

RECORD OF PROCEEDINGS

Minutes of

Etna Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 10148

October 13

2005

Held

19

Regular Meeting

The regular meeting was called to order by Chairman Holloway at 5:58 p.m. on October 13, 2005 at the Etna Township Hall. The meeting was audio and video taped for township records.

Roll Call: Mr. Johnson, Mrs. Rogers, Mr. Holloway, Mr. Cox, Mr. Goll, and Laura Brown present.

The purpose of this meeting is to read the minutes for the September 27, 2005 Meade hearing.

David Goll moved to waive the public reading of the minutes and to approve the minutes from the September 27, 2005 adjudicatory hearing. Cox seconded.

Roll call: Jeff Johnson, yes; Cheri Rogers, yes; Steve Holloway, yes; Frederick Cox, yes; and David Goll, yes. Motion passed 5-0.

The final order was signed and mailed.

The adjudicatory hearing for Meade and Bush will be on Friday October 28, 2005 at 6:00 p.m.

Steve Holloway discussed the new member packet.

David Goll moved to adjourn at 6:05 p.m. Rogers seconded.

Roll call: Jeff Johnson, yes; Cheri Rogers, yes; Steve Holloway, yes; Frederick Cox, yes; and David Goll, yes. Motion passed 5-0.



Laura Brown, Clerk

Approved as read  _____

Approved as corrected/amended _____



Steve Holloway, Chairman

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DAYTON LEGAL BLANK CO., FORM NO. 10128

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ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Holloway at 6:07 p.m. on October 13, 2005 at the Etna Township Hall. The meeting was audio and video taped for township records.

Roll Call: Mr. Johnson, Mrs. Rogers, Mr. Holloway, Mr. Cox, Mr. Goll, and Laura Brown present.

The purpose of this adjudicatory hearing is to consider an appeal concerning a building permit submitted by Maronda Homes Incorporated of Ohio. The nature of the appeal is to overturn a denial of a building permit for lots 41 and 46 of Longwood Crossing Section 2.

Chairman Holloway explained the process and those who wanted to testify and present evidence were sworn in. John Singleton, Lucas Haire, Dallas Maynard, Connie Klema, and Craig Wilson were sworn in.

Connie Klema was representing Maronda Homes Incorporated of Ohio. Dallas Maynard, Zoning Inspector for Etna Township was the first witness. Dallas Maynard stated his duties as a zoning inspector are to accept, review, and evaluate applications for building and various other zoning issues relating to our zoning resolution that requires permits. Connie Klema and Dallas Maynard reviewed the two zoning applications. Dallas Maynard read from the permits that the reason for the denial is the Etna Township Board of Trustees has not agreed that all final zoning issues for this sub-development have been resolved.

Connie Klema presented Exhibit A, Letter from Amanda Speakman of Maronda Homes to Dallas Maynard asking for a detailed letter stating what issues are not resolved and why the zoning was being denied. Exhibit A was also a letter from Dallas Maynard to Amanda Speakman suggesting to her that she direct her question to the Board of Trustees. Dallas Maynard read the Duties of the Zoning Inspector from Section 501 in the Etna Township Zoning Resolution and Section 508 Duties of Zoning Inspector, Board of Zoning Appeals, Legislative Authority and Courts on Matters of Appeal. Connie Klema referred to why he denied the permits. Dallas Maynard again read the reason for the denial is the Etna Township Board of Trustees has not agreed that all final zoning issues for this sub-development have been resolved. The original zoning resolution that was past and recommended to the Board of Trustees that was approved, the particular qualifications or requirements that were mentioned in the Zoning Commission's recommendation and accepted by the Board of Trustees has never been met still not met and there is no evidence that it is there that satisfies them that it has. Connie Klema asked Dallas Maynard if that is the Trustees interpretation of the zoning of Longwood Crossing Section 2. She is asking his interpretation not theirs.

Exhibit B is a letter from Richard Connie, project manager for Maronda Homes to Connie Klema dated May 13, 2005 with an attached bond to construct the emergency access for final plat recording.

Exhibit C is the minutes from the Licking County Planning Commission meeting on May 23, 2005 with Gary Burkholder and Paul George present. The meeting was regarding Longwood Crossing Section 2. A motion to conditionally approve the final plat application for Longwood Crossing Section 2 in Etna Township with one condition being a performance bond will be required for all portions of the site's construction that are not complete when the applicant wishes to record the final plat. All members voted yes and the motion carried.

Exhibit D is a letter from Richard Connie, Project Manager with Maronda Homes dated August 10, 2005 addressed to Paul George of Etna Township with a copy of Emergency Access Bond, emergency access plat, letter from Southwest Licking Fire Department, and copy of the recorded Longwood Crossing, Section 2 final plat.

Exhibit E an email from Brian Bosch with ODOT District 5 to Connie Klema dated September 7, 2005. The email stated that ODOT does not have any jurisdiction outside of the US 40 right-of-way. Therefore, you may do whatever work is needed outside of the right-of-way of US 40 in preparation of receiving the ODOT permit (this happens all the time). The point of access, the existing residential driveway is a legal point of access. ODOT D5 in coordination with ODOT,

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~~Hold~~ Central Office is processing our permit which will allow you to upgrade the gravel driveway to a paved driveway and associated work. The permit will not be for a new point of access, but to only upgrade the existing legal point of access and to pave it.

Exhibit F Zoning Map of Etna Township showing Longwood Crossing as a PUD. Dallas Maynard stated it is a PUD.

Exhibit G Longwood Crossing Section 2 plat map recorded 7/27/2005 and bonded.

Exhibit H Letter dated December 18, 2002 from Ty Yoho with the Licking County Engineers office to the Licking County Commissioners stated all the improvements to Watkins Road in regards to Longwood Crossing Section I are in accordance with agreements with Licking County have been satisfactorily completed. Connie Klema stated that on December 18, 2002 the Watkins Road turn lane improvements that were not completed before have now been completed as of December.

Exhibit I Longwood Crossing Section 1 plat map recorded February 25, 2002.

Connie Klema stated that the plat of Section 1 was approved and platted in February 2002 but not until December of 2002 were the turn lanes completed. The subdivision was platted but not completed and bonded and the bond released when it was completed.

Exhibit J A letter from Maronda Homes, Richard Conie to Marvella McCluskey, Licking County Commissioners dated April 16, 2003 requesting the return of the irrevocable standby letter of credit no 2002-07 issued on February 13, 2002 as this project has been completed.

Connie Klema stated that regarding Section 1 a zoning was approved in order to then record a plat that was recorded in February 2002 and a bond issued for the improvements that were to continually be done in that area, so there is almost a years time where the plat is recorded but all the improvements are not completed but are bonded and once bonded and completed the bond is released.

Exhibit K Zoning Permits issued for Longwood Crossing Section 1. These were issued 5-24-02 after the plat was recorded and the bond was posted but not before the improvements were completed. Total of five permits were submitted. All the permits were zoned as PUD.

Connie Klema called Lucas Haire with Licking County Planning Commission as the next witness. The Licking County Planning Commission has the authority over subdivisions in Licking County, regulations require the Licking County Planning Commission to review and approve all subdivision final plats, and review zoning prior to being approved by the townships. Lucas Haire stated the Licking County Planning Commission can not approve a plat if it does not comply with the township zoning resolution. Connie Klema stated that she has presented evidence with Longwood Crossing Section 2, a bond was posted for emergency access and a plat was recorded. Lucas Haire was present at the time the plat was approved and it was approved with some conditions, and a bond was posted for Longwood Crossing Section 2. He was aware the plat was recorded. In Licking County for a Subdivision that have a zoning and then have been platted are permitted to transfer lots as soon as the plat has been recorded. It is typical to apply for a building permit to build whatever is permitted in that zoning district.

Connie Klema called John Singleton, Fire Prevention Officer with West Licking Joint Fire District as the next witness. John Singleton is familiar with Longwood Crossing Section 2 and the emergency access.

Exhibit L A letter from John Singleton, West Licking Joint Fire District dated April 27, 2005 to Connie Klema regarding the emergency access road to US 40. The letter stated that the emergency access road meets the requirements of the Fire District and they find it to be acceptable pending approval of Etna Township and the Licking County Planning Commission.

Chairman Holloway stated for the record Exhibits A – L have been and accepted.

Connie Klema closed stated that Section 2 of Longwood Crossing was zoned prior to any submittal of application to file its final plat, it was zoned as a PUD on the zoning permit applications, the zoning permits in section 1 were granted even though certain improvements required were not completed and they were bonded. In Section 2 an emergency access and other

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~~things that have been required for that conditional approval that are either under construction or~~
 Held
 have been bonded. That plat has also been recorded, that plat and zoning are in effect and yet Mr. Maynard has denied zoning permits based on the fact that the township Trustees have issues with the zoning. Connie Klema referred to the text in our own code that says the duties of the Zoning Inspector is to make the determinations and judgments of whether or not the zoning is applicable to the site and what the requirement to that site are and whether that application is in conformity with that. The township Trustees have no power over the denying or the granting of the zoning permit.

Chairman Holloway recessed at 6:50 p.m. At 6:56 came out of recess, all members present.

Dallas Maynard, Etna Township Zoning Inspector presented the minutes from the Zoning Commission meeting on May 3rd 2000. Mr. Pabian moved the commission recommend the approval of the PUD Zoning contingent on the granting of the Route 40 access by ODOT and with the easement for emergency access in place and usable from Lots 69 and 70 to the edge of Route 40. The motion was seconded by Mrs. Hagy. Passed 4-0. Trustees meeting on July 17, 2000. Mr. Taylor said the developers have done a good job of revamping things. Mr. Taylor proposed Resolution 00-07-17-2 to accept the recommendation of the Etna Township Zoning Commission for the Community Development Corporation, Longwood Crossing, (located at the northwest corner of Watkins and National Roads) to rezone from R-1 and LB to PUD. Costlow seconded. Passed 2-1. Dallas Maynard stated the intent and purpose of the original resolution was to be and it was passed by the Board of Trustees that the easement for the emergency access to be in place and usable from Lots 69 and 70 to the edge of Route 40 in May 2000. Connie Klema stated that the intent and obligation has been taken on by Maronda last year in October when they were seeking a means to record their plat and identify the fact that the emergency access was to be a part of that. They made certain the easement was in place, it was identified with a title search. ODOT originally said they would not allow the second access through that easement, but ODOT did finally agree to the fact that they could use the access point that was part of the easement. On May 23, 2005 the Licking County Planning Commission meeting they had a plat that could be constructed in accordance with the intent of the original Commission and Trustees that approved that zoning and they provided a bond, approval of the easement, construction drawings, and that night the county accepted the plat for approval with the condition the access be constructed and in accordance with the plans they had at approval. Dallas Maynard stated that from May 2005 to September 7, 2005 when he denied the applications for Lots 41 and 46 was there any work accomplished towards establishing and constructing the access for Section 2 out to Route 40. Connie Klema stated they had begun, the bond had been posted which gave the applicant one year to proceed and complete all the improvements just as in section one when the left hand turn lanes had not been completed when it was recorded and zoning permits were still granted. In mid summer the applicant, Maronda Homes Inc., to inform the property owners with the easement going over their property that they would be staking out the access and also putting in, construction of the access easement. Connie Klema was contacted by Rachael Siddens and told not to contact the Murphy's because of the illness of Mr. Murphy and they apologized and said they would send the plans to their house and not address that anymore. They began efforts but were told to be very cautious how they move forward because of the illness and all of what was going on in the Murphy's lives at that time.

Connie Klema stated that the requirement was that an emergency access be included to Route 40 and as in the construction of the Subdivision that is outside the scope of the township, the County then comes in and requires that the zoning is recognized and accommodated and that the construction of those improvements are done in accordance with the Licking County Subdivision Regulations. Dallas Maynard asked Connie Klema if she agrees that the recommendation was that the granting of the approval was continuant upon the granting of the Route 40 access by ODOT with the easement for the emergency access in place and usable. Was that in place and usable on September 7, 2005? Connie Klema replied it was not required to be usable as of September. On September 7, 2005 they applied for permits after bonding the emergency access and begun construction which is permitted under the Licking County Subdivision Regulations. Just like when they bonded the turn lanes and were granted permits.

As of October 13, 2005 there has been staking out and clearing. Dallas Maynard submitted two photographs for the record. Exhibits M and M1, the photos are of Deer Path Ct North and Deer Path Ct. South. The pictures verified staking and clearing. The photographs are dated

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~~10/15/2005. Dallas Maynard stated that the original resolution which was a zoning resolution~~¹⁰ and approval by the Board of Trustees that it was to be in place and usable. Looking at those pictures is an emergency access usable there. Connie Klema stated that he is referring to a Zoning Commission's recommendation which is not the zoning. Zoning is not confirmed until it becomes before the Board of Trustees, there recommendation is considered by the Township Trustees and then is either approved or denied or approved with conditions.

She stated for the record that Dallas Maynard does not have the complete record of proceedings for the Township Trustees. The final zoning discussion lasted for two different meetings. In accordance with that they did pursue the emergency access construction drawings, confirmation of the easement, negotiations with ODOT, the fire department, and confirmation with the County Engineer that the access easement is there, available and could be constructed. They then bonded and it is now in the process of being constructed and been delayed only because of the fact that they have been told not to bother certain

people that the easement goes on their property. In no event has it now been pursued and it is bonded. In accordance with the subdivision regulations lots can be sold, it can be transferred, houses can be built. Dallas Maynard asked Connie Klema if there is a good reason why the emergency access has not been completed? She believes it has been it has been designed, it has been bonded, and efforts to begin construction.

Steve Holloway stated for the record a copy of the Zoning Commission meeting on May 3rd 2000 and the Trustees meetings on July 6 and July 17th, 2000 were given to Mr. Maynard, Ms. Klema, and all Board Members and one for the township records.

Rick Cox asked if the emergency access is because of the flood zone that separates Section 1 from Section 2 in the event of a flood or high water situation. Do the plans show that the water would be above the road and deny access to the fire department? Lucas Haire stated to the best of his knowledge the culvert that goes under the road will pass the one hundred year storm, that does not mean that water will never go over top of that.

Steve Holloway asked Connie Klema if she sees the possibility of the access being contested through the other property that you are going to have to take it through. Connie Klema replied they have the legal right to go through that property. I hope not, no. Steve Holloway asked again, you do not foresee it being contested? Connie Klema replied she has not had anyone contact her. Steve Holloway asked her if she has spoken with Mrs. Murphy and Connie Klema replied she was advised, told not to. Connie Klema referred to the Trustees minutes from July 6, 2005 on page 0279, Mr. Reynolds referred to an easement that was granted a number of years ago that provided vehicular access along of the front of the Murphy property that access easement was granted to the property owners.

Chairman Holloway read from the minutes from the Zoning Commission and the Trustees meeting as previously stated in these minutes.

Connie Klema stated that Maronda owns the easement through the Murphy property. The access to this easement was granted several years ago, prior to Maronda purchasing the property and it gives the right of access for whoever owns the property through the front of the Murphy property out to Route 40.

Rick Cox asked if it is currently passable for an emergency vehicle. John Singleton replied negative.

David Goll asked why it has not been completed the access is because the township has asked you to wait because of the illness with the Murphy's? Connie Klema replied they were told not by the body of Trustees but by Rachael Siddens in a phone call not to bother them at this time, we were then told at a hearing when she came to question why the zoning permits were not being granted I asked the township Trustees what issue there was and they mentioned the emergency access. Rachael Siddens again said that the Murphy's were too ill to be discussing this matter and had been very upset.

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~~Connie Klema stated the difference between applying for a zoning permit to begin construction of a house and applying for an occupancy permit. By applying for a zoning permit it permits you~~

^{Held} to begin construction of a house it does not permit you to occupy it. They have not asked to occupy any house. Steve Holloway asked if she was contending that with the evidence she presented today that if those houses were built today that you could not apply because the access is not built yet. Connie Klema said for the record that, she believes they have a right to get occupancy permits as it is now. I believe my client would be willing to say that they won't request an occupancy permit or you can not grant one until the emergency access is in place. Steve Holloway stated to Connie Klema that they would be willing to put in writing in an agreement that the house will not be occupied, no homes would be occupied in Section 2 unless that access is paved to the fire specifications, done paved and ready to use. Connie Klema stated that is what they said and the night of the Trustees meeting, they made that offer. She can not give that authority here because she does not have her client here.

Rick Cox asked John Singleton if he had a safety concern during the construction period. He stated they have had several EMS runs in developments when under construction. Has there ever been a time that the access has been blocked where you have needed a second access to get in. He stated several times; yes the streets are blocked by trucks, dumpsters, etc. Steve Holloway asked if he felt that was more of a concern then having a turn lane installed. He replied yes, anytime when you are talking about something that directly to life safety, to get to the scene of an emergency.

Craig Wilson lives west of the Property involved. His drive way approaches the fire access. He has never been contacted in any way about this fire access. The easement that he sees comes access the property from east to west in the width of thirty feet to almost the Murphy's property line, it comes about eight feet short. Unless ODOT allows them to move his entrance considerable to the east a fire truck will never be able to make the turn that they say is necessary and still avoid the properties that do not have the easement. The easement they are attempting to use runs an east to west across the Murphy property, thirty feet in width directly north of US 40 easement and extends over about eight feet short of Murphy's property line. Craig Wilson owns the first twenty feet east and west and additional easement from Murphy for access the next twenty feet. He owns the property that resembles a flag. Steve Holloway stated they go over Murphy's driveway into your property. Craig Wilson stated the easement does not allow for the radius turn that they require. Steve Holloway asked if he was going to contest this. Craig Wilson replied he is sure Mrs. Murphy will. He has not formed an opinion yet. Steve Holloway asked John Singleton what the radius is needed for a truck to get in. He replied the outside turn radius is 48 feet inside turn radius is less, he does not know the exact number for the inside turn radius. They did look at that when looking at the drawings and they can make the turn. Connie Klema stated that they only need the twenty feet east and west, to the south is the ODOT right-of-way. She is within the easement. She does not know if they go into his property. Craig Wilson stated the easement does not cross his property. Connie Klema stated there are two different easements. Craig Wilson stated one for him to use Murphy's property and one for you to come across east west, most of the way it falls short.

Steve Holloway stated he has a concern that if they contest it how long will it take to resolve. He is concerned that the houses could be built and occupiable and you have stated that it is your belief that these houses can be occupied with that being complete.

Steve Holloway stated for the record that the July 7th 2000 Trustees and Zoning Commission May 3rd 2000 minutes and July 17, 2000 Trustees minutes are now in the record. For the record the quit-claim deed was presented as Exhibit N from Craig Wilson.

Jeff Johnson asked Connie Klema if that is a usable easement. She replied yes.

Steve Holloway stated he feels the issue is what is in place and usable. What means in place and usable.

Cheri Rogers stated is in place in usable to grant the zoning change or in place in usable to grant construction permits?

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~~Held~~
~~There are two access points in Section 1 and only one access point in Section 2. Connie Klema~~
 stated that they only needed two access points in a subdivision. They had a discussion on the access points from Longwood. Because of health and safety the third access is needed.

Dallas Maynard stated that he did not recall ever issuing zoning permits in a subdivision that did not have approval from everybody from the zoning office down through the Licking County Planning Commission and so on. Section 1 had been approved by everyone and to everyone's satisfaction before permits were issued. Dallas Maynard asked Connie Klema if the Zoning Office is on the Plat for Section 2. Connie Klema replied that all the pertinent parties signatures are on the plat but the township Trustees is not there, nor is the zoning office. Dallas Maynard read from the Licking County Subdivision Regulations regarding the approval of plats and subdivisions, Section 15 and read from Section 33.67 Recording of Final Plat. Section 33.65(2) additional information required Item D is the required statements and signatures to be affixed on plat per see appendix II. Appendix II stated signatures that are to be affixed on the plat, it mentions to be in complied with all existing zoning etc. Dallas Maynard stated the point he is making is this plat that was shown to him tonight was never presented to him by Licking County Planning Commission or by the attorney for Maronda Homes or any other entity. Licking County Planning Commission did not follow their own rules. Dallas Maynard asked Lucas Haire why it was not presented to the zoning office. He stated that he believes the signature line was not put on there and it was an oversight of the Director to sign that without the townships signature on it. Lucas Haire verified that he was aware of the minutes. The township is invited to all of the TRC meetings. They were in attendance of the TRC meetings. It was an oversight on the Director to sign the plat without the township on it. It is not required by O.R.C. that the township sign the plat but it is required by the LC Subdivision regulations. He feels the book should be followed; it is our responsibility to follow the regulations. Connie Klema did attempt to amend the plat for the township to sign and they would re-record the plat. Both Dallas Maynard and Paul George stated there is no need to do that. A bond was provided by law for property guarantees. When Licking County Planning Commission approved the final plat, Gary Burkholder and Paul George were there they made no objections to the filing. Paul George stated they had been working with him to make certain we would have a good emergency access and he was fine. That does not appear in the minutes but it would be on the tape. Dallas Maynard stated that when Connie Klema asked for his signature he has never signed off on a plat without review. He would not sign it unless he was satisfied everything was complied with.

Steve Holloway summarized we are back to the same question, how to interpret in place and usable. Does it mean paved and ready to go or staked out, in process.

Jeff Johnson asked John Singleton how many houses built would make it an issue for him, just one? The fire code any subdivision greater than 14 it requires secondary access. If you can drag your hose across the lot opposed to being a thousand feet back, each situation would be different. David Goll asked how many accesses do you consider being in Section 2. Their code requires which became effective January 1, 2002; requires a minimum of two access points to all developments. Phase two does not meet the fire code requirements right now, without the access.

Steve Holloway explained that we have 30 days to make a decision. We can deliberate in private, this is an adjudicatory hearing. The decision will be made in public.

Cheri Rogers stated that Section 1 is complete. Why were Section 1 allowed to be constructed without the emergency access through the Murphy Property. Why does it now become an issue? Dallas Maynard responded Section 1 had already been signed off and put in place when he came on board. He can not answer for why they issued permits. Section 1 did have two access points. The fire department caught that Section 2 did not have two emergency accesses.

Steve Holloway has the safety and welfare of people as his concern. It could be done in 90 days. He feels there is more economic reasons that they just want to get going. That is his opinion to the board.

Connie Klema would like to submit a post hearing brief.

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Jeff Johnson moved to table the adjudicatory hearing. Jeff Johnson withdrew his first motion.

Jeff Johnson motioned to adjourn the adjudicatory hearing. Goll seconded. Roll Call: Jeff Johnson, yes; Cheri Rogers, yes; Steve Holloway, yes; Frederick Cox, yes; and Dave Goll, yes. Passed 5-0.

The Board of Zoning Appeals will meet on November 3rd, 2005 at 6:00 p.m. to make their decision.

Mr. Holloway adjourned the meeting at 8:45 p.m.

Laura Brown

Laura Brown, Clerk

Approved as read _____

Approved as corrected/amended *SMA* _____

SMA 11-14-05

Steve Holloway, Chairman