

**Brunswick Hills Township  
Zoning Commission  
Regular Meeting Minutes  
September 5, 2019**

Vice Chair Mickas called the Brunswick Hills Township Zoning Commission regular meeting to order at 7:08 p.m. A Roll Call of the board was executed.

- **Board Members in Attendance:** Matthew Mickas (Vice Chair), Barb Porter, Trica Murphy
- **Board Members not in Attendance:** Sandra Jenkins (Chair), Linda Kijek
- **Alternate Board Members in Attendance:** Patti Wetterman, Sy Mougrabi
- **Others in Attendance:** Trustee John Witthuhn (Zoning Liaison), Matt Payne, Fire Prevention Officer, Mary Jean Milanko (Secretary)

Alternate board members Patti Wetterman and Sy Mougrabi were seated to represent a full board and Vice Chair Mickas ran the meeting.

**APPROVAL OF THE MINUTES**

1. **August 8, 2019 Regular Meeting Minutes- Motion:** Mrs. Murphy made a motion to approve the August 8, 2019 regular meeting minutes. Mrs. Wetterman seconds. **Roll Call:** Mrs. Porter- yes; Mrs. Wetterman- yes; Mrs. Murphy-yes; Mr. Mougrabi-yes; Mr. Mickas-abstain. Motion carries to approve.

**CONTINUED BUSINESS**

**1. Right-of-Way and Setbacks**

No discussion or comments by the board. Vice Chair Mickas tabled until next meeting pending more information from the board.

**2. Update on Brian James Application Process for Southridge Subdivision Conservation Development**

Vice Chair Mickas stated we have not heard back from the Planning Commission on this and opened up discussion to the board. Secretary Milanko stated the update on this is that Mr. James has submitted the information to the Planning Commission and they are scheduled for a Concept Plan Meeting on Wednesday, September 18, 2019. Secretary Milanko distributed copies of the Planning Commission letter and maps and a letter to the Zoning Commission from Mr. Brian James. Mrs. Porter asked if we have received anything back from the Prosecutor on the Homeowners documents. Secretary Milanko stated Mr. Richter is in the process of reviewing the information.

**Public Comment**

1. **Brian James, 943 Wye Drive, Akron, Ohio 44303** (applicant) addressed the board. Mr. James said as we discussed last month, we are working through **Sec. 411 Conservation Development Overlay District** of your zoning code. He stated he sent a letter over yesterday touching base on a couple of the items we discussed last month. Mr. James said with that section of your zoning regulations, we have to come through with a General Development Plan, which is similar to the Preliminary Plan, which is the stage we are at with the Planning Commission right now. He said we are scheduled for a Concept Plan meeting this month and hope to be on the November Planning Commission meeting with our Preliminary Plan, which is relatively the same plan. Mr. James said for the process, the General Plan comes before you; you make a recommendation to the Trustees; and then we come back to this board with the Final Plan and then that goes back to the Trustees. He said it is kind of a preliminary stage on this end as it is with the Planning Commission. Mr. James said we are hoping that you can send this on to the Trustees to keep the procedure moving knowing that you will see the whole thing a little while later with more details. Mr. James stated he believed they addressed the few things that came up last month and would be happy to discuss any new concerns that may have come up.

Mr. James said we are aware in your zoning code you have 60 days from our meeting four weeks ago to make your recommendation, and then the Trustees have 60 days, and then you have 60 days, and the Trustees have 60 days on the Final Plan. Mr. James said I'm hoping there are no concerns for you to table this another month. It's our hope you can send it off to the Trustees so we can keep things rolling knowing that we will be back before you.

**Questions/Comments by the Board**

Mr. James asked the board if they have any questions. Secretary Milanko referred to the letter from Mr. James where it says in the first sentence: "*Thank you for the opportunity to address you on July 8<sup>th</sup>*". Secretary Milanko asked if he meant August 8<sup>th</sup>. Mr. James confirmed for the record that the letter should say August 8<sup>th</sup>.

Mr. Mickas said his concern is that he would like to see the feedback from the Planning Commission and additionally, the feedback from the Prosecutor on the HOA document. Mr. Mickas stated he is fine with the questions we had, but he would like to have the second set of eyes from the Planning Commission on the plan. Mr. Mickas stated that is my opinion and I would not be comfortable moving this on to the Trustees at this point. Mr. Mickas opened up the discussion to the rest of the board for their opinions. Mrs. Wetterman stated she felt the same way and plans on attending the Planning Commission meeting to see what they bring forth. Mr. Mickas stated from the board's perspective, we do have 60 days and our regular meeting on October 3<sup>rd</sup> which is 56 days and falls within our regulations. Mrs. Porter stated she hoped that we will have the information back from the Planning Commission by then. Mr. Mickas stated he spoke to the Prosecutor today on a number of items and said he is working on the information for the township. Mr. James stated he understood the decision.

**Public Vs. Private Streets**

Mrs. Murphy said you mentioned that the streets were going to be public streets. Mr. James said that is what we discussed. Mrs. Murphy said in our zoning code it says they shall be private streets per **Sec. 411-4 (E) (2)**

- a. All streets constructed as part of a Conservation Development Overlay District shall be private streets unless a public street is specifically authorized by the Township to provide for interconnection or to achieve some other public access purpose.

Mr. James said my first question is do you really prefer them to be private streets? Mr. James said we can have that conversation and talked about it a little more in-depth at the December Pre-Application meeting. He said we will build them according to county standards and we prefer them to be public streets. He said in general his experience for the last 30 years is that townships, in general, have tried to get away from private streets just due to the fact that the street is private and the homeowners don't like it because they end up calling the township expecting that they are going to get services. Mr. James said private streets have been falling out of favor for a number of years so we would prefer them to be public streets built to township standards. He said he thinks the township would prefer them to be public streets. Mrs. Murphy said we are just a recommendation board and I was just looking at the code. Mr. James said that is our take on it and we can have that discussion. He said it is going to look like a public street and the property owners are going to think it is a public street even if they know it's not. Mr. James said we had a lengthy discussion on this at the Pre-Application meeting and thought we were on the same page with this.

**Additional Public Comment** - None

**Motion to Table Recommendation on Southridge Subdivision to the Trustees to the Next Meeting**

**Motion:** Mrs. Wetterman made a motion to table the recommendation to the next meeting on October 3, 2019, which will be within the 60 days. Mrs. Murphy seconds the motion. **Roll Call:** Mrs. Wetterman-yes; Mrs. Porter-yes; Mr. Mougrabi-yes; Mrs. Murphy-yes; Mr. Mickas-yes. Motion carries to table the recommendation to the Trustees.

**NEW BUSINESS: Formal Acceptance of Application Requests by David Terry, Terry Properties for PMUO**

**1. Zoning Map Amendment Application Request by David Terry, Terry Properties, for Extension of Existing PMUO**

**2. Application for Concept Site Plan of PMUO request by David Terry, Terry Properties**

Vice Chair Mickas stated the next item of new business is the formal acceptance of the application request by Terry Properties for the PMUO (Planned Mix-Use Overlay) which includes the properties on Rt. 303 and Substation Road.

**Recusal of Board Member:** Vice Chair Mickas stated he has a conflict of interest and recused himself from the board.

**Chairperson Pro tempore:** Mr. Mickas asked for a nomination of a board member to take the Chair. **Nomination:** Mr. Porter nominated Mrs. Murphy as Chair. Mrs. Wetterman seconds. **Roll Call:** Mrs. Porter-yes; Mrs. Wetterman-yes; Mr. Mougrabi-yes; Mr. Mickas-yes. Mrs. Murphy took position of Chair.

Acting Chair Mrs. Murphy stated we have an application request by Terry Properties to extend the existing PMUO and asked the board for comments. Mrs. Wetterman asked about the use of property exiting on Substation Road and said it continues to Center Road, but our zoning references the major roads for a PMUO and Substation Road is not one of them per our Zoning Sec. 406-3. Mrs. Wetterman stated he is planning on using Substation Road for two exits; one that includes an exit for his townhouses. Mrs. Wetterman asked if that is allowable and said this may be a question for the Planning Commission.

**Sec. 406-3      Establishment Of A PMUO District**

Planned Mixed-Use Overlay Districts shall be established in accordance with the procedures set forth in Section 406-7 hereof. Consistent with the purposes of such districts, applications for establishment of a PMUO District shall be limited to those properties that meet all of the following criteria:

1. Are located with frontage and access on a major road,
2. Include some land that is commercially zoned,
3. Contain a minimum of forty (40) contiguous acres, and
4. Are served by public water and sanitary sewer facilities.

For the purposes of this Section, major roads shall be Center Road, Marks Road, Grafton Road, Pearl Road, and W. 130<sup>th</sup> Street.

Mrs. Wetterman stated the plans also say he is proposing a trail on an existing easement, which I believe belongs to the electric company, and that would have to be approved before we go any further.

Mrs. Murphy said there are two applications for the PMUO: (1) The first application is a request for rezoning and (2) the second is a Preliminary General Development Plan for the PMUO. Mrs. Porter said we can look at the rezoning application, but she did not believe the board could accept the application for the General Development Plan tonight because that is based on getting the rezoning approved. Mrs. Murphy said it is currently zoned C-2, R-1 and R-R and asked if they are requesting PMUO over what's existing right now. Mrs. Wetterman asked if we have signed/notarized documents from everyone in that area. Mrs. Murphy stated the zoning map amendment doesn't need the signed documents, but the general development application does and said the applicant has supplied the names and addresses of all owners.

**PUBLIC COMMENT/Applicant**

1. **Kristin Hopkins, Land Use Planner, CT Consultants** (on behalf and in partnership with Terry Properties) addressed the board for the rezoning application request for the Planned Mix-Use Overlay District. Ms. Hopkins stated they were under the impression that they should submit both applications at the same time, but you are absolutely right that one application follows the other. Ms. Hopkins stated we respectfully request that our application for the General Development Plan be put on hold.

Ms. Hopkins provided her background information to the board: Land Use Planner for over 30 years; 10 years with the Cuyahoga County Planning Department and fulfilled the role of the Subdivision Review Administrator for Olmsted Township and Chagrin Falls Township in Cuyahoga County. Ms. Hopkins stated I am familiar with the review process for both Zoning Amendments and Planned Unit Developments. I was a key advisor to Olmsted Falls Township in the update on their Comprehensive Land Use Plan, as well as writing some of their regulations for Planned Unit Development.

Ms. Hopkins said we are requesting an expansion of the Planned Mixed-Use Overlay District, which is a rezoning application that you would be reviewing according to the section of the township zoning regulation that corresponds with this rezoning and the Ohio Revised Code (ORC) Sec. 519.021.C, which also requires an approval of the rezoning before the approval of the General Development Plan. Ms. Hopkins distributed a document of the ORC section and stated this is also in your township zoning regulations under Sec. 406 for the Planned Mixed-Use Overlay District.

Ms. Hopkins said the way the ORC is written in terms of rezoning requests, there is no review for completeness, there is no acceptance of the application – it is a filing of the application so it's an action we made with the township by filing the application within those five days. She said there is a requirement to transmit to the County Planning Commission. Ms. Hopkins stated I'm not sure what the discussion is yet and I know you are required to wait for a response from the County Planning Commission on their review of the proposed rezoning. She said but in terms of discussing the application right now, I am not quite sure what your procedures are so I would look for some clarification on that from our standpoint. Acting Chair Murphy said we received the application at the last meeting, went through the information and the board decided to table formal acceptance of the application because there was a lot of information that we had just received, so that is where we are at. Ms. Hopkins said also, it is our understanding from the Zoning Inspector that we were not going to be on the August meeting, that our application submitted on August 2, 2019 was for tonight's meeting.

Mrs. Murphy said the present zoning is C-2, R-1 and R-R and you want to do the Planned Mixed-Use Overlay District over that zoning. Ms. Hopkins stated that is correct and that is how the overlay district, according to the Ohio Revised Code Sec. 519.021(C), works. She said until a development plan is accepted and approved by the township, there are two layers of zoning on the property. The existing zoning remains and then if the overlay zoning is approved, those two co-exist until such time as the General Development Plan is accepted. Ms. Hopkins said and then the property is no longer dual zoned, it is only

zoned as according to the Planned Mix-Use Overlay District. Ms. Hopkins said this is different than the Conservation Development District, so I can see where it's confusing.

Ms. Hopkins stated the other thing to point out is the rezoning request does have a time limit on it. The development plan review by the township does not, which is another reason we are asking you to table or put it on hold because you are not obligated to review it. She said and again that is a distinct difference with the Conservation Overlay District, because you do have those timelines with the General Development Plan review and you do not with the PMUO General Development Plan review. Ms. Hopkins said we do acknowledge that we don't have all of the components required for the General Development Plan like the Homeowners Association documents for review, and a phasing plan, and that's because until there is some assurance that the zoning is in place and we can move forward, it's premature for a developer to provide detailed engineering drawings and traffic studies, etc. at this time. However, in regards to the water and sewer, that is one of the four criteria for the expansion of the Planned Mixed-Use Overlay District. She said the developer has been working with the County Sanitary Engineer's Office and with the County Planning Department in getting all of that confirmed. She said it is our hope that tonight you would accept the application so that it can then be submitted to the County Planning Commission for their review and it can be on the October Planning Commission meeting. That meeting is October 2, 2019 and by that time there would be an official report by them and in your court. Ms. Hopkins stated you should have that information if you were to schedule a public hearing for your next meeting.

Mrs. Wetterman said if I understand what you are saying, this is just to approve the application. Ms. Hopkins said you are not approving the application; you are accepting it so that tomorrow you can forward it to the Medina County Planning Commission and you can set a public hearing date tonight. Those are the two things that we are asking for as a result of tonight's meeting. Secretary Milanko confirmed for a rezoning request, it is up to the township to submit the application to the Planning Commission. Ms. Hopkins confirmed that is correct. Ms. Hopkins said at the Planning Director's request, when we did submit the application back on August 2<sup>nd</sup>, he requested we copy him, so he does have the application. She said my understanding is that was his way of helping facilitate the township's forwarding it to him.

Mrs. Wetterman asked if they are just requesting rezoning for the 32 acres? Ms. Hopkins said no, it's a request for a Planned Mixed-Use Overlay District for the 214 acres. Ms. Hopkins said I would say after seeing your reaction and hearing your comment earlier about having access onto Substation Road, I think that is a legitimate question in terms as to whether the Zoning Resolution anticipated that or not. She referred to the zoning map and stated the Planned Mixed-Use Overlay District is limited in where it can be applied in the township; Marks Road, Center Road, Pearl Road, Grafton Road, so it's very limited and subject to interpretation. She said the way it is written it states that it has frontage and access is on the major road, but it doesn't say none on a side road. Ms. Hopkins said in talking with the County Planning Director, his interpretation was that if we were to apply and ask for any rezoning on Substation Road, but with no frontage on Center Road that wouldn't qualify. She said by virtue of having frontage on Center Road was one of his interpretations that we were within the boundaries of the recommendations for the locations.

Mrs. Porter referenced the traffic study and said that wouldn't be done until after the zoning was changed, correct? Ms. Hopkins stated correct; the traffic study is not required for the rezoning, but it is required for the General Development Plan. Mrs. Porter said that is a very high traffic area. Ms. Hopkins said the developer recognizes that is a very high traffic zone and traffic improvements will be necessary. The traffic study will identify what sort of traffic improvements will need to be made, whether it's a left turn lane, at Center and Substation Road or what. Ms. Hopkins said it is a high expense to go through for a rezoning, but once the zoning is in place the developer will need to have that for you to review the General Development Plan.

Mrs. Murphy referred to Exhibit 8 in the packet and said in there the total proposed acreage is 218.1, but then when you add it up it is 218.3, so what's the difference between that and the 214 acres? Ms. Hopkins said page 3, Exhibit 1, identifies the acres and that 4.1 acres of the parcels that make up the requested rezoning area is located in the right-of-way, so in terms of determining the amount of open space and the amount of retail that's required it's based on the actual buildable area of the lot, so that is what we were doing with our application and the two different total acres.

Mrs. Murphy referenced question #11. on the application: *"Does the current use conform to existing zoning?"* She said both yes and no are checked. Ms. Hopkins stated I'm not sure that is accurate. This was our second go around with the application, so I'm afraid that might have been a mistake because that was the case previously when we were considering land to the east and to the north. Ms. Hopkins stated the daycare is a permitted use and all of the houses are permitted. Ms. Murphy asked if the previous request was for a rezoning. Ms. Hopkins said yes and this is where we've had two separate set of procedures, so our first applications went to the Zoning Inspector and then she did forward it to the Planning Commission. Mrs. Wetterman said and they turned it down. Ms. Hopkins said the Planning Commission did not act; the Planning Director wrote a staff report. Ms. Hopkins stated we got the report from the Planning Director and we withdrew before the Planning Commission acted on it; and then in response to his comments, we did meet with him and we are back with a different configuration based on his comments and interpretations.

**PUBLIC COMMENT:**

**1. Evert Van Staden, 4954 Roscommon, Brunswick Hills, OH**

Mr. Van Staden asked if there are any conditions or rules to be considered for application to be submitted for the Planned Mix-Use District. He said if so, what are those rules and is that open for public comment for the residents of the township with regard to our concerns with the rezoning of the area given the nature of our township being a Rural District.

Acting Chair Murphy stated tonight is the first discussion of the rezoning application and the application will go to the Medina County Planning Commission and they will review it and provide a recommendation back to us. Mrs. Murphy stated the Planning Commission meetings are also open to the public. She said we will have a public hearing to review it and that will be open to public comment. Mrs. Murphy said we look at our Zoning Resolution and our Comprehensive Land Use Plan. Mrs. Porter also confirmed the public will have an opportunity to voice any concerns and ask questions. Mr. Van Staden asked if that will specifically apply to the rezoning. Mrs. Porter said yes. Mrs. Murphy said after that the board makes a recommendation to the Board of Trustees to approve, disapprove or approve with modifications. Mrs. Porter stated the Board of Trustees make the decision for approval or disapproval at their public hearing. Mrs. Porter stated so you have many opportunities to voice your opinions or concerns.

Mr. Van Staden said my development (Greenfields) is immediately adjacent to this planned proposal so will there be notices sent to surrounding areas of the planned proposal How will the residents be notified of this which is in our immediate vicinity. Secretary Milanko stated letters are not required to be sent, per the ORC, but the township will send letters out; not to the whole township, but to the properties that are contiguous to the area proposed for rezoning. She noted that the open space owned by the Greenfields HOA abuts to one or more of the properties proposed in the rezoning. Secretary Milanko asked who the HOA representative is for the Greenfields. Mr. Van Staden stated Dan Kubicek. Secretary Milanko stated a letter was sent to Mr. Kubicek as HOA President previously to notify residents when Mr. Terry submitted his first application for this request a few months ago. End of public comment and discussion.

**Motion to Accept the Application for PMUO Rezoning by Terry Properties.**

**Motion:** Mrs. Porter made a motion to accept the application for the Zoning Map Amendment and forward it to the Medina County Planning Commission and the Prosecutor’s Office and set a public hearing for October 3, 2019 @ 7:00 p.m. our regular scheduled time. Mr. Mougrabi seconds the motion. **Roll Call:** Mrs. Porter-yes; Mr. Mougrabi-yes; Mrs. Wetterman-no; Mrs. Murphy-yes. Motion carries to accept application request by three (3) yes votes to one (1) no vote.

**Deadline to File Applications to the Medina County Planning Commission**

Secretary Milanko stated she will check the deadline for application submissions. Ms. Hopkins verified the deadline is tomorrow (September 6, 2019) and she believed that all Mr. Henwood needed was an email from the township because he has the whole packet. Ms. Hopkins stated he needs authorization from you that it has been forwarded to the Planning Commission. Secretary Milanko confirmed she will send a letter and the application information to the Planning Commission and the Prosecutor stating when the board met, date, time, and the motion so we can get this on their agenda and told Ms. Hopkins she will be copied on that.

**Request to Hold the General Development Plan by Terry Properties Pending Rezoning Decision**

Mrs. Murphy asked Ms. Hopkins if they have informed the Zoning Inspector that the General Development Plan is on hold. Ms. Hopkins stated she was not sure what the procedure was for that. Secretary Milanko stated we should have some kind of documentation in the minutes, per the applicant’s request, to place the General Development Plan on hold. Statement by Ms. Hopkins to place the General Development Plan on hold until the decision on rezoning is made noted for the record.

Vice Chair Mickas returned to his seat and resumed running the meeting and opened the floor to the public for any additional comments or additional business to present to the board.

**Additional Public Comment:** None.

**ADDITIONAL BUSINESS**

**1. Update on Zoning Commission Training Session**

Mr. Mickas stated he did not reach out to Mr. Richter again on the training request and asked Trustee Witthuhn if he spoke to him. Trustee Witthuhn stated he contacted Mr. Richter after the last zoning meeting and did not hear from him so he emailed him again last week and still has not heard back from him.

**2. Brian James, Developers Management Concept Plan Meeting with the Planning Commission**

Secretary Milanko confirmed that Mr. James’ Conservation Development has gone to the Planning Commission for a Concept Plan Meeting on September 17, 2019 and distributed the information from Planning to the board.

**3. Fire Safety at Agritourism Facilities**

Secretary Milanko distributed a document by the Ohio Department of Commerce forwarded by Trustee Witthuhn on **Fire Safety at Agritourism Facilities.**

**4. Kutchta-Carrie Farms Subdivision Concept Plan Meeting with the Planning Commission**

Secretary Milanko stated we received an email from Planning Services for a Concept Plan Meeting on September 18, 2019 for a new subdivision: Kutchta-Carrie Farms Subdivision, which is a property on Substation Road and Emerald Drive and distributed the information from Planning. Mr. Mickas said so this has not come to us yet, it went to the Planning Commission? Secretary Milanko stated correct, and my conversation with Ron Henwood (Director, Planning Services) is that sometimes concept plans for a

subdivision go to the Planning Commission first and then the Zoning Commission, but it is not unusual for a developer to talk to the Zoning Commission first and then submit to the Planning Commission. She stated that Mr. James came to the Zoning Commission first and then submitted to Planning, but this application went directly to the Planning Commission first. Mr. Mickas asked if the Zoning Inspector has seen this. Trustee Witthuhn stated yes, they had met with her earlier in an unofficial meeting where they talked about the proposal. Mr. Mickas looked at the current zoning for the area which is R-1 and the application request is for R-1 so it doesn't appear this is a rezoning request. Mrs. Murphy asked if the Zoning Commission will see these plans. Trustee Witthuhn stated he did not have the answer but knows the Trustees have to sign off on the final plans.

**ANNOUNCEMENT OF NEXT MEETING DATE: Thursday, October 3, 2019 @ 7:00 p.m. (Public Hearing & Regular Meeting)**

**Motion to Adjourn:** Mrs. Wetterman made a motion to adjourn the meeting. Mrs. Porter seconds the motion. Roll Call: All in favor. Meeting officially adjourned at 8:10 p.m.

Respectfully Submitted,

Mary Jean Milanko, Zoning Secretary

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Zoning Commission

Date