting process for Planning Commission in the zoning code be the same as the BZA in the charter, or, finally, PC can recommend an amendment to the charter that aligns with the BZA and the Planning Commission’s voting process as written in the zoning code.

Conard presented a hypothetical scenario, noting that the charter only addresses BZA on this topic, not PC.

The matter was discussed, with PC concluding that it makes sense for BZA and PC to align both with one another and with the Charter.

Swinger was directed to bring the revised language to the following meeting.

In response to a question from Stiles, Conard noted that he and the Clerk had discussed the matter of the requirement that an alternate have been present during deliberations in order to participate in the continuation of the hearing. He commented that in this electronic age, it seems appropriate to change that language to permit an alternate to prepare him or herself by reading minutes and watching the video of the meeting(s) missed and to affirm as to that preparation.

**Review of Transient Guest Lodging Legislation.** MacQueen asked whether she and Donnell should recuse from the discussion.

Conard opined that because both are engaged in TGL, they must both recuse.

PC moved the discussion to Agenda Planning so that the recusing members could depart: following Agenda Planning, Donnell and MacQueen recused and Donnell joined the audience, while MacQueen left the meeting. Pallota and Kreeger joined the discussion at Council table.

Kreeger stated that this is a growing issue nationally, and Council has discussed possibilities on several occasions without coming to any firm decisions. She stated that the input of PC would be helpful in directing Council actions.

Swinger noted that Council has indicated that they would like TGLs to be made a conditional use. She noted that other suggestions have been made, which could also be contemplated by PC.

In response to a question from Stiles, Swinger noted the following: The village currently has 39 transient guest lodging applications on file. Of these, two have been sold and have not been renewed as a TGL establishment. This leaves 37 active applications. Of these 37, there are three that do not operate under the Airbnb business model. They are Glen Helen Outdoor Education Center, Mills Park Hotel and the Arthur Morgan B&B. Of the remaining 34 that are operating as Airbnb's, one application has two locations under one name with a total of four separate units. The other has one application under one name for both a house and an accessory dwelling unit on the property. Of the remaining 32 properties, eight have separate mailing addresses from the TGL location. Of those eight, three owners live within the corporate limits of Yellow Springs.

Conard referenced a presentation he made to the Miami Valley. He noted that it is important to determine whether the issue is revenue, affordable housing, community considerations or economic impact. He suggested that the reason for any restriction should be housed in a clearly stated concern.

Swinger asked whether if the matter was a conditional use, neighbors could protest the use and PC could then deny the use, expressing that this was a concern for her.

Doden asked whether the conditions that would be applied would need to be consistently applied.

Williams stated that he was in favor of a conditional use, and that the application could be denied for the reasons stated in the conditional uses.

Conard commented that the law has to be applied in a uniform manner, but that the facts governing each scenario are specific to that scenario. PC has the ability to address variation in circumstances.

In response to a question from Swinger, Conard stated that PC members have the latitude to consider the merit of neighbor concerns and citizen concerns to the best of their judgement, and may weigh some concerns or facts differently.

Conard added that in his experience, both PC and Council have responded to public hearings in a fair, legally responsible manner.

Stiles stated that she would like to see minimal conditions imposed. She stated that she had attended the TGL meeting, and that what she had heard was that people were engaged in the business as a means of being able to afford to remain in town. She stated that there need to be fact-based reasons why conditions are imposed. She stated that the considerations should be objective. She stated that "it sounds as if they are bringing wonderful people to town." It is anecdotal that people are losing their housing. Some people have lost their affordable housing because they have not been responsible tenants, she stated, and the transient guests take better care of the property in the cases she had been made aware of through conversation with property owners.

Swinger noted that Council is attempting to get ahead of a growing problem in returning the matter to a conditional use.

Swinger offered to bring back the initial PC recommendation to Council.

Pallotta asked for a map of where the TGLs are now located.

Kreeger asked that discussion take place regarding limiting TGL permits to permanent residents.

Conard opined that this would likely be in violation of constitutional law and subject to challenge.

In response to a question from Swinger, Conard stated that PC could ask that the total number of permits be limited, and that those limits be placed according to certain zoning areas.

Conard suggested that the number of TGLs in the village is substantial.

Swinger suggested bringing information to the next PC meeting for a discussion around capping the total number of permits.

Karen Wintrow commented that there are a number of visitors to town, and their lodging tax dollars will be lost if they stay elsewhere. She stated that she was not concerned about the numbers of TGL units, stating that the market will reach a saturation point naturally, and that it does not make sense for an investor to buy up a number of homes as an investment in the village because this is not the same kind of place as those reporting serious problems.

Wintrow asked that “real facts” be brought to the discussion, rather than anecdotal information.

Eric Clark noted that TGLs have always been a part of the village in some manner. There are limited numbers of places for people visiting the village, he stated, and some of the Cedarville visitors stay in the village.

We don’t have enough places in town to accommodate all of the people who want to experience the village.

Clark asked that PC consider permitting people to pass their permits on to their heirs. “I am hoping that my two kids will get the two properties I have,” he stated.

**AGENDA PLANNING**

Kinney subdivision work session/314 Dayton St work session. PC discussed potential dates to hold the work session.

Swinger asked whether 314 Dayton Street could be discussed at the same meeting to save time overall and maximize staff presence.

The afternoons of May 7; 8 and 9 were held for this session, and Doden will follow up with Swinger regarding his availability for those dates.

**ADJOURNMENT**

At 8:45pm, Stiles MOVED and Williams SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A VOICE VOTE.

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Frank Doden, Chair

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Attest: Judy Kintner, Clerk

*Please note: These minutes are not verbatim. A DVD copy of the meeting is available at the Yellow Springs Library during regular Library hours, and in the Clerk of Council’s office between 9 and 3 Monday through Friday.*