

Minutes**Bethel Township Board of Zoning Appeals****October 26, 2006 – 7:30 P.M.****Regularly Scheduled Meeting****Firehouse, 8735 S. Second Street – Brandt, Tipp City, Ohio**

Zoning Commission Member(s) Present: **Broerman, Bush, Sheldon,
Underwood, Wells (Chair)**

Staff Present: Gebhart – Director of Planning & Zoning

Mrs. Wells called the meeting to order at 7:30 pm.

Audience member asked to have podium moved so that they could see the Commission better. Mrs. Wells complied with the request, while emphasizing that the podium would be used to speak from throughout the evening.

Mrs. Wells started by having the members of the Zoning Commission and Township Staff present introduce themselves.

Mike Gebhart –Bethel Township Director of Planning & Zoning
Robert Bush - Commission Member - 5635 Studebaker Road
Ed Broerman - Commission Member - 5260 E. St. Rt. 571
Judy Sheldon – Commission Member – 4905 Rudy Road
Jesse Underwood – Commission Member – 5010 Eastland Drive
Lana Wells – Chairwoman – 5330 Eastland Drive

Mrs. Wells explained that the reading of the minutes from the last Zoning Commission meeting would be dispensed with because they were not ready yet, and would be entered into the record as soon as possible.

Mrs. Wells discussed the purpose and the powers of the Zoning Commission as outlined in the Chapter 519 of the Ohio Revised Code. She described the process that the evenings events would take place in. She stated that she would start with the reading of the application, which would be followed by comments from the applicant. At that time she would call for anyone wishing to address the Commission in support of the application. She would then call for anyone wishing to speak in opposition to the proposed zoning. She stated that anyone wishing to speak would need to come to the podium, state their name and address before making any comments. She also instructed the audience that comments must be addressed to the Commission, and that there would be no questioning between members of the audience to each other. All questions would come from the Commission members. At the end of this process, Mrs. Wells stated, that a motion would be placed on the floor and voted on by the Zoning Commission.

Mrs. Wells read the request:

Case #ZA-5-06, a request from Mr. & Mrs. Larry Dollar, 6165 Agenbroad Road, Tipp City, Ohio. The applicant would like to subdivide a 9.6037-acre tract of land at 6165 Agenbroad Road, Tipp City, Ohio into three lots, and rezone the three parcels from A-1 Domestic Agriculture to R-1AAA, Residential. The parcel in question is located at 6165 Agenbroad Road, Tipp City, Ohio, Miami County, Bethel Township, Town 2 Range 9, Section 16.

Mrs. Wells asked if the applicant was present?

The applicant, Mr. Larry Dollar of 6165 Agenbroad Road, was present.

Zoning Commission member asked Mr. Dollar what he would like to do.

Mr. Dollar explained that initially he and his wife Stephanie wanted to make three (3) lots out of their 9.6037-acres, but after consultations between Jacob Hoover at the Miami County Planning Department, and staff of the Miami County Engineering and Health Department that plan had changed. Miami County staff believed that there is very poor drainage on the proposed new western lot. County staff recommended two (2) lots instead of three (3). The existing home and barn would be located on almost a 5-acre parcel of land in the rear of the property. Mr. Dollar stated that it was their intention to sell the existing home and barn to his daughter and son-in-law to raise their two children in, and build a new house on the proposed new front lot of 4.90-acres, which he and his wife would live in. Mr. Dollar stated that they had received a variance from the Bethel Township Board of Zoning Appeals on September 21, 2006, for a 50' wide street frontage for the rear lot. Mr. Dollar stated that what they were requesting was for two (2) lots on their 9.607-acre tract of land. The rear lot with street frontage variance would be 4.73-acres and the front lot would be 4.90-acres.

Mrs. Wells asked Mr. Dollar if he was amending his application request from three (3) lots to two (2)?

Mr. Dollar responded – YES.

Mr. Bush asked Mr. Dollar why he needed a variance for the street frontage. Mr. Bush asked about the depth of lot ratio for this lot. Mr. Dollar explained that when he applied in July that was what he was told to do.

Mr. Gebhart interjected that at the time of Mr. & Mrs. Dollar's application, the Township was in the process for interviewing for a new zoning person. The previous zoning inspector had resigned during the spring, and this may have added to confusion in the Dollar's application process.

Discussion between Mr. Gebhart and members of the Zoning Commission regarding Mr. Bush's previous question, and whether the Dollar's could fix the drainage issue for the

eastern part of the new lot. Mrs. Well's tried to clarify that for the Dollar's to try to split the new 4.9-acre lot into two as their original application had requested would still require approval from the Zoning Commission at that time. Mr. Bush again questioned the Bethel Board of Zoning Appeals granting of a variance for a 50' wide street frontage.

Mrs. Wells, Mrs. Sheldon and Mr. Underwood all stated that precedent had been set all over the Township for very narrow street frontages.

Mrs. Wells discussed the Strategic Development Plan and said that the Zoning Commission was doing its best to adhere to that plan since it was established.

Mrs. Wells asked each of the Commission members if they had any other questions for the applicant, Mr. Dollar. They did not.

Mrs. Wells asked if there was anyone there who would like to speak in support of the proposed zoning change.

Support for the application:

None

Mrs. Wells asked if there was anyone who would like to speak against the zoning application.

Opposition against the application:

James Schenck, 6395 E. Agenbroad Road. Mr. Schenck stated that when he moved in, you had to have 5-acres to build in Bethel Township. Mrs. Wells interjected that was not a requirement of the Township. Mr. Schenck than said that he was stating a fact, and that everyone on Agenbroad Road had either 5 or 7.5-acres. Mrs. Wells again stated that was not a requirement of the Township. Mr. Schenck again said that when Jack Henkle plotted Agenbroad and Studebaker Roads off, which 1,500 square feet was the minimum size of the house and 5-acres were the requirement of that time, and they can be found recorded at the County Courthouse. Discussion ensued between Mr. Schenck and Mrs. Wells as to whether these were developer restrictions or actually part of the zoning code at the time. Mr. Schenck advised that he had called Mr. Gebhart and asked that he and his wife's opposition to this application be entered into the BZA record. He asked if it was. Mr. Gebhart stated that it was, and that since he was here speaking to the Zoning Commission that there was not a need to enter that same statement into the record since he was physically present to do that now. Mr. Schenck than questioned why the BZA passed the variance request if there were people in opposition to it? Mrs. Wells stated that the BZA of Bethel Township is a completely separate body from the Bethel Township Zoning Commission. Mr. Schenck said that he has supported this Township and the schools for years and believes that Agenbroad Road needs to be 5-acre lots. He said that the schools own land on Agenbroad. With the granting of the variance, he doesn't want his street to turn into Huber Heights. Mr. Schenck asked if anyone else had comments for him? Mr. Underwood pointed out to Mr. Schenck that Agenbroad Road falls into the New Urbanism area of the Strategic Land Use Plan, which encourages high-

density housing. Mr. Schenck again stated that he doesn't want to see high density housing on Agenbroad Road and that Studebaker Road doesn't want to be high density housing either. Mr. Underwood asked if Mr. Schenck was familiar with the Strategic Land Use Plan. He said he wasn't. Mr. Underwood asked Mr. Gebhart to get a copy of the document for Mr. Schenck after the meeting. Mr. Gebhart said he would get a copy for anyone who wanted one after the meeting. Mr. Schenck stated that they had moved out here to be in the country to have rural living and yet you want to develop to the point where we are all in small houses. He knows that there is water up to the schools and soon it would be on Agenbroad Road for housing, which will cause the lots to go "down, down, down". "It's just not fair to the people who moved in here many years ago."

Mrs. Wells thanked Mr. Schenck for his comments.

Deborah Music, 6605 Agenbroad Road. Said Mr. Schenck was correct in his statement about the original seller. She stated that she had purchased the property from her parents who had purchased the lot from the original seller. The original seller had set up the sale of the lots with a minimum of 5-acres and 1500 square feet for the size of the house. She said it was recorded at the county court house, and that maybe the Township Trustees had not recorded it.

Mr. Bush interjected that what she is describing is a Covenant that may have been placed on the land by the original owner.

Mrs. Music continued that her Dad was informed of these restrictions when he bought the property, as was Mr. Schenck.

Mr. Bush further clarified that a covenant is something a developer comes up with. It is not binding on the zoning of a property. He stated, "It has nothing to do with us. It has nothing to do with the governing laws of the township, or the county."

Mr. Bush asked Mr. Gebhart if that was correct. Mr. Gebhart responded, "Correct."

Mr. Bush went on to say that a covenant is something between you and that developer in writing. It is between you and the developer to sue or take legal action.

Mrs. Music asked if that is what the deed says you have to have five acres...Mr. Bush said that is between you and the developer.

Mrs. Music and Mr. Bush discussed this back and forth; with Mr. Bush saying it was between you and the developer of the land (tape counter 1127).

Mrs. Music stated, "Then no one has to stick to it?"

Mrs. Wells interjected that you would have to take them to court to make them stick to it (tape counter 1132).

Mrs. Wells and Mr. Bush both stated that as an individual you would have to take them to court. They both reiterated that this is something outside of the zoning code. They asked Mr. Gebhart if that is correct. He responded yes.

Mrs. Music said that it offends her that someone other than her, determined that her land should be considered for “new urbanism.” (tape counter 1167). She said she had been to several of the Strategic Development public hearings. She said she didn’t know who was on that committee, but assumed that they were people from Bethel Township. She was upset that her road was picked as an area for “new urbanization.” She made mention of the Strategic Development Plan being set up to stop the annexation efforts by Huber Height. She stated, “...Whether Huber is annexing her, or her my township is fixing it so that I feel like I am back in Huber Heights, I don’t appreciate it.” She went on to question whether there were members of boards who changed what classification their properties would be under the new Strategic Development map. She would like to know who was on the boards, and what their land was classified as. “...this was not put to a vote of the general public, if I’m not mistaken.” (tape counter 1208).

Mr. Bush stated it was all a matter of public record.

Mrs. Music wanted to know if the general public voted on the map. Mr. Gebhart said no, and that the Trustees voted on it. Mr. Bush added saying that we are a representative government and that not everything is voted on by the public. You elect the Trustees to handle such items. They are voting on your behalf. Mr. Bush stated, “If you don’t like a decision you should take it up with the Trustees.” (tape counter 1252).

Mrs. Music continued that she is opposed to this applicaton.

Mr. Bush gave her an example of other cases similar to this.

Mrs. Wells asked if there was anyone else wishing to speak?

Mr. Gebhart spoke. He quoted directly from the Strategic Development Plan brochure. “Note: Concept areas suggest flexibility in boundaries and development forms and a particular concept area will not necessarily be completely developed with the indicated use.” He stated that it is a flexible plan and is adaptable. (tape counter 1495). Mr. Gebhart continued to address the Strategic Development Plan. He tried to answer Mr. Bush’s question about removing the variance from the rear lots street frontage. He explained that by reconfiguring the rear lot to have a street frontage of 175’ and the new lot being reconfigured would have a frontage of 236.59’; the new lot (front lot) would be considerably smaller than the 4.9-acre that the County Planning Commission had recommended. The new rear lot would be well over 5-acres and the new front lot would be well under 5-acres. Mr. Gebhart said that by keeping the two (2) lots, as proposed by the County Planning commission and approved by the applicant, that was a better solution to keeping the area close to the 5-acre lots that the neighbors were fighting for.

Mrs. Music asked Mr. Gebhart if the applicant could someday change the new front lot of 4.9-acres back into two (2) 2.45-acre lots they originally proposed? Mr. Gebhart said that to subdivide this lot again would take approval from the Zoning Commission. (tape counter 1500-1538).

Dan Music, 6605 Agenbroad Road. “Years ago, when her parents were alive, we tried numerous times to move out of Huber Heights, numerous. You know what stopped us, the 5-acre requirement on the land, buying the land. The people just trying to get started couldn’t afford it. Kids, we couldn’t afford it. Now we have reached a plateau in our lives where we have what we always wanted. I can go outside and take my pistol and set up a target up and shoot. I can take my shotgun, walk my field, and I can hunt rabbit and pheasant. I can kill a deer on my place. That’s going to be next isn’t it? This is just the beginning, what you are doing here. Opinions have been voiced against this kind of thing. Your urbanization plan is just a way, as far as I see it, to increase your tax revenue. Just as soon as the high school decides to sell that property over there across the road from us, is going to be big money to somebody. That’s all I have to say on it.”

Mrs. Wells thanked him for his comment. Mrs. Wells stressed again that the 5-acres that everyone keeps mentioning is a misconception.

Mrs. Wells asked for any other opposition.

Mr. Schenck asked for clarification on the lots being proposed. Mr. Gebhart responded that the applicant was now requesting just two (2) lots, the back lot of approximately 4.73-acres and the front lot of approximately 4.9-acres. (tape counter 1715).

Mrs. Wells again asked for anyone in opposition.

Lloyd Baker, 6260 Agenbroad Road. Mr. Baker said what he was really opposed to was the deviating from the 175’ of street frontage. He stated that he was at the meeting when the street frontage variance was approved. He stated, “Mr. Gebhart said what we are doing here don’t mean nothing if it don’t pass this meeting, it don’t mean nothing. Don’t get all worked up over nothing. So I said o.k. Do you (Mr. Gebhart) remember saying that?”

Mr. Gebhart spoke. “My statement was, that if the variance isn’t passed on September 19th excuse me September 21st, then all of this doesn’t take place because without that variance, the road can’t go back to that back lot.” The Board of Zoning Appeals approved this variance with a 4-0 vote. “And, if you remember I said it would be very difficult to get over all of these hurdles. As you can see, it is very difficult for them tonight. It passed the hurdle at the Miami County Planning Commission, now it is to this body. Again after this, there will be a public hearing in November and then in two (2) weeks, which you will all get notice to, but there will be an additional public hearing, assuming it passes, and then it will go onto the Board of Trustees for their approval. So these are all hurdles they will have to pass.”

Mrs. Wells interjected that the Zoning Commission only recommends to the Trustees. The Board is only a recommending body.

Mr. Baker again stated his opposition because he tried to do something similar years ago. He was upset about how he was treated in the past. He is not against Mr. Dollar doing what he is doing, except for the variance. He wants the variance overturned. He had to adhere to the 3 to 1 ratio.

Discussion ensued between the Commission and Mr. Baker to determine what he did with his property several years ago, and in regards to depth to width ratio, and the variance. He is opposed to this strictly because of the street frontage variance.

In an effort to keep the meeting running, Mrs. Wells summarized what Mr. Baker's objection was. He agreed that it was because of the variance. (tape counter 2175)

Mr. Bush asked Mr. Baker if he had gone before the BZA for a variance. He did not go to the BZA for a variance. (tape counter 2230).

Mr. Gebhart discussed the reasons why the zoning code allows for the possibility of the variance. Gebhart again stated that he couldn't go back and change what Mr. Baker went through.

The Commission said that the BZA had already rendered their decision, and that the Zoning Commission did not have any authority over the BZA.

Mr. Baker began to address the Strategic Development Plan. He said he didn't know how that whole thing came about (tape counter 2458-2480). He said it doesn't represent the people, and the people don't want it.

Mrs. Wells thanked him for his comments. Mr. Baker said he knew that this setting wasn't the place to discuss the Strategic Development Plan, but wanted to say something. Mrs. Wells said that was fine, and all his comments were appreciated.

Mrs. Wells again asked for comments in opposition to the application.

Paul Speros, 6223 Agenbroad Road. Mr. Speros was present at the Miami County Planning Commission and has spoken to Mr. Dollar about his opposition. He is concerned with the adhering to the zoning code. He is also concerned that one division to a lot will lead to more and more lot divisions on Agenbroad Road. He thanked the commission for listening to all the neighbors.

Mr. Broerman took exception with the insinuation that no one wanted the Strategic Development Plan. He said there were plenty of opportunities for public discussion during the development and adoption of the Strategic Development Plan. He said he felt it was a misrepresentation.

Mr. Broerman also discussed conservation development when discussing the Strategic Development Plan. He communicated that conservation development could be used in new urbanism, and that postage stamp lots would not be the norm. He doesn't see 5-acre lots as the norm anymore in areas such as this because the growth is inevitable. With the Strategic Development Plan, it allows the township to control that inevitable growth so it doesn't look like a Huber Heights. (tape counter 2780). It is better to have a plan than to have no plan.

Mr. Schenck said that they just wanted to avoid housing that would bring the value of their properties down.

Multiple people began to speak after Mr. Schenck's comments.

Mrs. Wells reminded everyone that they needed to give their name and address to speak, and that there would be no discussion among audience members with each other.

Mr. Gebhart spoke on conservation development. He understood that residents live in Bethel to not live in the sprawl of Huber. He championed conservation development as the way to control growth while keeping Bethel's rural feel. Mr. Gebhart discussed the need for the Strategic Development Plan as well as his hope to have open house type meetings next year that would allow people to come see him with questions about the Plan to try to clear up the misconceptions and rumors floating around the Township. He reiterated that there is flexibility in the plan.

Mrs. Wells addressed the residents concerns about house size. Mr. Gebhart stated that the Zoning Code required a house of no less than 1,500 square feet. Mrs. Wells hoped that would calm the fears of residents.

Mr. Baker asked to address the comments of the Zoning Commission that he felt were directed to him. He said he likes things the way they are. He's never talked to anyone that is in favor of changing things on Agenbroad such as putting in sidewalks. (tape counter 3140). We like farmland.

Mrs. Wells tried to get back on the subject, and thanked Mr. Baker for his comments.

Mr. Broerman and Mrs. Wells both said that we are not talking about putting sidewalks up and down on Agenbroad.

Mr. Bush asked Mr. Dollar about where the new house would be placed? Mr. Dollar said the house would sit back about 240' off of the road. Mr. Dollar showed the Commission where the house would be on the survey provided. The Commission continued to discuss location of the new house, and ground elevation. Mr. Dollar and Mr. Bush continued to discuss house placement.

Mrs. Wells asked if there were any other people in the audience wishing to speak against the application.

Richard Geiger, 6795 Agenbroad Road: Wanted clarification that the applicant was requesting two (2) lots and not three (3).

Mrs. Wells and Mr. Bush explained that on the recommendation of the County, the applicant only wanted two (2) lots now. Mr. Geiger asked Mr. Bush about the old dairy farm on that land. Mr. Geiger wanted to know about the tile that went all the way down to Pisgah. Mr. Bush explained that the tile still exists, and at some point in the future the neighbors in that area will need to address any repair issues with the tile.

Mr. Baker left the meeting.

Mrs. Wells asked for any other opposition to the application. There was none.

Mr. Underwood said that he was concerned about the water in the area, and for that area it is considered a moderately low area, 5-20 gpm. He said he had talked with one of the neighbors who has too much water, so it is not that big an issue. He said that water could become an issue as more houses are put in on Agenbroad. He was also concerned about this being the first R-1AAA lot in the area, but was shown that there were others in that area. He also stated that he was looking for the tile.

Mr. Bush interjected that he had received an answer from Janice through Jerry that if someone breaks a tile in construction, that person is responsible for fixing it/re-routing it.

Mr. Underwood had no further questions.

Mrs. Sheldon's questions were answered during the discussion.

Mr. Broerman had no questions at that time.

Mr. Bush still has concerns with the replacement of the new home. Mr. Dollar addressed Mr. Bush's concerns.

Discussion among the Commission regarding the Health Department's approval and County Planning Commission recommended approval.

Mrs. Wells asked for clarification that the Dollar's request was for two (2) lots, not three (3) as originally requested, based on the approval recommended by the Miami County Planning Commission. Mrs. Sheldon and other Commission Members said yes.

Mrs. Wells asked for a motion

Mr. Gebhart stated that the motion should include, "Based on the Miami County Planning Commission, a two (2) lot subdivision and rezoning, not a three (3) lot."

Mrs. Wells, "OK do I have a motion."

Mr. Bush made the motion. “ Make a motion for the proposal to reflect the following a 4.73-acre and one (1) 4.9-acre lot. That is the way I see it. I make a motion to recommend the approval.

Second: Mr. Broerman.

Mr. Broerman – Yea
 Mr. Bush – Yea
 Mrs. Sheldon – Yea
 Mr. Underwood – Yea
 Mrs. Wells – Yea

Motion passed 5-0, for approval of a subdivision and rezoning of an existing 9.603-acre lot zoned A-1 to two (2) lots of approximately 4.73-acres (Lot 1) and 4.9-acres (Lot 2) in size and rezoned R-1AAA One Family Housing.

Mrs. Wells stated again that this was a recommendation being sent to the Bethel Township Board of Trustees for approval or denial. Mrs. Wells asked Mr. Gebhart to give the dates for the Trustees public hearing on the matter as well as the date for the Trustees final vote. Mr. Gebhart stated November 14, 2006 at 7:00 pm in the firehouse for the public hearing, and November 28, 2006 at 7:00pm in the firehouse for the vote for approval or denial by the Trustees. He stated that they would receive notice in the mail prior to the November 14th meeting. Mr. Gebhart encouraged them to attend the public hearing so that the Trustees could hear their thoughts on the issue.

Mr. Bush made a motion to adjourn.

Mrs. Wells said that there might be other business. She invited the audience to stay if they wanted.

Mrs. Music asked that the Commission to restate their names so that in the future when she attends meetings she will be familiar with everyone. Mr. Gebhart started and said that he would mail a copy of the Strategic Development Plan to all in attendance this evening.

Mr. Gebhart brought up discussion concerning self-storage units in the Township. He stated his concern about self-storage units being a permitted use in I-1 Light Industrial Districts. He explained that in his opinion self-storage facilities should be a “Conditional Use” so that the Township could better regulate them. Discussion ensued on the issue.

A motion was made to direct Mr. Gebhart to initiate a zoning amendment application to change rental self-service storage units to a “Conditional Use” in an I-1 Light Industrial district.

Motion was seconded.

Mr. Broerman – Yea
Mr. Bush – Yea
Mrs. Sheldon – Yea
Mr. Underwood – Yea
Mrs. Wells – Yea

Motion was passed 5-0.

Mr. Gebhart went over some house keeping items with the Commission.

Motion to adjourn

Seconded: Mr. Broerman

Mr. Broerman – Yea
Mr. Bush – Yea
Mrs. Sheldon – Yea
Mr. Underwood – Yea
Mrs. Wells – Yea

Meeting adjourned.