



City of Powell, Ohio

Board of Zoning Appeals
Ryan Temby, Chairman

Randy Duncan Robert Hiles Gregory Short Dan Wiencek

MEETING MINUTES

July 9, 2018

A meeting of the Board of Zoning Appeals was called to order by Chairman Ryan Temby on Monday, July 9, 2018 at 7:00 p.m. Members present included Randy Duncan, Robert Hiles, Gregory Short and Dan Wiencek. Also present were David Betz, Director of Development; Leilani Napier, Planning & Zoning Clerk; and interested parties.

APPROVAL OF MINUTES

MOTION: Board Member Hiles moved to adopt the minutes from June 14, 2018. Board Member Duncan seconded the motion. By unanimous consent the minutes were approved.

CONDITIONAL USE PERMIT

Applicant: HorsePower Farms LLC
Location: Home Road and Steitz Road
Zoning: (FR-1) Liberty Township Farm Residence District
Request: Approval of a Conditional Use Permit to allow for a sportsman's club.

MOTION: Board Member Hiles moved to take the Conditional Use Permit from HorsePower Farms LLC off the table. Board Member Short seconded the motion. By unanimous consent the request was removed from the table.

Mr. Betz advised the Board they were correct to open the public hearing again. The Board has the opportunity to continue the public hearing, even at the end of this hearing. The Board will have thirty (30) days from the time the hearing is closed to render a decision. If the Board closes the hearing and needs more time to think about things, the Board has thirty (30) days to make a decision. Three (3) out of the five (5) Board members must have an affirmative vote to approve the Conditional Use Permit. If the Conditional Use Permit is approved, the Conditional Use Permit is good for one (1) year to allow the applicant the opportunity to create the final plans and meet any supplementary conditions and safe guards the Board may issue with their decision. If the use would cease to exist, after being started for six (6) months, the Conditional Use Permit would go away. Someone would have to re-file for a new Conditional Use Permit.

Mr. Betz reviewed the Staff Report (Exhibit 1).

The Board asked for certain information at the last meeting. The applicant was able to obtain most of the information. The applicant will cover some of the items requested which haven't been submitted on paper yet. The applicant did submit a revised site plan. The pond has been revised to allow for 30' of area, which is one of the items AEP asked for. Specifics on lighting were submitted. There will be no pole lights. All lights will be building lights. The light study shows the amount of lumens at various locations on the property. The amount of lumens is zero (0) when you get to the edge of the property line. Light will not flush off of the site. The applicant has communicated with AEP. Mr. Betz showed the e-mail he sent out to the Board earlier in the day (Exhibit 1A). There were also copies at each Board member's seat. It is interesting to note the concerns AEP brought up were in regards to the grading plan, because they don't want to see big mounds; the detention pond, because they don't want a fountain in the pond; the ornamental trees because they don't want any trees; the windmill being within the easement and the existing horse fence. The applicant will probably use bubblers in the pond to keep the pond healthy, will look into what type of landscaping will be acceptable to use and the horse fence on the south side of the site will have to be removed. AEP didn't have concerns about buildings which are located outside of the easement. They are only concerned about their easement area.

The Board can place conditions or special safe guards on an approval of a Conditional Use Permit as long as they relate to the General Standards listed in Section 1129.03. Staff does feel completing the proposal in phases is a good idea. The Board has full control over what happens with this Conditional Use Permit. The Board needs to decide if the use itself is a conditional use within the FR-1 District as identified by the applicant. Staff has some ideas of conditions which are listed in the Staff Report.

Chairman Temby asked all people who would be speaking to stand. People in the audience stood and were sworn in.

Chip Vance, 275 Oakham Court, Powell, said he has made changes to the size of the pond and where the pond will go in the easement since the last meeting. To recap, the condominium documents won't allow for unkempt private or common areas, accumulation of debris, noxious chemicals and fumes, fuel storage, commercial enterprises, activities which disrupt the peace, welding, painting or flammable storage. He is proud they are able to accomplish zero (0) lumens at the property line. They will use a soft, yellowish light. Noise pollution will be covered by the bylaws. Mr. Betz showed the e-mails from AEP. AEP wasn't able to give him their approval in writing. He hopes to have it this week. None of AEP's questions raised any red flags for anyone. Their traffic study shows low impact. Brian Reynolds is here tonight to talk about fire prevention and protection issues if anyone has questions. There will be a one hour fire wall between each unit. There will be fire and smoke detectors in each unit. Pond maintenance will be covered in the bylaws. There will be reserves to ensure the property is maintained. The same goes for the landscaping and the grounds. The people who buy these condos want to have a nice place. Mr. Vance showed where a dumpster will be placed. The dumpster will be enclosed with a fence. He feels compelled to help the Board understand what these garage condos will look like. It is a concept which people don't understand unless they are a car guy. Mr. Vance showed some pictures of other car condos (Exhibit A1). The people who buy these condos will finish the floor with an epoxy floor in many cases. The person could opt to put in a mezzanine with stairs to go up to it. These people have homes so they won't be spending the night here. They will be there for special occasions. The variety of finishes and interiors runs the gamut. The unit could be empty. Our target is automobile, motorcycle collectors, someone who has an RV. The units will be climate controlled. This is important to collectors of high-end cars. Unheated spaces make things rust. Unconditioned air allows moisture to accumulate. The buyer of the unit is affluent. They are particular individuals. They won't tolerate a common area which is unkempt. They want their piece of real estate to appreciate. It would be foolish of any developer to do something in AEP's easement which AEP doesn't like or approve. He will do what AEP allows. He respectfully requests approval of the Conditional Use Permit so he can get moving on this project.

Chairman Temby said he appreciates all of the hard work done since the last meeting. The Board did ask for sportsmen's club bylaws or articles of incorporation. Have you had a chance to get these documents accomplished? Mr. Vance said he does have them but they aren't complete. He would be happy for this to be a condition of the approval. He didn't want to spend the money and time to finish the documents until he knew he was moving forward.

Chairman Temby opened this item to public comment. He advised the audience the Board is specifically interested in new testimony. Comments which haven't been discussed before. Please state your full name, address and keep comments to 3 minutes.

Larry Coolidge, 78 W. Olentangy Street – supports

- He has been around for a while now. He moved here in 1973. He became active. He was on the Zoning Board. If you look back in the archives, we didn't have Zoning Codes. When they built Olentangy Ridge he met with the attorney Ben Hale who put together a zoning book for the City for \$500. It got us started.
- He has always stood and tries to promote the good projects in Powell. He fought the ones he didn't like.
- He has known Mr. Vance. His building is one of the nicest in Powell. The building isn't in the Historic District but Mr. Vance followed all of the guidelines. Some people come in and do projects like the one on Home Road. The property is in the Township. Townships don't have the same ability to regulate or enforce. He is glad this project will be in the City where the City can have better control.
- Mr. Vance invited all of the neighbors in and showed them his project. Most are happy.

- Powell lacks a lot of tax dollars from commercial properties. This is a commercial venture and will collect tax dollars. There won't be any children going to school. 75% of the tax dollars earned from this project will be a relief.
- Mr. Vance has the capabilities to finish this project. Some builders get ¾'s of the way through and run out of money and don't complete.

Joel Kallman, 1501 Dickerson – supports

- He lives in Liberty Township between Powell and Delaware. He has been a resident since 1997. They built one of the first houses in Big Bear Farms. The only things around at the time was UDF and Wendy's. Sawmill was extended to Seldom Seen and stopped. A couple years later, the shopping center started and numerous other businesses.
- Along with the development came traffic. Today he lives off of 315 and he travels Home Road on his way to work in Dublin. He is very sensitive to traffic. The proposal for HorsePower Farms introduces the least possible impact on traffic.
- Like everyone else, he is fearful of development. But he does think this is the best project.

Surendra Vegnesna, 2606 Triple Crown Xing – opposes

- If the Board is really going to approve this project, he requests that Phase 1 be reviewed after completion before giving approval for other phases.
- The Powell Auto Club wasn't a good job. He sees how Auto Assets is but you never know.
- Will the approval be granted with a condition about the bylaws?
- Will HorsePower Farms be a part of their assessments due to the access?

Chairman Temby asked Mr. Betz about the access point from the residential neighborhood. Mr. Betz said the driveway will be closed off and gated. It will be for fire access only. Mr. Betz asked Mr. Vance if this is correct. Mr. Vance made a comment from the audience (inaudible). Mr. Betz said there is no other reason for the connection due to the low traffic. It is wise to have another access point onto the property. The fire department has ways to get into a gated entrance. Chairman Temby asked Mr. Vance to come back up to the podium and asked if this is the intended use of the entrance. Mr. Vance said correct. There is no intent for the access area to be used for anything other than emergency vehicles. The neighbors were concerned the trees and shrubbery will have to be removed and they will see into his property. The growth currently provides a lot of buffer. The shrubbery would have to be removed to put the gate in. Light wouldn't go down the road. This can be revisited in Phase 2. If the Fire Department doesn't have to have the access he would not put the road in and leave the brush and trees. If they want the access road, he will provide it. Chairman Temby said it is fair to say if the road is built, it will be exclusively for emergency access. Mr. Vance said emergency only. Mr. Betz said Mr. Vance could ask Fay Baynton if her driveway could be used for emergency access. This could be a good option and could be re-visited later.

Vince Contini, 2474 Friesian Lane – opposed

- The southeast corner of this property is Golf Village. The northeast corner is Harvest Pointe, a Rockford Homes development. The southwest corner is the Reserve at the Glen, a MI Homes neighborhood. This is where he lives. You can throw a baseball to 2 of these neighborhoods from this property. Harvest Pointe is little more of a stretch but very visible. People are just buying there now. His whole point is there are hundreds of people who have invested basically their life savings into \$500,000 to \$700,000 homes in these 3 neighborhoods. Their intent wasn't to have a car storage facility in their neighborhood. The land was intended for farm use. He was always taught by his parents you can't change the game in the middle of the game. It is fair to these folks to keep the intended use of the land, farm use.
- Would the Board like a car storage facility in their neighborhood?

Jon Petz, 4320 Home Road - opposes

- There are a couple questions which haven't been addressed. He wants to make sure the bylaws or regulations will make sure people will not live in these condos.
- He wants to make sure the height, light or movement of any signage is addressed.
- He would like to know more about the screening along Home Road to block residents across the

street.

Chairman Temby asked Mr. Betz to show a shot of Home Road. Mr. Betz said there is a mix of trees and shrubs along the parking lot.

Todd Faris, Faris Planning and Design, 243 N. Fifth St., said they will pick up the landscaping from The Reserve at Scioto Glen. They will use the same horse fence, the same pattern with the plantings. The landscaping will be identical to what they did for Scioto Reserve. They want the continuity. They are providing additional screening in front of the cars so if something happens after dark headlights don't shine out on Home Road. This is typical.

Hearing no further public comments, Chairman Temby closed the public comment session and opened the floor for comments and questions from the Board.

Chairman Temby thanked everyone for their input. The Board has a couple matters to decide. We need to first decide if what has been presented to the Board does meet the clause of a sportsmen's club. There is no precedent in Powell as to what counts as a sportsmen's club. We don't have a zoning stipulation in the guidelines. We have nothing to go by. The dictionary definition offers no help. We did ask for bylaws and they haven't been presented to the Board. We asked for articles of incorporation which haven't been presented to the Board. Condominium documents have been mentioned but we haven't seen these. Chairman Temby asked Mr. Betz if we have seen condominium documents yet. Mr. Betz said not yet. Chairman Temby said we need to decide if this meets the condition. He would like the Board to discuss whether this qualifies as a sportsmen's club.

Mr. Wiencek said he wasn't here for the last meeting. He did review the minutes. He recalls Mr. Vance's intention to be marketing to vehicle enthusiasts but if someone else wanted to buy a condominium Mr. Vance wouldn't stop them. Mr. Vance said the units are geared towards motor sports, car enthusiasts. This is where they will do their marketing. This is the type of people he wants. There are people who have RVs who may want to use these units as well to store their RV. Some people have used units for records storage. He doesn't know how you can discriminate in the uses other than through the bylaws. To answer Mr. Petz's question, the units can't be used as a residence. People can't sleep there as a primary residence. You can't have a commercial enterprise where people exchange money for goods or services. There are other places with less expensive storage for other items. These units will not be inexpensive. They will be geared towards people with the means to buy a place to put their nice things.

Mr. Hiles said if it was all cars this would more reflect a sportsmen's club.

Mr. Wiencek said he is struggling with the issue. When you think of a club, you think of people who have something in common. These people have ownership of a condo unit in common. This is what makes it a club, their ownership. He doesn't want to put words in Mr. Vance's mouth but to him this is the definition the Board has to accept as a definition; an ownership in this condominium complex and not get too hung up on what someone may or may not be storing. This is where the crux of the question is to him. He read the Township zoning and it provides no help. It gives examples but the examples are what you would expect, a hunting club, and a fishing club. This request doesn't fit into this. Mr. Wiencek asked Mr. Betz if Staff had a role in advising the applicant on coming forward with this application as opposed to a zoning change or a variance. Mr. Betz said we had a lot of discussion about which way to approach this. Because the Conditional Use Permit process allows for a similar type of hearing as a zoning change, it allows for similar examination of the facts of the case as a zoning change, it gives authority to the Board to place conditions and safe guards on the proposal. The biggest task is defining the use of a sportsmen's club which the Board has authority to do under the Code. Can the Board determine whether this use is similar to a sportsmen's club? This is the reason we went this route. If we went through a zoning change to a Planned Commercial District you end up with that zoning. Planned Commercial allows for a myriad of uses. Staff felt this was the best route for the City because of all of the conditions which could be placed on the request. This Board is in charge of looking at uses and determining which uses are acceptable. If this is identifiable as a sportsmen's club, then it is a Conditional Use in this District. The property owner is telling you this will be a sportsmen's club for car collectors. The bylaws can be written specifically and the Board would want the chance to look at the bylaws as a condition of approval. Mr. Vance wants to get some approval so he can move forward with the legal documents. The documents won't come cheap. Mr. Vance said they have created a clubhouse on the property. There will be restroom facilities and an office for an office manager so the property owners have someone to turn to. The clubhouse is also a place for owners to gather. The price point of the space is going to discourage people from storing a lot of items. Mr. Wiencek said the

units will be too expensive to store records. Mr. Vance said the units will be geared towards car collectors. The word is going to spread. His hope is to fill it with really cool cars. Mr. Wiencek said the applicant has made the appropriate effort to design the space in a club environment. Building a clubhouse isn't an inexpensive gesture. It isn't putting lipstick on a pig. It is a significant improvement to the property. He doesn't think this use was the original intent of a sportsmen's club as defined in the Township but he can see the commonality. He could move to say yes, this is a sportsmen's club.

Mr. Vance asked if he could make a clarification. Chairman Temby asked Mr. Vance to come back to the podium. Mr. Vance said reading from the Liberty Township Farm Residence District, Section 8.04.E, Public or Private Golf Courses, Country Clubs, Hunt Clubs, Sportsmen's Clubs, Fishing Lakes or Similar Recreational Uses, etc. If it would help the Board, he could change his application to "Similar Recreational Uses" as opposed to a Sportsmen's Club. Chairman Temby said this isn't necessary.

Chairman Temby said he has a real difficult time seeing condominiums as a sportsmen's club or a recreational use. He might have had an easier time if the Board would have had at least a skeleton of bylaws. Not an expensive document but something which would have given an indication of what you are going to keep the use to and how you are going to guide the rules. His opinion is this should be a re-zoning effort and not a Conditional Use Permit. However, we do have a motion to accept the use as a sportsmen's club.

MOTION: Board Member Wiencek moved to accept the use of HorsePower Farms LLC as a sportsmen's club.

Board Member Short seconded the motion.

VOTE: Y 4 N 1 (Temby)

Mr. Hiles said he has been out to the property and he doesn't see a lot of victory elsewhere for this property. He thinks this is probably the best use for the site. Knowing Mr. Vance lives in Powell and is a business owner, I think Mr. Vance is going to want to do right.

Chairman Temby said the second item we need to consider is the conditional use of the FR-1 District zoning. He has numerous notes on this in regards to what needs to be considered and listed as part of the Conditional Use Permit. Chairman Temby reviewed each of the 4 conditions listed in the Staff Report. All Board members agreed the 4 conditions should be listed.

Chairman Temby added the following items to be listed as conditions:

- AEP compliance. All Board members agreed.
- Bylaws to be presented back to the Board for approval. Mr. Short said he would like to see this condition added. He has been on an HOA board. What Mr. Vance puts in the bylaws will be very important for the Board to see. The hours need to be addressed. In the previous meeting Mr. Vance said 10:00 p.m. to 6:00 a.m. as quiet hours but in this meeting Mr. Vance said 10:00 p.m. to 8:00 a.m. There needs to be clarification. The number of units sold to change the development from a developer-managed to a board-managed entity needs to be addressed. How the board will run needs to be addressed. Mr. Wiencek said he also has some concerns he wants to see specifically addressed in the bylaws. The first is how the reserve amount is established. It does no good to have a condominium association if they don't have enough money to maintain the property. Mr. Wiencek asked Mr. Betz if the property falls into disrepair or an inappropriate use happens, would the Zoning Administrator handle? Mr. Betz said yes. In combination with the association, both the Zoning Administrator and the Police Department can get involved. We would work closely together. The City deals with zoning violations all the time. Chairman Temby said bylaws are going to be particularly important and the Board would like them to review. All Board members agreed.
- Landscaping. We have heard about and seen pictures of trees. We want to ensure the landscaping theme used in Scioto Reserve and Reserve at Scioto Glen is continued on Home Road in this project. All Board members agreed.
- Emergency entry/exit. The access should be for emergency vehicles only. Mr. Hiles said a locked gate should be put in to keep people out. Mr. Betz suggested looking at the placement of the fire access not being from Friesian Lane. The location could be from some other place. All Board members agreed.

- Mr. Wiencek asked for a condition stating this property will be a part of the assessment district. The property is gaining the benefit of the sewer and roads. They should be paying their fair share of assessments. Mr. Betz said they are getting their sewer from Scioto Reserve which is in Concord Township. Mr. Wiencek said then maybe this isn't a reasonable request. Mr. Wiencek withdrew his suggestion.
- Mr. Wiencek suggested a condition regarding signage. He asked Mr. Betz if it is appropriate to have signage reviewed. Mr. Betz said yes. All Board members agreed.

Mr. Wiencek asked Mr. Faris to come to the podium and explain how the pond will be kept from becoming an algae collection. He lives near a City pond which is only an acre in size and it has 4 bubblers in it and it's weedy and full of algae. Mr. Faris said Delaware County has standards in regards to how ponds are constructed, especially in regards to the depth of a pond. As long as we maintain a depth of 6' to 8' it helps the water quality be consistent. The bubblers add onto this. The biggest issue is to make sure the depth is there. We have to follow Delaware County regulations. Chairman Temby asked if the Board wants to review the pond design. Mr. Wiencek said City Staff will be reviewing this along with drainage issues. Mr. Hiles said he concurs. It wouldn't help for the Board to review pond designs.

Chairman Temby reviewed the conditions one last time and asked if there were any other comments or questions.

MOTION: Board Member Hiles moved to close the public hearing. Board Member Short seconded the motion. By unanimous consent the public hearing was closed.

MOTION: Board Member Wiencek moved to approve the Conditional Use Permit to allow for a sportsmen's club for HorsePower Farms LLC, located at Home Road and Steitz Road, as represented by Chip Vance, subject to the following condition(s):

1. That approval shall be granted for the completion of Phase 1 only and that all future Phases shall come back before the Board of Zoning Appeals; and
2. That the applicant shall come back before the Board of Zoning Appeals at a future date for review and approval of building designs and details; and
3. That the applicant shall submit building designs with no doors on the front of the storage building(s) facing Home Road; and
4. That the applicant shall submit for and receive approval of all utility plans, site engineering and grading/storm water control plans by the City Engineer; and
5. That all project plans shall be AEP compliant; and
6. That the applicant shall come back before the Board of Zoning Appeals at a future date for review and approval of the condominium association bylaws. The bylaws shall specifically address the hours of quiet time, how the reserve will be established and managed and when the association will be in full control; and
7. That the applicant shall ensure all landscaping plans continue the landscaping design along Home Road which is currently present in the Reserve at Scioto Glen and Scioto Reserve; and
8. That the emergency access/exit at Friesian Lane shall be a gated, secured entrance used by emergency personnel only; and
9. That the applicant shall come back before the Board of Zoning Appeals for review and approval of all signage.

Board Member Hiles seconded the motion.

VOTE: Y 5 N 0

Mr. Betz advised this is an appealable decision. If someone has a question, they can talk to an attorney. Chairman Temby said absolutely, yes.

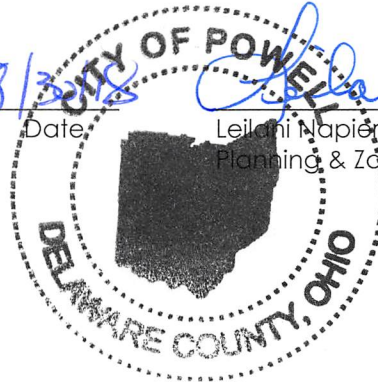
ADJOURNMENT

MOTION: Chairman Temby moved to adjourn the meeting at 8:10 p.m. By unanimous consent of the Board members the meeting was adjourned.

DATE MINUTES APPROVED: August 24, 2018

Ryan Temby
Chairman

8/30/18



Date

Leilani Napier
Planning & Zoning Clerk

8/30/18

Date