Beavercreek Township Trustees' Special Zoning Meeting

Thursday, August 4, 2011

Mr. Glaser brought the meeting to order at 7:00 p.m.

Present: Mr. Glaser; Ms. Graff; Mr. Stone.

Township Comprehensive Land Use Plan

Mr. Glaser opened the meeting by stating that the latest revisions to the plan would be addressed as noted on the change sheet provided by staff. He then asked if anyone in the audience would like a copy to follow along. Several people indicated they would. Mr. Glaser directed Ms. Long to make copies which were then passed out.

Mr. Glaser stated he would like to hear from staff on what changes had been made to the plan and why, after which the floor would be opened for public comment, and then conclude with discussion among the board. Referencing the few audience members in attendance, Mr. Glaser stated he did not believe a time limit would be needed.

Mr. Glaser asked Ms. Long if she wanted to lead the discussion. Ms. Long deferred to Charles Brackenhoff, chair of the Zoning Commission.

Mr. Brackenhoff began by stating that over the past few months there had been a lot of misinformation floating around regarding the revision process for the land use plan. In an effort to stem that, Appendix A was created. It contains copies of meeting minutes, public hearing notices, input gathered at public meetings, everything having to do with the revision process to date.

Mr. Brackenhoff noted this has been a lengthy process, covering a period of two years. The Zoning Commission has spent countless hours looking at land use plans of communities comparable to the Township in size and land use. All of the meetings were open to the public and the Zoning Commission listened to everyone who had something to say. Mr. Brackenhoff stated this document has been written based on input from the citizens of the unincorporated portion of the Township regarding what they envision for the Township's future.

Mr. Brackenhoff emphasized this plan is not the city of Beavercreek's land use plan. The city finished their plan prior to the Township starting their revision process. Mr. Brackenhoff noted that the city did not ask the Township for any input into their plan; however, the Zoning Commission did review the city's plan as part of this process. He said that in a previous meeting it had been stated that the city was built out; they had no more land to develop. The city's land use plan shows that is not accurate information; there is still buildable land in the city.

Mr. Brackenhoff reiterated that this process has been completely open; there has been no attempt to conduct business "behind closed doors." That is why Appendix A was created and will be continually updated until the process is complete.

Mr. Brackenhoff further reiterated there have been multiple open meetings where public input was solicited, most recently at the June 2, 2011 meeting. At that meeting, the Zoning Commission and those in attendance went through the document line by line and made changes. The changes were discussed with everyone present. He emphasized that the Zoning Commission did not just go through and randomly make changes. Everyone at that meeting came to an agreement, a consensus, that they could live with this document.

The Zoning Commission did not vote on the document on June 2nd because they wanted to incorporate the changes and have a clean document to review. The

Zoning Commission met again on June 23, 2011 at which time they did a final review of the document and recommended approval to the Trustees.

Mr. Brackenhoff stated he could go through the document and address each item on the change sheet, but he did not have it written down in his notes why specific changes had been made. However, all the changes made are shown on the change sheet, which also includes changes suggested by those in attendance at the (June 2nd) meeting.

Mr. Brackenhoff emphasized that this document is not a final document. It is like a contract; it changes as needed. Originally, the Zoning Commission thought the land use plan revision would be relatively easy to address and could be accomplished during the economic lull; that turned out to not be the case. Mr. Brackenhoff shared that this was a learning process for commission members. One of the things most often discussed was the lack of participation from the citizens. It seemed like the only time people came to zoning meetings was when something directly affected their land.

In conclusion, Mr. Brackenhoff stated the land use plan is the first step in a two-track program. The next step is to update the zoning resolution. Mr. Brackenhoff emphasized that the Zoning Commission has learned a lot during this process and said he believes they have done a good job taking the public's input and incorporating it into a vision for the Township's future. However, he reminded everyone that while the land use plan looks to the future, the future is not written in stone. What exists today may not be here tomorrow.

Mr. Glaser remarked on the multiple attempts made during the revision process to encourage public involvement, noting that it was an ongoing problem.

The floor was then opened for public comment.

Bob Nutter, 925 Hilltop Rd., addressed the board. Mr. Nutter stated he had seen many land use plans come and go, most of them ineffective. This particular one discusses eliminating urban sprawl, but talks about limiting density to 1.8 units per acre. The areas not served by utilities are going to be limited to 2.6 units per acre. To him, this is urban sprawl. He elaborated that the Township has urban sprawl because it didn't have utilities. The big joke used to be that everyone wanted a ½ acre with a view. It seems like the authors of this document still want that.

Mr. Nutter implied that the lack of public participation in the plan could be because of poor communication with the citizens. He only found out about the plan by accident a year ago. Mr. Nutter then suggested that "one concept of getting people in that own land may be pick up the telephone and say, 'Hey, we're doing this, do you want to come in and tell us what you think?' Doing it during the time when people can do it, versus having these public meetings where you're limited to a back and forth discussion; you're only getting one side. So, if you really want to have public input, you have to seek public input. Quite frankly, given the authors of this document, as long as they've taken to write it, I don't think any of those authors really want public input. They might want it just by virtue of saying, 'Oh, gee, we have to say that.' Well, I don't really think they do."

Mr. Nutter said he had tried to develop his ground in what he believes is a responsible fashion. He is pleased that some of the features in his development at Stonehill Village are listed in the land use plan. "However, to have restrictions of 1.8 units to the acre and you say it is only going to be single family housing from now on, is a very shortsighted concept. And, if you want to stop

development in Beavercreek Township, implement this plan and we'll sure slow it down, and what you will have is urban sprawl. You'll have 3- and 5-acre farmers everywhere; they take care of an acre and they let the rest of it grow up in weeds. So, it's a shame that seems to be the concept of this document. "

Mr. Nutter urged not putting "artificial limits in documents like this. If it truly is a land planning document, let's not make it a zoning code document. That's what you have when on several of these items that say, 'will limit 1.8 acres; will limit 2 point something acres,' and that becomes part of the zoning code. So, either it's a planning document or it's a zoning document."

Mr. Brackenhoff asked to respond to Mr. Nutter. Mr. Glaser asked him to postpone his response until after all public comment had been offered.

George Oberer, Jr., 2003 Amy's Ridge Court, Beavercreek, addressed the board. Mr. Oberer acknowledged several positive changes made to the document, specifically that the open space definition had been loosened up. "Just to clarify a couple of things, in another area you actually have got a little more restrictive. I think when you talk about the residential development part of it, you know, the previous document actually said that residential development should occur at a variety of densities but not to exceed 1.8 units to the acre. It actually stiffened up a little bit. Instead of 'should' it's 'will occur at a variety of densities not to exceed 1.8 units to the acre.' I think to start with that kind of restriction on the density is a mistake on the part of the Township. I can tell you that there was a piece of property annexed to Fairborn from Beavercreek Township because of that kind of language. And Fairborn, the density achieved there was closer to 3 units to the acre and it still turned out to be a very nice development. It's a similar kind of development I talked about the last time I addressed the Trustees. These are the kinds of situations that encourage annexation. Our county government, in many cases, has invested significant amounts of money to put in trunk sewer lines, trunk water lines into Township territories. Mr. Nutter and myself are fortunate because we have control of, or own those properties, or many of those properties that were even mentioned in the document…So in a way again I'll reiterate a little bit, but sometimes speaking against this document is not to our financial benefit because it actually makes value of the properties already entitled worth more money because this document would tend to restrict future development.

I think Mr. Hibbner, in an earlier meeting, pointed out that the Township's attractiveness is going to be greater in the coming years because Beavercreek is virtually out of developable residential real estate. Technically, there are probably two areas at the Kemp, right off of Kemp Road in Beavercreek, across the street from Wagner's Trace and another one is around the corner, Dan Warner's property, that are technically developable. Both of them have sewer problems, sewer issues. One of them has significant sewer issues and we're not sure that it's solvable, but it also has potentially some environmental issues. So, I'm very familiar with what tracts are developable in Beavercreek, and the two that I'm talking about have some serious issues. That being said, that's going to push residential development into the Township. And, as it pushes into the Township, the more restrictions and more, shall we say 'boundaries', that are drawn prior to even getting to the zoning table or the zoning discussions, causes developers to look for other options. And frankly, when you have comprehensive land use plans in surrounding cities, including Xenia, Beavercreek and Fairborn, I would just submit to you that you're going to encourage annexation into those areas.

The housing market has changed tremendously, and I don't want to be redundant, but I want to point out again that folks look at housing today a little differently than they did several years ago. It has been quite a number of years

since we've seen inflation, or appreciation that has outpaced inflation in the housing industry, and I don't see that changing in the near future. If anything, we see the home-buying public becoming more conservative. I think I stated in the last discussion that the days of the McMansion are over. Housing is going to become more difficult to finance; it already is. Unless you happen to be a veteran and entitled to a VA financing option, the days of the three, uh,100% interest loans are good (gone.) I think that's a good thing for housing. They got way too careless in financing homes for folks who couldn't afford it; but, the other side of that is they're going to have to be a little more practical about what they purchase in the future. Qualifying for loans is more difficult and so they are going to look at housing as more for shelter than they are for investment. For that same reason, it's going to push people towards a more affordable price point and unfortunately that doesn't go hand in hand with your larger lots and your less affordable homes."

Mr. Oberer referenced a recent article, either in the Dayton Business Journal or the Dayton Daily News, that showed where the most popular housing price points were. It talked about Huber Heights being one of the hottest housing markets in the Dayton-Cincinnati area for those relocating for BRAC, one of the reasons being that they offer affordable housing. "If Beavercreek is simply saying we don't want affordable housing for the folks that are serving our country and Wright-Patterson Air Force Base, and some of the supporting companies, then we ought to just say that, 'We don't want affordable housing; let's have those folks move on to Huber Heights,' because in Huber Heights, they're aggressively going after that market.

We're getting our fair share here because of the developments we are doing with previously approved planned developments. Mr. Nutter's done a great job. I think we've done a pretty good job out on New Germany-Trebein Road with Spring Ridge and Spring Meadows, but those developments probably are only going to last a couple more years; we're going to be out of ground in those areas. Fortunately, I think we still have some entitled ground, but that's a temporary solution.

My point is that, while I think the document is improved, I think it still is largely oppressive with respect to development. I think it restricts the Trustees by setting forth guidelines that the Trustees are expected to follow. It takes away some of their flexibility I think, because I think when you get into some of these tough zoning cases, and we all have been in them, the public is going to point back to this document and they're going to say you all adopted this and now you're going against it.

The market has changed. This 1.8 to the acre policy was attempted to be implemented, well, it has been attempted to be implemented for many, many years. It's outdated, and to keep a policy and to adopt a policy that further enforces that, I think, is going to be detrimental to the long-term viability of the Township. The Township, I think, is at a fork in the road. They are either going to be a progressive township that's going to allow reasonable development, or they are going to decide to remain a rural township, which is okay, but it's probably going to limit the lifespan of the Township because it will be eaten up bit by bit by your surrounding cities."

There being no other public input, Mr. Glaser closed the public portion to further comment and gave Mr. Brackenhoff the opportunity to address what had been said.

Mr. Brackenhoff referred the board to p. 7, Existing Footprint. He stated the commission tried to put exactly where the Township is at this point. Over 3,150

lots have been approved. Those lots were approved based on 1.8 (density). That's the standard, that's what has been used previously, that's historical data. The purpose of putting that number in the land use plan is so developers have a starting point.

On p. 8, under legislatively approved PUDs, 3,150 houses have already met the 1.8 (density.) "The existing adjacent land uses around a site will set general guidelines for what should be developed on a particular site." This sentence is to let people know that when you have higher density for existing developments, adjacent PUDs could have higher density as well; however, it also provides leeway for PUDs approved for lower density to increase density based on adjacent uses.

On p. 35, under Residential Development, the first sentence in the second paragraph reads: "The predominant dwelling type will be the single-family…." The commission spent quite a bit of time trying to find the appropriate wording for this section. Single family dwellings are the predominant type of dwelling in the Township; that is why this wording is in there. However, that does not mean single-family housing is the only type of acceptable housing. The next paragraph specifically addresses multi-family and other types of dwellings. The sentence discussing gross density being used to define densities in these types of developments was added due to past legal issues.

Mr. Brackenhoff emphasized there is no 'our way or the highway' attitude in this document. It has been worded in such a way that developers can come in and be innovative. The 1.8 density is based on what has already been approved. It was included because developers have asked for it, but it is intended as a starting point.

Mr. Brackenhoff stated the Zoning Commission represents the citizens of the unincorporated portion of the Township. The citizens have come and said they want development to continue the same. "It would be unfair to the voters, the residents in the unincorporated area to take out or give too much until we know what's going to happen. We set the boundaries and then we wait to see what they come up with."

Mr. Glaser asked the board for comments.

Ms. Graff said she just had a couple of items. On p. 5 she would like to see the actual 2010 census number. This prompted some discussion of what the actual number was. Mr. Oberer offered 6,963, to which Ms. Graff responded that number was incorrect because it included land that had been annexed from the Township. Ms. Graff then asked that the 2010 permit numbers be included on p. 6. The last item was a clarification that the language on p. 35 does say 'not to exceed 1.8;' however, it does not say <u>every</u> lot has to be 1.8. Ms. Graff said it seems to be a matter of interpretation as to how it is read.

Mr. Nutter asked to respond and was told the public portion had been closed.

Mr. Stone said he was inclined to be more lenient with regard to allowing the public to make further comments, given that there were not that many in attendance. After some discussion among the Trustees, it was decided that further comments would be allowed.

Mr. Nutter commented that "the data they collected on density was skewed primarily because the density data they collected does not differentiate between that area which has utilities and that area which is on septic systems. The majority of Beavercreek when I was growing up was developed in ½ acre lots

because they had septic systems and that was the bare minimum. Most of those are failing now, as we all know. Of course the health department won't permit that anymore. I have, in my development, areas that have been zoned officially at 4 units to an acre, 2 units to an acre and 8 units to an acre. I have, every time we have come in with a 4 unit to an acre proposal it was shot down by zoning because, then they used some other criteria and said, 'Well, it doesn't have enough frontage,' irregardless of what the design of the product would be. When we had an 8 unit to an acre which didn't get built, and because of restrictions placed on the zoning officials with the suggestions of our county advisors that gee, we could only manage 7.2 units to an acre, and they thought that was abominable. I think that the 1.8 acres is a terribly skewed number primarily because that which is on septic systems versus that which is on utilities."

Mr. Stone commended the Zoning Commission for all their work. He then stated he believed the intent was to make this more of a guide and a working document as to what things you should look at when considering a development. Mr. Stone addressed what he felt were contradictions within the document and asked for clarification of the intent.

The board, with Mr. Brackenhoff and Ms. Long, spent time reviewing and discussing the language in question.

Mr. Glaser expressed the same concern as Mr. Stone regarding contradictions within the document, and emphasized they were not trying to pick it apart. The Trustees want to keep the Township a township. They want to keep the atmosphere of the Township; however, they don't want to have to defend it in court all the time or risk losing land to annexation.

Mr. Glaser specifically pointed out unclear language on p. 44 in the section entitled "Transforming the Plan Into Public Policy:"

- Through public meeting processes, have the Zoning Commission "adopt" (should be **propose**) the plan.
- Have the Township Trustees formally adopt (should be **review for adoption**) the plan as policy during a public hearing.
- Submit a copy of the plan (**if approved by Trustees**) to the Regional Planning and Coordinating Commission of Greene County for review, adoption and incorporation into the County Land Use Plan.

Mr. Glaser emphasized that this is one instance in the proposed land use plan where there seems to be a misunderstanding as to who has the responsibility for establishing final policy for zoning in the Township. The Trustees have that authority and are not going to adopt a policy which gives up that authority. Prior to approval of this document, it needs to be purged of all language calling for the Trustees to hand over the authority for final zoning decisions as granted by the Ohio Revised Code.

There was some additional discussion of the language regarding the monitoring program and smart growth practices. Mr. Glaser took issue with the language requiring smart growth practices being incorporated into the zoning resolution.

Ms. Long explained that the smart growth practices were not intended to be incorporated into the zoning resolution as a requirement, but rather to allow them to exist. The current zoning resolution does not recognize them.

Mr. Stone pointed out that if the Trustees are having difficulty interpreting the intent of the language, the public will, too.

Ms. Graff suggested inserting language that these practices should be added as desirable possible alternatives in the zoning resolution.

Ms. Graff then revisited the density issue noting that, traditionally, it has been 1.8 for residential and 2+ for rural residential. She proposed adding language to the effect that "It is the intent that areas adjacent to already developed pieces be compatible. As future development and infrastructure change, densities are reviewed case by case." The idea is to protect what is there now while allowing some flexibility. Ms. Graff then suggested removing the maximum density number of 1.8, but indicate that 1.8 is historically reflected in the newer developments in the Township. She noted that this document needs to be more permissible, provide some leeway. The more restrictive language can be put in the zoning code.

Mr. Stone emphasized that open space, sustainable growth, etc., are all good things to ask for, but you need to leave room to negotiate. We need to encourage landowners and developers to be creative, to stay within the design of the unincorporated area, but we can't make it so restrictive that they run.

Mr. Brackenhoff asked to address the board. He directed them to p. 8, pointing out that the language mirrored what Ms. Graff wanted to add and reiterated that it was flexible enough to give the board options. Mr. Brackenhoff then read from the language with regard to how new development should reflect the character of the community, noting that this is what the public cares about. He emphasized that the choice of the word 'should' was deliberate to provide flexibility.
Ms. Graff agreed that it did offer flexibility, but the language on p. 35 was contradictory to the language on p.8.

Mr. Brackenhoff stated that the purpose behind the revised language in the land use plan was to stimulate developers to take the initiative to be more innovative, more creative, to come in with new ideas for better ways of doing things.

Mr. Brackenhoff emphasized that the 1.8 is based on historical data; thousands of yet to be built homes have been approved with the 1.8 density. He has "not seen one revision to rezoning come in to change any of that. If all this is going on out there, and all this time the developers haven't approved, then why haven't the developers come in and asked for any changes? So, what we're looking at is land that hasn't been developed. So, what's going to be used against us is that the land use plan and the zoning resolution book have to be in sync. If they're out of sync, you're going to be in law, you're going to be in court somewhere because a developer, and nothing against developers in or out of this room, they will use it against you because you didn't put it in there. So, you put it in there because we've had developers ask us, 'You don't have it here, but it seems like you're doing this.' We've heard it today: 'You're doing it.'"

Mr. Brackenhoff then moved on to discuss the issue regarding the predominant dwelling type being single family housing, by emphasizing 'predominant' does not mean 'only.' It is stated in the land use plan that the Township will consider other types.

Mr. Stone pointed out that it also had the 1.8 restriction. Mr. Brackenhoff explained that without the 1.8 what will happen is the developers won't want to address it (density) in the rezoning. That will lead to higher density dwellings going up similar to what is behind Lowe's on New Germany-Trebein Road, and then the citizens will be upset. Then, it will come back on the Township that if they wanted the 1.8, it should have been in there.

Mr. Brackenhoff reiterated that the entire zoning board was in agreement that the 1.8 had to be in there. It is historical data. However, there is a caveat for the developers if they come in with something outside of that.

Mr. Stone stated he did not see that. The language very specifically talks about a maximum (density).

Ms. Long responded that legal counsel reviewed the document, but had not specifically been asked to look at that (maximum density).

Mr. Stone stated he thought he understood what they (Zoning Commission) were trying to do, and he does not disagree with it; however, if he's having trouble interpreting it, then it's likely the public will, too.

Ms. Long said it may be time to have legal counsel offer guidance on what language to use.

Ms. Graff suggested rewriting some of the language to more clearly indicate that this is what is preferred, but it is not the only way should circumstances warrant modifications.

Mr. Brackenhoff responded that he spends most of his time working with contracts. He noted that you could have five different people read one sentence and come up with five different interpretations. What it comes down to is wordsmithing, having the historical data, and being consistent in your interpretation of the document(s). "There is nothing in here that restricts, but what it doesn't do is give them full open invitation for someone to go out and do whatever they want without any limits."

He then quoted from the last sentence in the first paragraph on p. 44 regarding policy direction, "'It sets policy direction against which development proposals may be measured.' So, even though we want a plan out there that's visionary like this, we have to, within anything, establish some type of policy direction or guidelines, and that's what the 1.8 is, policy direction and guidelines, 'which development proposals <u>may</u> be,' not <u>will</u> be, '<u>may</u> be. And that's the out."

Mr. Stone suggested that possibly the paragraph on p. 44 should be put up at the beginning of the document to provide more clarity. He then agreed with staff that perhaps it was time for legal counsel to take a look at the document, and stated he would "really love the measure and would just offer here where the statement is made that nothing in here restricts; there is nothing in here that restricts." He then noted that Mr. Brackenhoff had the advantage since he deals with contracts for his living and directed Ms. Long to "ask Mr. Surdyk does he agree, that in general, this does not set restrictions."

Mr. Oberer asked to add one last comment. "One of the reasons that I'm here this evening is because of that 1.8 restriction. Because I'm not proud of the fact that the last primary units that my company zoned in this township were zoned through litigation. And it started it because the document we had to go by at the time, the planning document, was a comprehensive land use plan that had been adopted at a county-wide level, and the land that we were trying to zone had a range of 1-3 units to the acre. It was low density housing; that was allowed. But, the Zoning Commission at that point in time tried to hold us to one unit to the acre because that was the minimum within the range and they wanted to hang their hat on that. Part of the property we were trying to zone was up against property in Fairborn that was three units to the acre and, or close to three units to the acre. My point to all that is it tends to be when you put those ranges in a

document you tend to be held as a developer to the most restrictive end of the range."

At this time, Ms. Graff stated that some of the members had been sitting on zoning cases longer than they can remember; they have heard every argument more than once. They have been on both sides of the fence with regard to annexation, from the city side and the township side, and tend to take talk of annexation "with a grain of salt." As far as referencing the previous litigation, Ms. Graff stated "we know why we went to consent decrees" and noted "it got us pretty much where we needed to be and why we are where we are."

Ms. Graff then moved on to address concerns with making amendments to the land use plan, specifically that there is no length of time provided for the amendment process. Additionally, there should be clarification that the amendment is for the land use plan and not for zoning. Finally, the amendment process needs to be clearly outlined.

Mr. Brackenhoff had a question as to what would take precedence: the land use plan or rezoning. Ms. Long stated the rezoning would because it is a legislative action defined by state law; the law mandates the timeline for rezoning. If a rezoning request was made for a land use that does not exist in the Township, an amendment to the land use plan would occur concurrently with the rezoning. The rezoning would be a change to the land use plan.

There was some discussion of the need to include language in the land use plan addressing the airport and the proposed changes to US 35.

2011-320 Mr. Stone moved to table the land use plan pending review by legal counsel. The motion was seconded by Ms. Graff. The Vote: Mr. Stone, yes; Ms. Graff, yes; Mr. Glaser, yes. The motion carried.

2011-321 Mr. Stone moved to adjourn; Ms. Graff seconded the motion. The Vote: Mr. Stone, yes; Ms. Graff; yes; Mr. Glaser, yes. The motion carried.

The hearing adjourned at 8:40 p.m.