**Special Beavercreek Trustee's Meeting**

**Tuesday, November 27, 2012**

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

Roll Call: Ms. Graff; Mr. Paxson; Mr. Glaser.

Others: Woodrow Willis, Bob Gustin, and Chuck Brackenhoff from the Zoning Commission; Dr. James Amon; George Oberer; Robert Surdyk, Township Legal Counsel; Alex Zaharieff, Township Administrator; Laurie Brown, Clerk III/Zoning.

Mr. Glaser stated the purpose of the hearing was to discuss possible amendments to the consent decree between Oberer Companies and the Beavercreek Township Trustees.

George Oberer, Jr. addressed the board. Mr. Oberer explained that the proposed amendment to the 2006 consent decree will affect the Spring Ridge and Nathaniel's Grove PUDs.

Mr. Oberer then gave a brief summary of the consent decree, noting that the consent decree set the parameters, but the details of the specific site plans had to go before the Zoning Commission for initial approval before being forwarded to the Trustees.

The consent decree was amended in 2010. At that time, Mr. Oberer had asked to take smaller, higher density lots and transfer them from the Spring Meadows development over to the Spring Ridge development in the higher density multi-family unit section. A total of 12 units were moved. Spring Meadows was reduced to 141 units. On the Spring Ridge side, the number of units was increased from 68 to 80 units.

What he is asking for this evening is to reduce the density in the Spring Ridge development. There were some topographic issues to be dealt with in developing this property. Originally, this parcel had been pre-sold to another developer who built condo-style, four-unit buildings that would have fit within the topography. However, when the economy changed, the developer backed out of the deal. At this time, Mr. Oberer believes the best possible use would be a single detached product. It would be more environmentally sensitive because it doesn't develop the entire property.

Mr. Oberer stated that when they originally brought up the amendment, Ms. Long had asked that they submit a site plan to give the Trustees an idea of what type of development was being proposed. There is no specific site plan at this time; they are proposing to take 12 lots from one side and move them to the other side. The consent decree requires that, prior to any type of approval, they would have to come before the Zoning Commission to discuss the site plan.

Mr. Glaser asked Mr. Oberer to go over the specifics of the proposed amendment.

Mr. Oberer stated the first part of the amendment would take the Spring Ridge development from 80 attached single-family homes on the 18.8 acres, to 55 detached homes. Those proposed homes would have the same lot size requirements that the Township approved for Nathaniel's Grove in Product A. These are basically 56-foot lots.

There are several reasons for the change. The topography is rough; the slopes are too great to accommodate the large footprints that would be necessary for the multi-family buildings originally approved. As well, the developer had to back out due to economic conditions.

Mr. Oberer noted that this change would allow a more environmentally friendly design. The less dense single- family detached units would require less dirt to be moved and the streets would follow the existing grades more closely. Furthermore, the market for single-family detached homes is viable right now. Also, with 25 fewer units, the density will be decreased.

At this time, Mr. Surdyk asked if it was 55 units or 48.

Mr. Oberer checked his numbers and stated that it was 48; the 55 was from an earlier version of the plan and was also the lot width. It was noted that there were 47 smaller lots and one large 5-acre lot.

Mr. Oberer then stated the minimum lot size would be 56x145, with the minimum lot square footage being 8,120. The average lot size would be 10,000 square feet.

Ms. Graff asked if that calculation included the 48$^{th}$ lot or just the 47 building lots. Mr. Oberer stated he did not know the answer but assumed that it did not include the 48$^{th}$ lot because the square footage would be larger.

Mr. Oberer stated the front and rear yard minimums would each be 25 feet. The side yards would be 5 feet with 10 feet total. Each unit would have a minimum 2-car garage.

Mr. Oberer stated that the house square footages for Product A would be in the 1600-2500 range. He emphasized this would be above grade, exclusive of basements or garages.

Mr. Oberer said this summarized the Spring Ridge request and asked if there were any questions.

Ms. Graff questioned if the 48$^{th}$ lot was going to be common space; she noted it had a detention pond on it.

Mr. Oberer said they would sell that off as an estate lot to someone looking to build on a larger lot.

Ms. Graff noted that they would be responsible for maintenance of the detention pond.

Mr. Surdyk interjected that is all subject to change. It is not a final site plan.

Ms. Graff noted that these lots are smaller than the ones that have already been built on in Spring Ridge and in Fawn Ridge, the adjacent development to the north.

Mr. Oberer said that would be an accurate statement. Fawn Ridge primarily had 70-foot lots. The difference is that the multi-family plan that was approved for Spring Ridge had smaller lots because they were intended to be attached single-family homes; so, the lot that was deeded with that property would be significantly smaller than the average of the proposed lots.

Ms. Graff stated she was looking at how they were contiguous to the next plat. She had no problem with the density; it is lower than what they started with and closer to what the Township prefers. She is surprised there is no one here from Fawn Ridge complaining about the smaller lots adjacent to Fawn Ridge.
Mr. Oberer emphasized that this was not intended to represent a site plan. The only reason it is attached was because Victoria had requested it to give the

Trustees a better idea of the type of density being proposed. He hopes that doesn't create confusion and reminded the board that the site plan will be reviewed later with the Zoning Commission.

Ms. Graff clarified that Mr. Oberer is asking for 48 lots versus the original 80, to be configured on this piece of property at some point in time. Mr. Oberer confirmed that is what he is asking.

Mr. Oberer then moved on to the part of the proposed amendment regarding the Nathaniel's Grove development.

For this they are requesting to amend the timeline for the construction of the amenities. In the original consent decree, the plan was that Phase I would put 90 lots on 44 acres with four different non-competing product types. However, the change to the housing market since the original plan was approved makes it impractical and impossible to finance with the amenity package included.

They are requesting to postpone the construction of the amenities until 33% of the 475 lots are constructed. This would give them more flexibility to craft the first phase of construction in a way that would maximize its marketability. By doing that, the development would gain momentum that would propel it to successive phases where the amenities would be built in a timely and responsible fashion. As an added benefit, this amendment would allow the homeowners' association (HOA) to fill its coffers so it could assume the maintenance of the amenities without placing an undue burden on the first homeowners in the development or by forcing the developer to subsidize the amenity package.

The proposed change to the Nathaniel's Grove conditions also gives the Township the assurance that the construction of amenities would begin once 33% of the development is finished, and that it would be completed within 12 months of commencement of construction. Additionally, the Township would have the ability to withhold the 156$^{th}$ building permit, and subsequent permits, until construction of the amenities is completed. Similarly, if the amenities are not completed within that 12 month period, the Township will be entitled to hold any permits until such time as they are completed.

Mr. Oberer noted that this proposal basically reflects current economic conditions. He informed the Trustees that he already has a development in Washington Township that he is having to subsidize; he doesn't want to make the same mistake again.

The way the HOA documents are written, this is a safety net for the developer and the homeowners. If for some reason the developer was unable to financially perform, the homeowners who are already in the development would have to assume the obligation. This would preclude that type of situation.

Mr. Paxson stated that he has seen this happen in Sugarcreek. He asked Mr. Oberer for confirmation that homeowners already living in the development had to bear the burden of upkeep for the rest of the development.

Mr. Oberer clarified that the declaration would require all the lot owners bear the cost of caring for those amenities, which would also include the developer. However, if the developer failed, the burden would fall heavily on the current homeowners.

Ms. Graff noted that holding off the construction of amenities until 1/3 of the lots have been developed would allow that 33% to reasonably support the

operations. With regard to the other lots that haven't been sold, isn't the developer responsible for cutting the grass? Wouldn't' they be charged for mowing if it wasn't done?

Mr. Oberer stated that typically the developer subsidizes the HOA in the first couple of years. This is something that is anticipated and built into the budget. What has happened in the last few years with lots absorbing at such a slow pace, the developer ends up subsidizing more than was originally anticipated. If the developer is unable to continue subsidizing, the burden falls on the homeowners and maintenance is usually deferred.

When a development is launched, the developer has to present a budget to the homeowners and sell them on the belief that the developer can deliver what he promises. If this amendment is approved, they will sell homeowners on the fact that the amenities will be forthcoming when 33% of the lots have been built. The HOA's budget will adjust those fees accordingly; they will not have to pay for amenities that do not exist. They will only be expected to pay for what has been deeded to the HOA. This is done on a section by section basis.

Ms. Graff noted that Mr. Oberer had said the HOA would have the ability to build up reserves for future amenities, but he also said they will not be paying for amenities they do not have. Mr. Oberer responded that it would still give them the opportunity to build up reserves. Reserves are still a budged item and would be collected. The actual operating costs for those components, like a swimming pool for example, would not be assessed until the swimming pool is built.

Moving on, Mr. Oberer informed the board that Product A for Nathaniel's Grove is still intended to be marketed as an empty-nester or patio home type of product. In the original consent decree, the product design was geared toward seniors or buyers without children. Most floor plans will be single-story with a basement. The basement would be in compliance with condition 13 of the exhibit. However, it is very unlikely many, if any at all, will be constructed with basements because of the soil conditions in that area. The covenant of condition 13 of the consent decree dictates the grade of the finished floor and depth as it relates to the sewer. You cannot have a basement lower than the sewer.

Mr. Oberer also noted that lawn maintenance and care of the shrubbery and trees was going to be provided for the individual lot owners. The proposed amendment would change that condition and provide that the individual owners would care for their own property. He stated that with previous developments they had put in a standard landscaping package. What they encountered were active homeowners who wanted to further develop their lawns with irrigation systems and more lavish landscaping. This presented a problem when managing the HOA. The problem is how to assess in a way that takes into account the variances in improvements to individual lots. They are asking to have this amended as suggested in order to appeal to the market in a broader way and not have to be so restrictive with the individualism of homeowners.

Ms. Graff asked if there would still be an association to take care of the common areas. Mr. Oberer said there would. He is only talking about the lots owned by individual homeowners.

Mr. Paxson briefly discussed the Nutter development on Trebein Road, noting that the individual homeowners appear to have their grass cut by the same contractor who did the common grounds. Mr. Oberer stated he was not familiar with how that is managed.

Mr. Oberer noted they have done it both ways, with the individual homeowners being responsible for lawn maintenance or the HOA contracting out for lawn maintenance. Homeowners are expected to meet certain standards with regard to lawn maintenance. An easement is maintained so the management company for the HOA has the ability to go in and perform work on individual properties not meeting the standards. These expenses are then assessed on the property owner.

Mr. Paxson stated his concern would be that if someone bought a home in this type of development and was taking care of their own lawn and then, for whatever reason, got to the point where they were unable to care for their lawn, how would that be assessed?

Mr. Oberer stated they would have the ability to come in and cut the grass and assess the homeowner. More often than not, though, unless you run into a situation where you have a foreclosure, you don't typically encounter this as a problem. If this type of situation were to occur, the homeowner would probably pay someone to cut the grass, even if it were the same contractor the HOA uses.

Mr. Oberer concluded by stating he would happy to answer any questions the board might have. He reiterated that the plan that was attached was not intended to be any type of conceptual plan, it was only for illustrative purposes.

At this time, Mr. Surdyk clarified that in the initial consent decree drawings had been attached that were referred to as 'development plans.' These are not site plans. A site plan is a document that is defined within the resolution that must be reviewed by the Zoning Commission and then brought before the Trustees for final approval. These were referred to as development plans in the consent decree; that is what Victoria was requesting. In the proposed amendment it would be referred to as a development plan as well. In the proposed resolution it was mistakenly referred to as a site plan. That will be corrected if it gets to that point.

Mr. Surdyk recognized there is some concern on behalf of the Trustees that the final development would not be subject to review by either the Zoning Commission or the Trustees. He emphasized that under the consent decree it would in fact be reviewed by the Zoning Commission and then pass on to the Trustees for final review.

At this time, Mr. Glaser opened the public portion of the hearing.

Woodrow Willis, 2542 Rolling Meadows, Beavercreek, addressed the board. Mr. Willis noted that he is the vice-chair for the Zoning Commission and that he was new on the board when this particular case was resolved in 2006.

Mr. Willis stated he has no issues with what is being proposed; he thinks it is positive. He did note some inconsistencies and math errors, and asked to approach the board to show them what he had found. The board reviewed the documents with Mr. Willis. Most of the inconsistencies appeared to be clerical errors.

It was noted that the total number of units for Spring Ridge should have been shown as 134, not 141. Mr. Oberer clarified this was also a clerical error left over from a previous proposal for 55 units that was then lowered to the current 48.
Mr. Brackenhoff, chair of the Zoning Commission, addressed the board.

Mr. Brackenhoff stated that there is a lot of confusion with the numbers. He emphasized that the numbers have to add up correctly because this is what pushes the specific site plan.

Mr. Brackenhoff then explained the consent decree process to Mr. Paxson who was not part of the original proceedings. He noted that this is really a two step process. The actual consent decree only deals with the rezoning. The second part of the process is the creation of the specific site plan, which comes before the Zoning Commission and then the Trustees.

Mr. Brackenhoff then observed that the lots have been made larger, but the side yard setbacks are still the same. They are five (5) feet or a maximum of 10 feet. What this means is that they are five (5) feet on each side. When this is included in the consent decree, it ties the hands of the Zoning Commission. What Mr. Brackenhoff is suggesting is that all references to side yard setbacks be taken out of the consent decree. They should be addressed in the specific site plan. This would offer more flexibility for the Zoning Commission, Trustees and the developer.

Mr. Brackenhoff then noted that he did not get the specifics of what Mr. Oberer was proposing to change. He stated that it would be helpful, when making changes to a public document, to offer the specifics such as page number, what you're proposing to change, etc. You should not have to read through the entire document to see what is being changed..

Ms. Graff asked for clarification of what Mr. Brackenhoff was proposing to remove from the consent decree.

Mr. Brackenhoff stated that you have to very careful as to what is included in the rezoning. Once the rezoning has been approved, anything that was included as part of the rezoning is approved as well. Often items are included that should be addressed in the specific site plan, not the rezoning process. That is how a lot of these items ended up in the consent decree.

Mr. Brackenhoff  pointed out that the amended development plan shows a single point of access into the development, which is not optimal for fire department access. If the Trustees accept the amended development plan, they might find that their hands are tied. He suggested that the Trustees might want to table action on the amendment pending further review by Mr. Surdyk and the fire department.

At this time, Mr. Surdyk stated it would increase everyone's flexibility to do away with the development plan in B-1. He suggested getting the basic parameters and then using those parameters to develop the specific site plan.

Mr. Brackenhoff responded the Zoning Commission is looking at that, but this is a little bit different case.

Mr. Surdyk said he understood, but that amendment could be made as part of this change. Eliminate the development plan which is B-1, a requirement of the development plan, set your parameters and then use the parameters for the specific site plan when it comes to the Zoning Commission in the second stage process.

Mr. Brackenhoff asked for clarification that they would use this process to remove this document from the consent decree. Mr. Surdyk confirmed this.

Ms. Graff questioned whether they wanted to leave minimum lot size for the 48 units or not.

Mr. Glaser asked what the original document said with regard to the side yard setback.

Mr. Surdyk stated it was five (5) feet, with a minimum 15 feet between houses.

Mr. Brackenhoff emphasized that was when there were smaller lots. He cautioned that you have to be careful with inserting numbers. You can't have one document overriding another. He recommended leaving the front and rear setbacks as between 15-25 feet. For the side yard setbacks he recommended leaving it as "to be determined."

This prompted some discussion regarding the best way to address side yard setbacks.

Mr. Surdyk said what he is hearing is that lot sizes and density can be addressed in the consent decree, but setbacks should be part of the specific site plan process.

Mr. Willis suggested using "at least" instead of "equals," so you don't have the intent of stacking houses on each other.

Mr. Brackenhoff stated he believed the Zoning Commission usually used "at a minimum."

Mr. Oberer said he was fine with that he was fine with either one.

Mr. Surdyk will make the proposed changes regarding the deletion of the development plan and the insertion of "at least" or "at a minimum."

Dr. James Amon representing the Beaver Creek Wetlands Association (BCWA) addressed the board.

Dr. Amon stated the BCWA had property adjacent to Spring Ridge. There have been issues with the discharge from the Spring Ridge detention pond causing erosion on BCWA property. They reached an agreement with the Oberer Company to repair the damage. A level spreader was supposed to be used; instead, all they did was to put down some new rip rap.

Ms. Graff asked if the developer would be willing to modify the detention pond on Spring Ridge property or to put the level spreader on the Fairborn Marsh property.

Mr. Oberer stated this was the first he's heard of this problem. He has an engineer who designs the detention ponds. He noted he was not sure if Dr. Amon is part of the review process for that.

Dr. Amon emphasized the problem is with the engineering.

Mr. Oberer said he would make sure the repair is made and that Dr. Amon will be included in the loop for future development.

**2012-399** Ms. Graff moved to close the public portion of the hearing. Mr. Paxson seconded the motion. The Vote: Ms. Graff, yes; Mr. Paxson; yes; Mr. Glaser, yes. The motion carried.

**Special Beavercreek Trustee's Meeting**

**Tuesday, November 27, 2012**

Mr. Zaharieff was directed to put the consent decree amendment on the agenda for the December 10, 2012 Trustees' meeting under Old Business.

**2012-399A** Ms. Graff moved to adjourn; Mr. Paxson seconded the motion. The Vote: Ms. Graff, yes; Mr. Paxson; yes; Mr. Glaser, yes. The motion carried.

The hearing adjourned at 8:46 p.m.

Trustee: _____

Fiscal Officer: _____