**Special Beavercreek Trustee's Meeting**

**Thursday, June 7 2012**

Ms. Graff brought the meeting to order at 7:00 p.m.

Roll Call: Ms. Graff; Mr. Paxson.

Others: Lisa Donigian; Delores Casebolt; Mark Justice; Woodrow Willis, Bob Gustin, and Chuck Brackenhoff from the Zoning Commission; Jeff Roberts, Robert Gemin, Andrew Peed and Brent Huntsman from the BZA; Victoria Long, Zoning Inspector/Administrator; Laurie Brown, Clerk III/Zoning.

Ms. Brown conducted a roll call for the Zoning Commission and Board of Zoning Appeals members in attendance.

Ms. Graff asked Mr. Brackenhoff to give an update on the revisions since the last meeting.
Mr. Brackenhoff noted the Trustees had concerns that the language regarding density was too restrictive. Legal counsel had reviewed the language and together with Mr. Brackenhoff and Ms. Long had revised it to make it friendlier to development. Mr. Brackenhoff then referred everyone to p. 41 of the Comprehensive Land Use Plan.

Mr. Brackenhoff stated that there was a need to put in a specific number for density because the Township had already been to court with a developer who used the range of densities in the original land use plan against the Township. The Zoning Commission had tried to hold him to the lower end of the density range. The developer sued and it went to consent decree.

Mr. Brackenhoff emphasized the 1.8 units per acre density level was a reflection of what had historically been permitted in the Township. It was also a reflection of what the residents of the unincorporated portion of the Township wanted to see in future development.

Mr. Brackenhoff noted that the 1.8 units per acre density did not preclude a developer from coming in with a higher density proposal. It would be decided on a case by case basis. The 1.8 number would give a starting point to developers unfamiliar with building in the Township.
Mr. Brackenhoff stated that while the proposed language had been softened, it still reflected the "flavor" of the community and the wishes of the residents to maintain the rural feel of the Township.
There was some discussion of the predominant dwelling type in the Township being single family. Mr. Brackenhoff clarified that was not intended to imply that single family dwellings would be the only ones considered for development; rather, it referred to lots already approved for development. Mr. Brackenhoff stated that the board is open to other possibilities. For instance, clustered development may be appropriate in certain areas.

Ms. Graff asked Ms. Long to read an email from George Oberer, Jr. into the record. (See attached.)

Mr. Brackenhoff stated that this was the only developer to have a problem with the 1.8 units per acre density. The executive director of the Dayton Area Homebuilders Association had been in attendance at a couple of the public input meetings and did not have a problem with the language in the land use plan being too restrictive.
Mr. Brackenhoff emphasized that the land use plan is for the residents of the unincorporated portion of the Township. By consistently trying to get rid of the 1.8 units per acre density number, this particular developer has shown his strategy for

the future. There is nothing that will prevent him from annexing to an adjoining city if he wants to; however, there is nothing to prevent any citizen of the Township from annexing.

Of the over 2,000 lots that have been approved but not built, not one developer has come in and asked for smaller lots, including the developer who does not want the 1.8 number. Mr. Brackenhoff reiterated to the Trustees that the 1.8 number is a baseline. If they take it out of the land use plan, it will be used against them in the future. The reasoning would be if the Township wanted 1.8 units per acre density, they should have stated it in the land use plan.

Ms. Graff said she did not believe it to be too restrictive. Both of Mr. Oberer's developments at Trebein and New Germany Trebein were building out nicely, and one of them did include multi-family housing units. Ms. Graff noted that she has seen nothing to indicate that the market is going in the direction that Mr. Oberer says it is and she sees no reason to change the 1.8 number at this time. Should it need to be changed later, there is a modification process in place to address that.

Mr. Paxson stated that the 1.8 number is what everything seems to center around. He would like to do a little more research into the density issue. He has concerns for the citizen who might want to sell their land to a developer, but the developer will have to annex because he won't be able to do what he wants with the land.

Mr. Brackenhoff explained that density had been an issue several years ago with land that was adjacent to Fairborn. The developer had asked to have the same density as Fairborn had granted in their development. The Zoning Commission tried to hold the developer to a lower density and he annexed to Fairborn. Mr. Brackenhoff emphasized that if higher density had been permitted, it would have been a domino effect. Other developers with property adjacent to higher density developed land would expect to have higher density granted to them as well.

Mr. Brackenhoff further elaborated that the developer in question is trying to make it appear that putting in a specific number for density takes the power of negotiation away from the Trustees; this is not true. It actually gives them more power. This number does not preclude anything. It reflects what has been historically permitted in the Township.

Ms. Graff noted the key is that anything other than two or three acre lots would have to have water and sewer; for multi-family you have to have water and sewer. The Township has limited areas with access to water and sewer at this time.

Ms. Long stated that the areas eligible for annexation in the Township are mostly zoned agricultural. As such, they would have to be rezoned to be developed. If the citizens of the unincorporated area of the Township don't agree with the rezoning, they can take it to referendum. The citizens could then make the decision not to rezone regardless what the Trustees want. Ms. Long further added that what Mr. Oberer said is a little misleading with regard to the Trustees losing power. The Trustees get their power from the Ohio Revised Code, not from the land use plan. The land use plan is a guideline; it gives the Township some legal protection.
Mr. Paxson reflected on the impact that density can have on the Township. He referenced the Siebenthaler (Oberer) case from a few years ago, noting it had been a major issue for the citizens of the Township.

Mr. Brackenhoff briefly recapped for Mr. Paxson the density issue in that case. Mr. Oberer had used the open space language in the land use plan to justify higher density. The 50 acres he used in his calculations still belonged to Siebenthaler's, who said it would not be available for public use. Because of this, the Zoning

Commission recommended that the Trustees not approve the rezoning. The Trustees denied approval and Mr. Oberer went to court. The result was the consent decree permitting him to have the higher density.

Ms. Graff elaborated on some of the conditions of the consent decree. She also discussed other developments in the Township with regard to what the Township has historically permitted for density.

Mr. Willis said he agreed with Ms. Graff that it was important to list a specific number for density. You have to have something concrete or the whole concept of land use planning is null and void.

Ms. Graff further emphasized that as she read it the land use plan did not preclude developers from presenting different types of products to meet current and future needs.

Mr. Brackenhoff then took time to explain to audience members why establishing a specific number for density was so important to the Township. Ms. Graff explained what density actually means.

Mr. Paxson asked if there was any type of study showing how property values might be affected by what is on adjacent parcels of land.

Ms. Long explained that there were numerous factors in determining what affects property values. There was a similar concern with the new school. Some studies showed that it would have an adverse effect on property values, while others said it would not. She emphasized there is no really good evidence to determine the effects of adjacent zoning on property values.

Ms. Graff related that it was her experience that the economy seemed to have a larger impact on property values than zoning.

Mr. Paxson asked how a community develops. Is it the community itself that attracts the public or do the developers build houses to attract the public to the community?

Mr. Brackenhoff stated there are a number of factors that come into play, including at the Township and county levels. Additionally, developers will buy up parcels of land in areas with good school districts, and where water and sewer hookup is projected for the future.

Ms. Long stated there is no definitive answer to that question and compared it to the age-old "the chicken or the egg" scenario.

There was some discussion of the general amendment process to the land use plan. (pp. 50-51) It was noted that the language had been reviewed by legal counsel.

Other changes to the land use plan were the inclusion of the 2010 census information and a verification of the total square miles for the Township, per Ms. Graff's request.

Ms. Long noted the 48 square miles shown for the Township were correct. Digital mapping, which is a more accurate measuring process, resulted in a loss of square mileage for the Township. (p. 36)

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Ms. Graff asked if there were any further comments. At this time, Mr. Willis recognized Mr. Brackenhoff's dedication to this project as well as the staff's perseverance through multiple revisions.

Ms. Graff then stated there were two options: determine if further revisions needed to be made or vote on the current document.

Mr. Paxson stated he still had some questions regarding the 1.8 units per acre density.

After some brief discussion, Ms. Graff asked Ms. Long to put the land use plan on the Trustees' agenda for the regular meeting on Monday, June 11th.

Zoning Resolution Update
Mr. Brackenhoff distributed and reviewed a brief summary detailing the need to update the zoning resolution.
Mr. Brackenhoff said that the zoning boards should begin doing research as soon as possible. He suggested that one member from each zoning board work together on the articles.
At this time, Ms. Graff noted that the US35 project is back on track, so that will need to be taken into consideration as well.
There was some discussion of what types of variances the BZA routinely granted and how those might be addressed in the zoning resolution. It was noted that larger accessory buildings were a common request.
Mr. Huntsman said it would be a good idea to prioritize what needs to be done first. Signs are a big issue, as well as providing zoning for sexually oriented businesses.
Mr. Roberts commented that there needs to be some focus on agricultural areas to resolve discrepancies with the Ohio Revised Code.
Ms. Long emphasized the need to address rural residential zoning.
Ms. Graff stated that, unlike the land use plan, the zoning articles could be adopted individually rather than waiting until the entire zoning resolution is done.
There was some discussion of what time would be best for the boards to meet.
Ms. Graff asked how many could not meet during the day. Several board members raised their hands. Ms. Graff noted the zoning boards and the Trustees would have to hold evening meetings.

Ms. Graff encouraged both the Zoning Commission and the Board of Zoning Appeals to get a head start on the zoning resolution revision by scheduling meetings whether they have cases or not.

**2012-214** Mr. Paxson moved to adjourn; Ms. Graff seconded the motion. The Vote: Mr. Paxson, yes; Ms. Graff; yes. The motion carried.

The hearing adjourned at 8:34 p.m.

Trustee: _____

Fiscal Officer: _____

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**From:** George R. Oberer Jr. [mailto:grojr@oberer.com]
**Sent:** Thursday, June 07, 2012 11:59 AM
**To:** 'Victoria Long (vlong@beavercreektwp.org)'
**Cc:** Glaser, Bob; Graff, Carol; 'Carol Graff (devoedrive@aol.com)'; Ahrens, Christy; 'Dan Paxon (dpaxon@beavercreektownship.org)'; 'Robert J. Surdyk (rsurdyk@sdtlawyers.com)'
**Subject:** Beavercreek Township Comprehensive Land Use Plan (CLUP)

Good Morning Victoria,

I understand that there will be a joint meeting this evening with staff, zoning commission and the Trustees to discuss the proposed CLUP.
I had planned to attend tonight's meeting but am unable to do so due to a family health situation.
Would you please e-mail a copy of the latest draft of the proposed document to me?
I will send a copy of this e-mail to the Trustees but since I had planned to attend the meeting and am unable to do so, this e-mail comes late since it is on the day of the meeting.

Would you please pass out a copy of my comments or read them into the public record before any vote is taken?

Dear Honorable Trustees Graff, Glaser and Paxon:

The subject document has resulted from the thoughtful collaboration of many staff, zoning commission members, residents and trustees that obviously care deeply about Beavercreek Township. I have seen many positive changes as it has evolved over the past year or so.

My input and comments come as a land owner with no selfish motives as the properties that I have interest in are already entitled or zoned. I am offering an experienced perspective that comes with over thirty years as a land developer in many townships and municipalities in southwest Ohio including multiple communities that were developed in Beavercreek Township or annexed to an adjoining city.

Beavercreek Township is a very desirable place to live, work and play. Times are changing and so are the home buying and business community's priorities and their ability to want or afford large lots and "big box homes". Large rural lots are less desirable without having the benefit of public utilities, fire protection, etc.
The long term viability of Beavercreek Township will depend on its ability to adapt and react to the changing market condition. Flexibility will be a demanded as new development concepts are proposed. Your proposed CLUP has considered some of this flexibility except that it continues to attempt to cap overall density at 1.8 dwelling units per acre. I believe that this is a huge mistake when your are surrounded by three progressive cities whose survival is based on their ability to grow and they already have more progressive and flexible land use and zoning options.

I believe that building in a 1.8 DUA as a maximum goal will force future zoning commissions and trustees into making decisions within those parameters and will ultimately result in land owners and developers considering annexation options. Many times, pre-annexation agreements with cities will be made as a result of township "policies" before you will even have a chance to consider what may have been a good development that could have stayed in the township.
I believe that you should consider some sort of "transitional zoning" alternatives where you have tracts of land that abut a municipality. The "transitional zoning" should allow densities and uses consistent with what would be allowed in that adjoining city. For an example, the Spring Ridge development was adjacent to the existing Fawn Ridge development in the City of Fairborn which allowed 3 DUA. I would argue that 3 DUA would not have been out of place for Spring Ridge. You should plan for areas in the township whereas nice apartments could be built at reasonable densities as much as 12-14 DUA.

WPAFB is a major magnet for residential development. We need to continue to provide desirable and affordable housing alternatives to the market to help support the base and the business community. Otherwise, will not take best advantage of existing infrastructure, we will lose property values and we will potentially lose land to adjoining cities.

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The issue is not really a density issue, it is an issue of an implied limiting of the Trustees ability to make decisions. The Trustees should always have the latitude and discretion to consider what is best of the township as a whole. Why would you let yourselves be pressured to vote to put any implied or arbitrary guidelines or ceiling on your ability to make decisions affecting the future of the township. You are all elected officials that were elected because the voters trusted in your ability to lead the Township. I submit that no body or commission that is appointed by the elected Trustees should be allowed the opportunity to limit your authority (even if only implied limits). There is little doubt that the subject document will be used against you or future trustees in the future.

Thank you for considering my comments and input to this important process.

Respectfully,
George Oberer, Jr.

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