



Meeting: July 3, 2019
Applicant: Westfield Township Zoning Commission (WTZC)
Hearing: TBD (Zoning Commission)
Amendments: Add new text to Section (§) 205(D) Lakes and Ponds subsection 5 Anaerobic Lagoons or Ponds
Reviewer: Rob Henwood

Proposed Amendments: In an email dated May 21, 2019 Cheryl Porter, Westfield Township Zoning Secretary, on behalf of the WTZC requested a review the following new text to be added to the Zoning Resolution (§) 205(D) Lakes and Ponds to be proposed by the WTZC at a future date. Similar text was informally reviewed by Department of Planning Services (DPS) staff on February 21, 2019. In this review DPS staff indicated that based on a phone call with Chris Moody, Ohio Environmental Protection Agency (EPA), Northeast District Office, Surface Water Division that the legality of a township regulating this type of lagoon or pond was unclear. Staff recommended WTZC contact the Prosecutor’s Office regarding whether such zoning text is authorized under Ohio law.

In response to DPS comments contained in the informal review, the WTZC made minor changes to the proposed text as recommended by the Medina County Board of Health. These changes are reflected in the proposed language presented below. While these changes were made, substantive changes to the text are not proposed. DPS staff is not aware of any changes to the situation regarding the state law and the authority for townships to regulate such lagoons or ponds. As such, the following relevant comments presented to the WTZC during the informal review are repeated below.

New text is underlined, text to be deleted is shown as ~~strikethrough~~, and Staff Comments and clarifications are ***bold and italicized***:

5. Anaerobic lagoons or ponds. No pond, lagoon, impoundment area or storage vessel shall be constructed or used to store sewage, industrial waste, or human waste, treated or untreated in any rural residential, suburban residential, local commercial, highway commercial or industrial district. Except for waste generated on the premises either human, animal or industrial.

This prohibition shall not apply to Household Sewage Treatment Systems or Small Flow On-site Sewage Treatment Systems approved by the Medina County Board of Health or other agency with authority to approve Household Sewage Treatment Systems or Small Flow On-site Sewage Treatment Systems.

Comments:

1. DPS staff assumes that the WTZC is aware that Pittsfield Township, in Lorain County, (*according to its’ website (<http://www.pittsfieldtwp.us/zoning.htm>) adopted on January 13, 2014*, zoning to prohibit Anaerobic Lagoons or Ponds. It appears that the proposed

language proposed by the WTZC is crafted based on the *Pittsfield Township language; given the similarities between the texts.*

2. DPS staff contacted Mr. Moody at the Ohio EPA, Northeast District office (330-963-1118) regarding the *WTZC proposed amendment and the* Pittsfield Township regulations. Mr. Moody indicated that his understanding of this issue is that treatment facilities of this kind are regulated by the Ohio EPA per Ohio Revised Code (ORC) § 6111.03(R)(2) Water Pollution Control Powers of Director of EPA, Ohio Administrative Code (OAC) § 3745-40 Sludge Beneficial Use, OAC § 3745-42 Treatment Works, and ORC § 3745.01 Power of the OEPA Director (Permitting). He was unclear about the legality of townships regulating such lagoons.
3. DPS staff cannot speak to the appropriateness of the WTZC proposal or the Pittsfield Township zoning language as this is clearly a legal issue. DPS staff recommends that the WTZC contact the Prosecutor's Office regarding whether such language is authorized under Ohio law.

Recommendation: Staff recommends **DISAPPROVAL** of the zoning text change to § 205(D)(5) Anaerobic Lagoons or Ponds because the WTZC did not obtain a legal opinion regarding the township's authority to regulate such lagoons or ponds.

Attachments: Email/Informal Review of Proposed § 205(D)(5) Anaerobic Lagoons or Ponds

Subject: Re: Anaerobic Lagoons/ Ponds Amendment

From: Rob Henwood <rhenwood@medinaco.org>

Date: 2/21/2019, 1:32 PM

To: Joe Doty <jedlaw69@msn.com>, jlikey@gmail.com

CC: Cheryl Heinly <cheinly@medinaco.org>, Cheryl Porter <zoningsecretary@westfieldtownship.org>, Michael Lyons <mlyons@medinaco.org>

Joe, Jim, and Cheryl:

Sorry its taken soooo long for me to respond. I have been a little behind as of late. I am pleased to inform you that I have hired a new employee and will be back up to normal staffing levels beginning in March.

Regarding the Anaerobic Lagoons/Ponds Amendment, I assume you are aware that Pittsfield Twp. in Lorain County proposed to adopt zoning to prohibit Anaerobic Lagoons. It appears that your proposed language is crafted based on their language below.

Pittsfield Township Text

(8) No Pond, Lagoon, Impoundment area or Storage Vessel shall be construc sewage, industrial waste, or human waste, treated or untreated in a residen business district. Except for waste generated on premise either human, ani

This prohibition shall not apply to sanitary units approved by the Lo Board of Health or other agency with authority to approve sanitary

A conditional use permit for such use may be issued to accordance v set forth In Chapter 5 of this Zoning Resolution.

Proposed Westfield Township Text

Anaerobic lagoons or ponds No pond, lagoon, impoundment area or storage vessel shall be constructed or used to store sewage, industrial waste, or human waste, treated or untreated in any rural residential, suburban residential, local commercial, highway commercial or industrial district. Except for waste generated on the premises either human, animal or industrial.

This prohibition shall not apply to sanitary units approved by the Medina County Board of Health or other agency with authority to approve sanitary unit installations.

I spoke with Steve Mazak at the Health Dept regarding the township proposal and he had the following comment: "I think the term "sanitary units" should be changed to "Household Sewage Treatment Systems or Small Flow On-site Sewage Treatment Systems" as these are the only two types of sewage systems the Medina County Health Department is in charge of."

I also contacted Chris Moody, at the Ohio EPA, Northeast District office (330-963-1118) regarding the Pittsfield Township regulations. Mr. Moody indicated that his understanding of this issue is that treatment facilities of this kind are regulated by the OH EPA per ORC Section(§) 6111.03(R)(2) Water pollution control powers of director of EPA, OH Admin Code § 3745-40 Sludge beneficial use, OH Admin Code 3745-42 Treatment Works, and ORC § 3745.01 Power of the OEPA Director's (Permitting). He was unclear about the legality of Townships regulating such lagoons.

I also cannot speak to the appropriateness of your proposal or the Pittsfield Twp. language as this is clearly a legal issue. I would recommend that the township contact the Prosecutor's Office regarding whether such language is authorized under Ohio law.

Call with questions.

Rob Henwood



PLANNING SERVICES & FAIR HOUSING OFFICE

ROBERT HENWOOD, AICP

Director

124 West Washington Street, Suite B-4, Medina, Ohio 44256

Phone: 330-722-9292 • Fax: 330-764-8456 • Email: rhenwood@medinaco.org

On 2/20/2019 6:57 PM, Joe Doty wrote:

Rob,

This was sent up for informal review at the end of December.

Can you let us know where this stands?

Thanks,

Joe

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From: Cheryl Porter <cherylporter2008@yahoo.com>

Sent: Sunday, December 30, 2018 11:53 PM

To: Rob Henwood; Cheryl Heinly

Cc: Joe Doty; Cheryl Porter

Subject: Anaerobic Lagoons/ Ponds Amendment

Dear Mr. Henwood,

The Westfield Township Zoning Commission requests an informal review of Anaerobic Lagoons or Ponds Amendment which is an addition to Article II, Section 205, D. Lakes and Ponds of the Westfield Township Zoning Resolution. The Zoning Commission is eager to receive the Planning Services recommendations at their earliest convenience. Attached is the language to be reviewed. If there are any additional questions or concerns please feel free to contact me.

Sincerely,

Cheryl Porter, Westfield Township Zoning Secretary.