

Minutes

Bethel Township Board of Zoning Appeals

August 26, 2015 – 6:30 P.M.

Regular Meeting

Bethel Township Meeting Room, 8735 S. 2nd Street – Brandt, Tipp City, Ohio

Board of Zoning Appeals Member(s) Present: Reese, Sonnanstine, Gross, Fisher, Butt

Board of Zoning Appeals Members(s) Absent: Durst

Staff Present: Jeff Green– Director of Planning & Zoning

Mrs. Fisher called the meeting to order at 6:30 PM.

Each member of the Board introduced themselves.

New Business:

Mr. Green read the first case:

Case V-04-15: A request from David and Kristin Niemeyer, 4300 Ginghamburg W. Charleston Rd, Tipp City, OH, 45371. The applicant requests an increase in front yard fence size from four (4) ft. to six (6) ft. The property is identified as Miami County Parcel ID # A01-075100.

Mr. Green made his staff presentation.

Mr. Green asked if the Board had any questions of him.

The board had no questions

Mr. Niemeyer was there to represent himself. He stated the fence was needed because his neighbors, the Blackburns, have cut down a tree 12 feet on his property, their children have thrown things into their yard damaging his lawnmower. Concerned about safety liability issues. We have worked hard to maintain their property and have different views on upkeep. We are not here to tell anyone how to manage their property, which is why we feel the 6ft fence was the only way. After erecting it, we discovered that the side facing the Blackburn's had to be considered the decorative side so we put the same material on our side to theirs to make it aesthetically pleasing. We have no intention of placing a 6ft fence around the entirety of the front yard. We had, prior to the building of the fence, discussed our plans with Josh Blackburn (neighbor). At that time, he said he knew where the property lines were and he was OK with it. The fence is several ft. off the property line.

Mrs. Fisher: So you have a clear indication where the property line was?

Mr. Niemeyer: Yes

Board has no further questions for Mr. Niemeyer

Brian Huelsman: There to represent Blackburn's. Approached the board with photos.

Mr. Huelsman handed photos to the board.

Board examines the photos

Mr. Huelsman: These photos show the property at this time. As you can see from the photos, the fence in the rear yard appears to far exceed 6 ft. in height which is in violation of the township zoning code. The Blackburn's have owned this property for 6 years and have been improving it ever since. To my knowledge the Blackburn's have no current zoning violations. Mrs. Blackburn has some concern about the fence in the front and safety issues her kids face when they wait for the school bus. Another issue is the lack of access to a leech field in the backyard due to the newly erected fence in the backyard. The leech field is on the Niemeyer's land but available to the Blackburn's via an easement.

Mr. Sonnanstine: The Easement is in the rear of the property

Mr. Huelsman: Correct. The two main concerns are the children's safety in the front yard and the lack of access to the easement in the rear yard.

Mrs. Reese: Where was the vegetation that the Niemeyer's tore out.

Mr. Huelsman: It was on our property

Mrs. Reese: So the concern seems to be that the rear yard fence is 2 ft. higher than we allow.

Mr. Green: This case is only about the front yard fence as it was advertised in the public notice. The board cannot make a decision on the rear yard fence as it has not been advertised.

Mr. Huelsman: The concern of the front yard fence is the children not being able to be safe when waiting for the school bus

Mrs. Reese: How far is the fence from the street

Mr. Green: The fence is out of the right of way

Mrs. Reese: So the fence should be at least 10 feet back from the road.

Mr. Sonnanstine: I think there is a photo that helps bring some of this in perspective. There is a photo of a truck sitting on the side of the road.

Mr. Niemeyer: Can I say something

Mrs. Fisher: Yes

Mr. Niemeyer: There is a gate in the backyard to allow for access to the easement. The fence is still not finished and will be 6ft tall once it is done.

Other public to speak:

Tim Reitz: 4350 Ginghamburg W. Charleston Rd. The only safety issue I see is the truck parked right off the road. The fence not block the view anymore then the already parked truck. So when I have to look down the road I have to see that truck right on the road.

Mr. Huelsman: The Blackburn's just want to make sure the children are safe.

Public Hearing Closed.

Board discusses the case

Mr. Sonnanstine: Motion to approve with the condition that it is not extended any further to block the view of the front yard from the street

Motion seconded by Mr. Gross

VOTE

Mrs. Reese	Yes
Mrs. Fisher	Yes
Mr. Gross	Yes
Mr. Sonnanstine	Yes
Mr. Butt	Yes
Mrs. Durst	N/A

Motion to approve case V-04-15 approved 5-0 with the condition the fence not extend any further into the front yard

Mr. Green read the next case:

Case V-05-15: A request from Emma Underwood, 8241 Dow Circle West, Strongsville OH 44136. The applicant requests that the minimum lot size for R-1AAA single family residential be reduced from the required to Thirty-One Thousand Two Hundred Fifty (31,250) sq. ft. to Ten Thousand and Eighteen (10018) sq. ft. for properties located at 6665 and 6659 US 40, Tipp City OH 45371. The properties are identified as Miami County parcel ID # A01-086026 and A01-086027.

Approval of minutes:

Mr. Green asked if there were any questions from him.

The board had no questions

Mrs. Underwood was there to represent herself.

Mrs. Underwood: We are asking for the variance to get the property rezoned. The property is currently zoned for business and does not allow for a residence. We have a buyer for the house, but they will not accept until it is rezoned.

Board has no questions for Mrs. Underwood

No one in public for or against the request

Public Hearing Closed

Board discusses the case

Motion to approve application made by Mr. Gross

Seconded by Mr. Butt

VOTE

Mrs. Reese	Yes
Mrs. Fisher	Yes
Mr. Gross	Yes
Mr. Sonnanstine	Yes
Mr. Butt	Yes
Mrs. Durst	N/A

Motion to approve case V-04-15 approved 5-0 as presented

Mr. Green Read the next case

Case V-06-15: A request from Honor Smith of N 3412 Hwy M-35, Menominee MI 49858. The applicant requests a triple variance to increase the total maximum size of accessory structure from Sixteen Hundred (1600) sq ft to Twenty-Five Hundred (2500) sq ft, to build an accessory structure prior to the construction of a primary residence, and to live in a camper until the house is complete. The property is identified as Miami County parcel ID # A01055430.

Mr. Green asked if there were any questions from him.

Mr. Butt: When you say one year what do you mean

Mr. Green: One year from this date

Mr. Smith was there to represent himself

Mr. Smith: We are moving back to Ohio and just purchased this parcel. We are doing things in different steps which is why we need the barn before the residence. We need to store our stuff.

Mr. Smith presented pictures to the board of what the house will look like

Mrs. Reese: How big will the house be?

Mr. Smith: 1800 sq. ft.

Mr. Gross: How tall is this

Mr. Smith: the walls will be 14 ft. high

Mr. Butt: Starting from scratch will you be able to build the barn and garage in one year?

Mr. Smith: Yes, that is our goal. The house should start in spring. The reason for that is we have yet to sell our house in Michigan.

Mrs. Fisher: What are the current dimensions of the barn?

Mr. Smith: 40x55

Mr. Green: So the barn will be 2200 sq. ft. and not 2500 sq. ft.

Mr. Smith: I may have calculated it wrong

Mr. Gross: How tall will this structure be

Mr. Smith: The walls will be 14 ft high

Mr. Gross: What about the peak?

Mr. Smith: It will be around 20 ft tall

Mr. Green: That would not be possible. Current regulations state it has to be lower than the house or no taller than 15 ft. Another variance may need to be obtained for height.

Mr. Smith: Why can't this board not grant it now?

Mr. Green: Because it was not advertised in the public notice. This board can only vote on things that have been advertised.

Mrs. Reese: what does the surrounding properties have accessory structure wise.

Mr. Green: The surrounding properties accessory structures vary in size. Some are close to 5000 sq. ft. or more and others are closer to what Mr. Smith is requesting. However, these lots are larger than Mr. Smith's.

Mrs. Reese: So how long do you think it will be until you build the house?

Mr. Smith: The contractors indicated 4-5 months as soon as the ground thaws out.

Mr. Gross: When would you live in the camper?

Mr. Smith: In spring when we start the house.

No other public present for or against the request

Public Discussion Closed

Board discusses the time frame to build the house and possibility of allowing Mr. and Mrs. Smith to live in the camper.

Motion to approve case V-06-15 with the condition that the barn be no larger than 2200 sq. f.t, and the house to be completed and occupied 15 months starting tomorrow (8/27/15).

Mrs. Fisher: Seconded

VOTE

Mrs. Reese: Yes

Mrs. Fisher: Yes

Mr. Gross: Yes

Mr. Sonnanstine: Yes
Mr. Durst N/A

Case V-06-15 is approved with the conditions that the barn be no larger than 2200 s. ft. and the house be completed and occupied by November 25th, 2016.

Mr. Green Read the next case

Case CU-02-15: A request from Three Springs Lake, 7745 Agenbroad Rd, Tipp City, OH, 45371. The applicant requests conditional use approval to allow for a pay lake and camp ground to be allowed on the property located at 7745 Agenbroad Rd, Bethel Township, Miami County, Ohio. The property is identified at Miami County Parcel ID # A01-059400.

Mr. Green asked if there were any questions from him.

The board had no questions

Mrs. Reese recuses herself because she has property abutting the case property in question.

Mrs. Fisher: there will be time restrictions placed on speakers. The two main parties, or their representatives, may have initially an unlimited speaking time. Afterwards they will be limited to 5 minutes.

Mr. Sonnanstine: I have heard that people have been saying this public hearing is fixed and that the outcome already has been decided. I just want people to be clear that this is not true. I do not know how I will vote and I trust that my fellow board members do not know yet either. We understand that this case and its precursor in May is extremely sensitive to the neighborhood. We will base our decision on the facts and land use.

Mrs. Fisher: In the interest of time I would like to ask that only people speak that brings new information to the table. Here are the complaints we hear in the May Public Hearing:

- Security/safety concerns
- Litter concerns
- Significant increase in traffic
- Noise Pollution concerns
- Light Pollution Concerns
- Drainage issue

Mrs. Fisher: If you have any new concerns we would love to hear them. However, if you still wish to speak you can. We are just doing this, again, in the interest of time. So what are the public's concerns?

Public Against

Jane Sessions: 4108 Dayton-Brandt Rd. I am concerned about sexual predators. There is no current way to tell who is going into the pay lake. I would ask that a 6 ft. chain link fence be erected with barbed wire at the top. So people cannot sneak out and go onto anyone else's properties. It's common around businesses because it is a commercial business in a residential area. I am also concerned about the fire pits being closer than 7 ft. to the property lines which goes against Ohio Camping regulations.

Jane Sessions: Explains the rule in particular she is talking about.

Jane Sessions: The location of fire pits is a concern because if there is a fire close to the property line abutting the lake, it could endanger the public and first responders. The OHIO EPA also recommends that if a residential property is within 1000 ft, a fire should be no larger than 3x2. However, this does not address multiple fires burning at the same time. As you know, state rules will trump and local rules on these issues. I recommend aside from the fence, established fire pits and the pay lake not allowing other non-established fire pits on the property. This is for the safety of first responders, pay lake users, and local residents.

Jane Sessions: presented the board with copies of the state law pertaining fires.

No other new concerns presented

Chris Conard: Representing the Three Springs Lakes. Attorney from Coolidge Wall. I would like to thank the board and Mr. Green for gathering evidence and the extraordinary amount of time that went into piecing the history of this case. I would not argue the history now, but we reserve the right to take this matter to court if need be. I will instead focus on the conditional use permit request. This will allow for a clear record for the property in the future. Here are some misunderstandings about the property. Here is a letter explaining the pay lake.

Mr. Green: For the record this will be exhibit 14.

Mr. Conard: these are the activities that will be allowed at the pay lake:

- No camping on the property (including use of RVS, pop-up campers, and fifth wheels) Mr. Durst would like one camper for staff use only to rest at. This will be there permanently.
- No firearms on the property.
- No alcohol or illegal drugs permitted
- Patrons making excessive noise will be asked to leave
- Quiet hours from 10PM to 8 AM

- The lake will be open seasonally. Generally speaking, the peak season is Memoria Day through Labor Day Hours of operations are as follows:
 - Monday and Tuesday closed for maintenance of grounds
 - Wednesday and Thursday open from 10 AM to 10 PM
 - Friday through Sunday open 7 AM Friday to close on Sunday at 8PM.

- Patrons will continue to be asked to sign in
- There are two ADT security cameras on the property to observe behavior if something were to happen. In addition, there will be two more ADT cameras
- There will be fire pits, but they have yet to be dug due to the Board last meetings asking to maintain the status quo and no new development to occur.

Mr. Conard: I am aware that Mr. Carter (the opposition's lawyer) has said development has been occurring on the property. I would assert that this is what most people would consider routine maintenance of the grounds. I would also like to say that Ohio law presumes that public officials due their duty. So when the pay lake was open, it was presumed that all permits had been obtained. Another point I would like to make is that the police records have been obtained and have showed no increase in call volume. I would say that because the property is open and not abandoned and vacant that the neighborhood is safer now. There is lighting, security cameras, etc. I would also maintain that property values should increase because an eye sore has been turned around. Lastly, I would like to say the Durst family has been here for generations. They live here and are invested in here. They want to do things the right way. They would like a recreational facility for the community to enjoy. Anybody that has been to the property can look and see the improvements. There are not many places around here like this so we should cherish the opportunity that someone has done this.

Mr. Green: You mentioned that Mr. Durst would like to put a staff camper on the property. Would this have a permanent location or move around.

Mr. Conard: The idea is the camper will stay right by the bait shop.

Mr. Green: So it will be permanent.

Mr. Conard: yes

Mr. Sonnanstine: Is this history of the pay lake something you put together

Mr. Conard: No, Mr. Carter did. (They are referring to exhibit 5 in the boards packets)

Board has no further questions for Mr. Conard

Jack Carter: Attorney Representing the Donahue's. So far we talked about how great the lake is and how much fun and community support it has, but that is not the issue right now. The issue is determining whether or not that the conditional use will have an adverse effect on the neighborhood. I'm glad the pay lake has support and cleaned up the

property, but that is irrelevant. I mean the opposition and the support to the pay lakes doesn't really matter. Again, it's if the pay lake will have an adverse effect on the neighborhood in which it resides. The board also has to determine whether or not the conditional use will meet the standards for the zoning regulations. The history of the continuous use for this instance is in chapter 519 of the Ohio revised code. This means that because the pay lakes appear to begin in 1960 they are not grandfathered in. Instead they have a nonconforming use. That is not the same as saying that since everyone else in the past has used it as a pay lake, Mr. Durst can then use it for the same purpose. In fact article 16 states that a pay lake needs conditional use permission for any land zoned A-2. There was also some discussion last time that the property was always used as a pay lake and cannot be used for anything else rather than a pay lake. The property can be used as other things such as a residence, it is not bound in any way to only be used as a pay lake. In addition, the property owner is not entitled to use their property in the most profitable way, which in this case would be the pay lake. Instead it should be used in a way that won't give it an adverse effect to the neighborhood. I think you will hear evidence and testimonials about the adverse effects that people have endured when the property was a pay lake. As far as the records go, I think Mr. Green commented that township records for properties particularly this far back are spotty at best. Mr. Conard is right. The township officials are presumed to perform their duties. The lack of record communicates or the township failed to act and bring the property into compliance. And because this has been nonconforming for so long, it doesn't grant the right for this to automatically be granted conforming status. We believe the history that we have managed to dig up shows that the pay lake has ceased business for more than two years a few times meaning a conditional use is required especially since there are no township records of this. This means any grandfather status would be lost per the Ohio Revised Code. So we do not think this concept applies and again we and other township residents believe this property will adversely affect the neighborhood with noise traffic congestion, debris, etc. Mr. Conard listed an admirable number of rules but who is going to enforce them to the fullest extent? Who believes the people are always going to be quite and family friendly? We would also argue that Mr. Durst's development of the land is going against article 16 of the zoning code. At first, the property had 65 acres. This kept it in compliance with the zoning code. As the years went by the property got smaller and smaller until now where current standards bring the property to non-conforming status. If Mr. Durst wanted to put an airport landing strip on the property, the first thing you would ask is: is there enough room? Do they have the acreage to do that? To do that you have to have a standard, and there is. The zoning code calls for 20 acres minimum, which this property is not. We argue that lot development standards apply to this situation and no further development can occur because it is nonconforming. Moving dirt around and taking out brush or trees is just some of what has been going on there. Again the two parcels together are not enough, and believe the proposed use is nonconforming. In addition, the small size means there could be a lot of congestion which is unsafe. Next I would like to address Mr. Sonnanstine's comment. It was never my intention to infringe upon the integrity of the board. What we meant in the memorandum was we were alarmed by what was happening. That's the way of saying we were alarmed about what was happening since the first hearing. We protested that and thought it was in violation of the agreement we reached at the last hearing. Let me end this by saying Chris is a dear friend of mine and

nothing about this is personal. I would like to thank the board for your time and consideration on this matter.

Board has no further questions for Mr. Carter

Board takes an account of who supports or opposes pay lake. One vote per property in Bethel Township.

Support: 31

Opposed: 3

Randal Donahue: 7835 Agenbroad Rd. Mr. Donahue presented trash he says is from the pay lake that came onto his property. Mr. Conard liked to say that the Durst's were good people and liked to reach out to people, but this is not the case as we and several other people from the first meeting were never approached by them about the plans for the pay lake. It was not until I spoke to Mr. Durst, when he was excavating by my fence when I first spoke to him. Instead of a friendly conversation, I was met with accusatory and derogatory statements. Big O Pay Lakes is not going around doing the right thing like they would like everyone to believe. They went full steam ahead, without consideration for township rules and regulations nor neighbor's opinions. Even when we thought an agreement to stop developing the land at the last meeting was reached, Mr. Durst has still been excavating the land. It was not until confronted by Mr. Green, that Mr. Durst started to go through the required processes. It is the board's responsibility to protect adjoining properties. I believe that my property value will go down as a result of the pay lake being opened. The strategic development plan for this is traditional neighborhood which does not mean a pay lake.

Natalie Donahue: 7835 Agenbroad Rd. I grew up in this township as well, off of Studebaker. So this is my community as well. We decided we wanted to stay in the township and found a nice piece of wooded property on Agenbroad, right next to the pay lake. We moved into the home in 1994 and were only the second family to have that home. We had one of the original homes in the area. When this area was all farmland, the then owners of our current residence controlled nearly all of it. I mention this history because at one point the pay lakes did not exist. We started this process, when we stopped into the zoning office to inquire about whether or not Big O had the required permits to do a pay lake. Mr. Durst conducting a pay lake out of that property, does not outweigh my rights or the resident's on Bethelville's rights to enjoy their property. Please do not ask our children or other children to give up their right, to enjoy our property just so a few people can enjoy fishing. There is also no guarantee that family oriented people being at the pay lake, nor does it guarantee that the rules won't be strictly followed that Mr. Conard has laid out. I also have another concern that the Pay Lakes operations are only 1.3 miles from the school. There are several school children that go to and from school in the area, and having patrons hanging around the pay lake 12 hours a day is a concern especially since we do not know who these people are. We don't need to invite those types of people into our neighborhood. Two days after the zoning meeting, Three Springs had a concrete truck on the property along with other things we thought were not

allowed as my husband has said. They have taken down several trees in the rear of the property and laid gravel down continuously since that hearing. Another thing this board asked them to do was apply for a sign permit. It took them 11 weeks to get that, nearly right before this meeting. Integrity is doing the right thing when no one is looking. Driving a golf cart on the road without proper tags/license around dusk is a hazard. We have personally witnessed this several times on Studebaker, 201, and Agenbroad. The township and county should be concerned about the hazards posed by this and the degradation of the road way. Patrons are told to not bring alcohol but from the trash we have gotten over the summer, patrons appear to have had alcohol on the property. We were told that staff would monitor the grounds, but they clearly cannot guarantee full compliance. Please consider, that there are other places they can fish or visit. These places are close and not surrounded by residences. Also the board, Big O lakes, and their patrons get to go home and live on quite streets away from this and all of the potential negatives it brings.

Public for

Chris Manheim: 6385 Heffner rd. The pay lake not only gives money to the Durst family, it also brings people in to spend money on other businesses in the township. I am opposed to the 6 ft barbed wire proposal. I am for the pay lake though. That is all I'd like to say.

Rick Ratterman: 6495 Bethelville Drive. I am the largest property owner abutting the pay lake. We have yet to see any problems. The noise level is lower than my voice right now. The previously listed rules give Mr. Durst the right to kick people off his property. I know Chris has had to kick 3-4 people out. He has groups like school groups wanting to come and see the lakes. I can tell you that this property has been a pay lake for a long time. As for trash, I can tell you I see Mr. Durst picking up the trash on the property and keeping it clean. Mr. Durst has transformed the property from a nuisance into something beautiful. Yes, he has taken out some brush and put gravel down, but we've had a wet year and the gravel keeps the vehicles from tracking mud onto the road.

Mike Ratterman: 6520 Bethelville Drive. Since Chris has been there, it has been nothing but an improvement. When Red Tail Fishing Lakes was there, the place was a dump and the guy who owned it kept trespassing on our land and telling us it was his land. I was glad when Chris bought this property. I knew he would clean it up and up my property value. He has done nothing but done what I expected. Since I live at the end of the end of a dead end road, I have not seen anything out of the ordinary or drive a single person out. It is quite place. In short it has been an improvement, and Chris has been a good neighbor. I am for it and will always be for it.

Ryan Duenport: 6540 Studebaker. I missed the last meeting and I am surprised to hear the complaints. I am his neighbor and he is a great neighbor. Real honest guy and is a real cordial neighbor. I am in support of the pay lake.

Julie Reese: 6184 Dayton-Brandt rd. I just wanted to make a mention about the trash. I own the farm field abutting a good portion of the pay lake. There has always been trash there, we have not noticed an increase in trash since Mr. Durst got the property.

Andrew Shay: 221 S third Street Tipp city. I also work at Three Spring Lake. I just want it to be known we put stamps on all of our bait containers. With attention to the trash complaints, there has always been trash on and around the property. Some of the trash is from the 90s so just because Mr. Durst got this property recently doesn't mean the trash is from him. The property is very quiet. I go to plenty of pay lakes and they are all loud. There are vehicles that drive by that are louder than the patrons. Some of the police reports shouldn't be trusted. We have talked to the police and sometimes they don't even know what they are doing out there.

Marie Nesko: 7777 Agenbroad Rd. I think I live closer to the lakes then anyone. I have not heard any loud music or anyone yelling. As far as the traffic goes, I don't see it any busier now than it ever has been. I appreciate Mr. Durst cleaning the property up. The patrons don't disrupt me and I live closer than anybody.

April Gibson: 102 Corq street. I used to attend Red Tail. I feel safe at this place. My son is 17 years old. If there was drinking or an unsafe environment I would not let him come here. Mr. Durst treats people as family and deserves this. They cleaned up this place and keep it nice for the community.

Miranda Durst: 6615 US 40. There is nothing much to do in this community. There is nothing better than coming out with family to a family friendly environment. This place has cleaned up a lot since we got it.

Closing comments from attorneys

Mr. Conard: Again I thank the board for the time. Like Mr. Carter we reserve the right for court at a later date. I will use this time to answer any questions from the board. I think we amply demonstrated the pay lake is not a nuisance to the community.

Board has no questions for Mr. Conard

Mr. Carter: Again, I appreciate the board looking into this matter. The board needs to determine if the proposed use will have a negative impact on the neighborhood. I would also like to say that this is not a popularity contest. Whether or not there are more people that like it then oppose it is not the issue here. The issue is whether or not this is an adverse impact on the neighborhood. I think we showed that there is an adverse impact from this business. Thank you for your time. I would like to say the trash my clients have gotten is not from the 90s but is very recent.

Board has no questions for Mr. Carter

Public Comments are closed

Board discusses the evidence and testimonies presented

Mr. Butt: Motion to approve case CU-02-15 with the following conditions

1. 6 ft fencing to be erected before April 1st of 2016 around the property
2. Quiet hours 10 PM to 8 AM
3. Shielding on all lights to reduce light pollution towards residential areas

Motion seconded by Mr. Sonnastine

VOTE

Mrs. Reese	N/A
Mrs. Fisher	Yes
Mr. Gross	N/A
Mr. Sonnanstine	No
Mr. Butt	Yes
Mrs. Durst	N/A

Adjournment:

Motion was made by Mr. Sonnanstine to adjourn and seconded by Mr. Gross.