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The Bainbridge Township Board of Trustees met in special session virtually on October 16, 2020. Those present were Trustees Mrs. Kristina O'Brien, Mr. Jeffrey Markley, and Mrs. Lorrie Benza. Mrs. O'Brien presided and called the meeting to order at 9:00 A.M.

The meeting was a virtual Zoom meeting.

Those present in person: Mr. and Mrs. Ted Otero and Mr. Jared Flynn.

Present via Zoom: Mr. Tom Fitzsimmons

Mrs. O'Brien stated that the board is meeting today to talk about Proposed Zoning Amendment Z-2020-4 which is the zoning amendment to rezone the property at 16832 Chillicothe Road, it has two permanent parcel numbers #02-262000 and #02-261900 from Residential R-3A to CB. She said the Zoning Commission took this on and the Planning Commission for the County also suggested to approve it and the Zoning Commission so it came to the board and we held public hearings regarding the rezoning. She said on August 24, 2020 we held our first public hearing, we had a lot of commentary in the affirmative, a lot of commentary in the negative, that whole public hearing you can find it in our minutes, that was August 24th. She said at that time the board received differing information regarding the process so we continued that hearing, we actually continued it twice, we continued it at our meeting that day and on September 14th we continued it again and we opened hearings for some comments and had a conversation and had the meetings and on September 28th we realized that we had pretty much exhausted all comments, we sought legal advice, further affirmation and whatnot so on September 28th we closed the public hearing and per statute we had 20 days to make a decision which brings us to today which is October 16th so that is why we called this meeting specifically on this issue. She asked for a discussion.

Mr. Markley said we should hit the talking points and he doesn't know if Mr. Fitzsimmons wants to say something.

Mr. Fitzsimmons asked if we are in public or executive session.

Mrs. O'Brien said we are in public.

Mr. Markley asked Mr. Fitzsimmons if he needs to say anything.

Mr. Fitzsimmons said he doesn't believe so unless the board would like him to.

Mrs. Benza told Mr. Fitzsimmons that he has been very helpful in giving us a lot of background and a lot of research and we appreciate that. She said this has been a difficult question for us to get our heads around so there has been a lot of guidance and we appreciate it.

Mrs. O'Brien said absolutely and thanked Mr. Fitzsimmons. She said like she just said when she went through the framework of timing and what brought us here, we have had months of discussion with the developer and if you are not aware it is all public record and Mr. Ted Otero was kind enough to run through the process and when he purchased the property meeting with the residents, putting together the HOA declarations so after months of discussions with the developer and affected residents, the Township is committed to the proposed development. These discussions have resulted in a general framework of obligations and restrictions for development of the parcel that protect the affected residents while still allowing for effective use of the parcel and positive economic development for the Township. She asked if it is a parcel or still two parcels.

Mr. Otero said today is the 16th so they signed it yesterday so he is going to pick it up.

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Mrs. O'Brien said the big interest here is to protect the affected residents and allow effective use of the parcel for positive economic development for the township. She said unfortunately through this process, the township is limited to only the powers that are expressly set forth in the Ohio Revised Code which have historically reflected a general view that townships need outside assistance to govern. She said other townships inside and outside of Geauga County have taken a different approach where the developer records certain deed restrictions and the township grants a rezoning request. Both the county prosecutor's office and separate outside counsel hired by the township have advised against that approach for this development. If the deed restriction approach were taken and someone were to successfully challenge it, the restrictions would be erased leaving the affected residents with no protection. The possibility of this result, regardless of the likelihood, is unacceptable to the Trustees. The good news is that the Ohio Revised Code specifically permits townships to settle zoning litigation by entering into a Consent Judgment Entry and that allows for rezoning variances granted by the township in exchange for restrictions and other obligations of the developer/property owner. Upon denial, if that happens today, the applicant could file a suit in the Geauga County Court at which point the parties would be free to negotiate a mutually-acceptable Consent Judgment Entry. This process requires approval of the agreement by a judge and permits third parties to object to the proposed settlement. This is a much more transparent process and she knows you are on board with that. The CJE (consent judgment entry) may contain the same restrictions and agreements that would be used in the deed restrictions approach but would be carried out in a more transparent and legally-enforceable fashion. While the township supports the proposed development, we have to work within the statutory framework created by the Ohio legislature, for good or for bad. She said that is pretty much what we have come up with.

Mrs. Benza said she really appreciates the amount of research and legwork that all of the attorneys have done, we looked into a few things and the law is not real clear, this is the information that we have gotten, there are arguments to be made on both sides and she thinks it is the lack of clarity that poses a risk for the adjoining residents and also for the township in the future, that is just a risk and it is very unfortunate. She said we have been talking, Mr. Otero, she thinks you started coming to us individually four years ago, something like that, and you had a great vision and she thinks we were all really stoked by the vision that you see for that area and we talked about repeatedly there are concerns, it is a highly travelled intersection and she thinks we had somebody who told us she had read a report that it is probably the highest volume in the entire county so those are things to be aware of and you worked really hard to address those and we've had discussions, Mr. Markley has had discussions with the folks from ODOT and again really appreciating the legwork and the cautions and the precautions that we have tried to put in place and she is hoping that those don't go away and because the law is not clear she thinks we are little reluctant but that doesn't mean that we are in any way less enthusiastic about the possibility and she hopes that is clear, she thinks it is unfortunate but that doesn't mean that our enthusiasm and excitement for the idea has in any way diminished.

Mr. Otero said he cannot say that he is not disappointed.

Mrs. Benza said we (Board of Trustees) have not taken a vote yet.

Mr. Otero said ever since we started this process regardless of the township, the deed restrictions are in place with the homeowners and just on the merits of our application he feels like these lots are suitable for the rezoning 100% so that is kind of his feeling and he understands the board's position, like he said in the past meeting there is always going to be risks with anything and we can't mitigate all of the risk out of it so he doesn't think they are the ones that brought up the deed restrictions they might have done that in the first place but again he feels like our application, those lots in those locations are not going to have houses on them and they are suitable for commercial development in a CB district and he thinks his vision hasn't changed from day one, he has said the same thing that he expressed to the trustees initially and they are going to follow through with that and that is our intent and if we have to go this path then we will go this path and maybe the only person that benefits from this is Mr. Flynn.

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Mrs. Benza said she doesn't think he is really thrilled about this.

Mr. Otero said it has been a lot of time and energy and he thinks he would have gone down that path a lot earlier if we would have known that that is the way we were going to go in the end so hindsight twenty-twenty.

Mrs. Benza said she does have to apologize for that, we know that the same approach has been used in another township in Geauga County and we don't know really what has changed and unfortunately again it is that lack of clarity and that lack of direction that puts us in this awkward situation.

Mr. Flynn said from the beginning, the Otero's collaboration with the homeowners, with the township, with all of the other important people within Dunkin Donuts, Key Bank etc. to do so it took a lot of time and effort. He said when anyone was engaged in this process and engaged with Oteros they were in support of this and he can't echo enough Mr. Otero's point that the application on its face screams that this property should be rezoned. He said the zoning is from the fifties, lots changed in Bainbridge, lots changed around and the deed restriction idea and he disagrees with the legal position of the township respectfully and he thinks you can look in your own township and realize that what you might be doing is setting a precedent and questioning some of the other deed restrictions that have been filed for properties but the deed restrictions were a response to the lack of collaboration in other parcels next to ours, they have nothing to do with our parcel, if the "Green Awning" across the street had the same collaboration that we did and went to the community we wouldn't be talking about architectural review because what they put on paper and what they have shown on video is amazing and they will follow through with that. He said if the Dunkin Donuts and the traffic issue and the drive through there was about collaboration they would have had a through street onto E. Washington and through Key Bank and there wouldn't be the traffic concern there so our project was about fixing those errors and fixing the zoning that preceded us, it had nothing to do with zoning on the property and that is the unfortunate part here and we are going to continue to collaborate and put together a great project here but the township needs to be proactive moving forward because they can't rely on consent judgment entries, they can't do that for every single parcel in this township because you are going to end up with some bad zoning, bad projects like the "Green Awning" across the street or the problems with the traffic so you guys have a tough role, he understands your legal advice has been provided that you feel questions this, he can't convince you at this point that that is wrong but he would echo the fact that you need to be proactive in your zoning and look for collaboration but look for unique ways pointing in the developments.

Mr. Otero said it was always on the table when they first initially met, here are the two options of where you could go but he didn't want to go down that route and now we are almost being forced to go down that route especially in the community and especially when there is such high support for it from an economic standpoint as well as for the community and they wanted to avoid that but on the next development he does, right, if he is given those two options, right so you've got someone in front of you that wants to collaborate and wants to do the right thing yet we are going to be made to look in a bad eye and have to sue a community that we like and we love being here.

Mrs. O'Brien said she is glad you (Mr. Otero) stated it just that way because that was the struggle as all of this has commenced and we have talked about it in executive session and that is a tough position to be placed in, this has been done in Geauga, you have proposed it but we have received guidance that we can't go that direction now, that is not the future, that is a lesson for future zoning and whatnot and it is unfortunate but when you look at it from the township's view albeit the risk is low, there are risks so unfortunately we have to follow that direction and she knows you sense that you don't want to sue your community you are in but she thinks we have been very clear with all of the meetings, all of the public hearings all of the comments that that is the way we have been directed to have this go.

Mrs. Kelly Otero said you would only move forward if there is zero risk in your eyes.

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Mrs. O'Brien said it is not risk, for her personally.

Mrs. Otero said you are saying it is so small, it is so much more positive.

Mrs. O'Brien said we put these in place and we have been told they are not enforceable by counsel, we all go away, you guys go away, someone else, John X buys the property, you've got a board that doesn't care what goes on up there, John X buys the property, he said these are not enforceable and you knew they weren't enforceable and then whatever happens up there happens.

Mr. Otero said but there are deed restrictions on the parcels.

Mrs. O'Brien said she agrees, correct.

Mr. Otero said there are restrictions on that property right and you are saying he is going to build a building and then at some point 20 to 50 to 100 years from now we are going to tear it down and build something different.

Mrs. O'Brien said no, she is saying it could happen tomorrow, that is what she is saying the risk is small.

Mr. Otero asked what about the deed restrictions that are in place right, would they sue the homeowners.

Mrs. O'Brien said you could but it is more about township enforceability, she is not concerned about that direction, she is concerned our direction for her.

Mr. Flynn said the risk is in a lawsuit and he hates to say that there are risks all around and he thinks we provided you a no risk proposition or a very, very low risk proposition and he understands you have gotten various interpretations or understanding based upon the Prosecutor's office and who was looking at it at the time but you've got precedent in this township, you've got precedent in northeast Ohio, you've got precedent in Ohio where this is done and he hates to see a decided decision on this come back in the future and he thinks we will get this project where it needs to be at the end of the day because we have taken that approach of collaboration and he thinks it is a good project.

Mr. Otero said he is not going away but if we all agree that this thing is good for the community, right, and it is an outstanding project, right, and if he wasn't as determined you would be shooting down something for the community and if someone didn't want to go this other route so if he wasn't as determined as he is someone might walk away and then you wouldn't have that.

Mrs. Benza said if you weren't a local person who has built the kind of reputation and character that you bring and she thinks that is something as well that makes this a very difficult and uncomfortable position in which to be and she apologizes for that. She said when you (Mr. Otero) first sat down with us individually she will never forget what you said to me was "why do I want to do this because if I want to take my wife to a nice dinner I have to go outside of my community and I don't want to do that" and that just resonated with her so much and she appreciate it and the folks who have contacted us your commitment rings so loudly and so clearly in this community and she thanks you for that and again she hopes you understand that is why and she thinks, at least she hopes you get the sense of how much we want this to be a workable project and it is very unfortunate that we find ourselves in this position.

Mr. Otero said then all he asks is that we go through it quickly so we don't delay this any further and we can work through this as a team and then talk a little bit about that and maybe ensure that we get the items that are in there without putting more restrictions on this property, that is his goal and that is the key.

Mr. Tom Fitzsimmons said if he could speak in defense to the extent that that word applies of the trustees being one of the people who was providing the legal counsel he would say from the get go that the trustees wanted to take the approach and follow the path that was already set out, the advice from the Geauga County Prosecutor's Office who is

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statutorily kind of the first step in terms of township legal representation, they said it is not an appropriate approach and we can agree or disagree with that result but that was their ultimate opinion so he was brought in to kind of look at the situation and he wants to say while he thinks back, of course there is any risk in any sort of approach, he doesn't think it is fair to say we are looking at the same amount of risk in both of these approaches because unfortunately as was said earlier there is a provincial approach to townships in the state of Ohio and they don't have the flexibility that all rural townships have and they don't have the same flexibility that cities have and so where you might be able to take several different approaches, here with townships you are limited literally to what is set forth in the code so just on behalf of the townships he doesn't agree respectfully that there is the same level of risk in taking an approach that the county prosecutor has advised against and is not set out in Ohio Revised Code versus an approach that is explicitly set out in the Ohio Revised Code. He said he doesn't disagree that that approach breeds a level of discomfort and a level of adversarial nature that isn't necessary but it is what it is unfortunately and so until the law changes and until the township is given the tools to do these sorts of things correctly they are obligated to work within that framework and so it is unfortunate and it is unfortunate that we are at this point but make no mistake, the trustees' opinion and the trustees' view from the get go and his conversations have been this development needs to happen.

Mr. Flynn said, Mr. Fitzsimmons, just to clear up he wasn't referring to the difference between your opinion and the county prosecutor, he was referring to the change in the county prosecutor's opinion at least.

Mr. Fitzsimmons said he understood.

Mr. Flynn said okay.

Mr. Markley said he has been taking notes he will get into some of this and it may appear as if he is starting out harsh or harshly but he will end on a very positive note. He said the objective is that Mr. Otero had when he first purchased or considered purchasing the property was to develop it using your vision and like he said it will start harsh but we will work our way out. He said it was residential property when you purchased it, zoned residential, you knew that going in so from that perspective you were taking a risk in the hope that the township would consider rezoning it to something that you could do more with than build a home on it, that was a risk on your part. He said some call it speculation, some call it risk management, whatever, but it was a residentially zoned property. He said when we talk about a proactive approach he doesn't disagree that the township trustees and in this particular instance this group has been together for a few years now and has taken a much more proactive approach than in years past and the trustees have been very focused on that aspect of it from a zoning perspective, certainly on economic development, we are definitely focused on that as a route to take our township beyond a sleepy little community at 422. He said the reason this was probably not on our radar, this particular site was several, it was residential property, it was under HOA, under Dalebrook and it very possibly could have remained a greenspace for a long period of time to come as a natural buffer between commercial and residential so perhaps we could address it, maybe we should have addressed it but our focus has been elsewhere in other areas of the community that are much more vulnerable and so we looked at it from that standpoint plus the traffic designs, do we want to consider any type of zoning for that, we look at all areas of the township right now that are undeveloped and try to figure out whether they are suitable for development or for protection, as is, or in some form of residential component so we kind of look at all of those things. He said as to the multiple routes to take once we've got and as they think about this, you are persistent, that is an awesome quality, and you have developed a plan that made us go hmm, you did do that thinking on the process, there were multiple routes, there certainly was the rezoning route, there was the BZA route in hopes to get a use variance and change things, as you look the rezoning opportunity there was the opportunity for a PUD rezone or do it conventionally consistent with the adjacent community or area which is CB. He said we had our discussions about that, we sat in the room together, we collaborated, we talked about what the best approach was and you chose to go that route given whatever feedback you were given at the time, right, he doesn't remember if Mr. Flynn

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was here or if Mr. Markowitz was here, he doesn't remember who initiated that direction but he still remembers sitting here thinking he doesn't know if this is the best choice but he is going to go along with it because you guys were excited about it and you thought, you were being told that this might be the best way to go and he said okay, let's go that route. He said he wasn't sure, go to the BZA, get denied and let's get to a negotiation at that point because you probably were not going to get a use variance so let's go that route but this is the direction we went so you guys did all of your homework you spent years on Dalebrook, you dealt with it and got everything worked through and you got to a point where Dalebrook for the most part was comfortable with where you were at, you went to the Zoning Commission, you did the public hearings, people were able to weigh in, we had our public hearings, people were able to weigh in, we were very much able to hear from the folks and we got to hear a lot of concerns across the spectrum, he doesn't see any of that as a waste of time, he thinks the entire process that you went through, while maybe it could have been a bit faster, he thinks all of this led to a point where we fully understand the project and fully understand your concerns and fully understand your passion, you fully understand our concerns, you fully understand our commitment, you fully understand Dalebrook's concerns and particular residents that maybe live super close to that potential property. He said given that we have vetted this seems like forever, he knows you feel that way, we are now at a point where we can go very quickly to your concerns about you hoping this goes quickly, he doesn't think we wasted any time other than hearing from everybody and in this particular situation given the concerns that we all have, whether they are valid or not, architectural concerns, not your problem, traffic not necessarily your problem but potentially could be if you introduce another business that draws more traffic but you demonstrated in a traffic study that there are solutions and buffering of the residential community being able to separate that commercial activity from the residents, the backup beepers, the early morning pickups, the clanging of the dumpster, whatever, we are going to be able to ameliorate that and in the end your efforts have gotten us to a point where we understand your project so well that he thinks that last statement that was said by Mrs. O'Brien, if he is not mistaken here, the township supports the proposed development but it is unfortunate that we didn't get it to where we wanted as did the community just north of us using a very similar process but we were told basically nothing so given that note we have the opportunity now through our due diligence to go a different route and all of the work you have done thus far will not go to waste, the ground work is there, the work has been done, much of our thought process has been developed and we should be able to facilitate this really quickly and in fact he would argue that this will go more quickly than had you gone the PUD route because we would have to figure out how PUD works, go through that aspect of things and then get us into the discussion point and that we would be having for the first time so we have that and he would say the BZA would have provided, maybe a slightly quicker route, maybe but here we are with this opportunity and with the concerns that the board shared not approving the rezoning today as is but going with the ability to discuss a round table, the final terms of this deal of what you want to build and guarantee the township the protection we receive should be extremely sufficient.

Mrs. O'Brien thanked Mr. Markley and said that was a great breakdown of everything and she said they received so many emails of support and that is great, a lot of community support, a lot of excitement, it is a beautiful design, just beautiful but like anything and in any business and in government you only hear when things are going bad so she doesn't know if Mr. Markley or Mrs. Benza have received, she received phone calls and comments about the traffic and how can this happen and she is so well versed as you just said in this project that so here is a suggestion here and this traffic lane will be here, the driveway should be shared and it is going to eliminate this and alleviate that to the point where the residents that she is hearing from are okay, but that corner is a mess. She said she drove it yesterday coming up E. Washington trying to get to Heinen's and everybody was packing on the part of the street that you are not supposed to be on, it is just difficult but it has given a different reference point for her and really you are right, we know this project.

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Mr. Markley said he had three people come into his office, he invited them in and he showed them the presentation booklet that you put together and said this is the project, they said that is great but the traffic. He said he brought out the site plan and shared with them what the vision is, they said oh, that doesn't sound so bad, so turning the noes into hmms, yeses or okay let's run with it. He said it has been their job for the past six months or so but we have done that quietly.

Mr. Otero said you guys have been spending a lot of time also.

Mrs. Benza said she wanted to say something in defense of our zoning commission, they also put a lot of time in this as you know, they started their public hearing, they also continued it, they had some questions and you all had discussions with them and they did ask early on about the feasibility of going the deed restriction route and they were under the impression that this could be done so again, that was a two to three month period, it wasn't until after that that we were told a different outcome and she talked to the chairman of the zoning commission and she asked him point blank had you known that this approach was going to be frowned upon do you think your recommendation would have been different and he said of course so our zoning commission really did put in a lot of energy and a lot of due diligence and a lot of homework as well and again that is another reason that if go in the negative today, we need to talk to our zoning commission folks and say guys this is in no way a reflection on you because you worked with them and they worked with you and she thinks that fits into that collaborative and the invested energy.

Mr. Markley said and presuming the denial is forthcoming we still have work to do, collaboratively we have work to do but immediately the township has work to do, not only the zoning commission to thank but also explain what it is that we intend to do, but we also have phone calls to make to some of the entities that supported your project via emails or phone calls to us, there are organizations that supported the concept and we want to make sure that they understand the direction we have to go or would presumably go and he thinks that is incumbent on us to make those phone calls.

Mr. Otero said that would be helpful because he still wants their support.

Mr. Markley said he doesn't understand how this will be received negatively for you but he understands your concerns relative to it, he has not been in that position so that is why he can't understand it completely, he is not diminishing that at all but he appreciates that.

Mrs. Otero said she doesn't want to make you guys or anybody look bad.

Mrs. Benza said you point to the Ohio Revised Code.

Mr. Flynn said he appreciates Mr. Markley going through that, he appreciates the trustees what you said here but when he looks at this and say, in the picture, he said he agrees with everything you said, the processed work, but the process was to rezone, a rezoning application which is a statutory allowable thing so we went through that, we had all the hearings, we had all the meetings, we checked all the boxes and got to the point. He said with the denials today you are basically encouraging.

Mr. Markley said we got all the way and then we met some resistance.

Mr. Flynn said you did but with the denials today if that is forthcoming, you were encouraging a developer, again, we went through all of this and you will now have this knowledge and you have this understanding of the project and we are all on the same page, but you are encouraging the next developer to come in and go the fast route, not collaborate, not do the same things and then file a lawsuit and maybe you will get it through the consent judgment or maybe you don't, it is a natural rezoning, you lose that process and what communities have done throughout the years is use the other statutory process of the rezoning, you have it in your code, you allow for that and you have public hearings and the reason you have public hearings on this, you have the process there to get us to today and

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if we are all on the same place in the affirmative and he understands the deed restrictions but again they exist in so many other communities and they are legal and there is not case law in Ohio that says no and that is the problem from his standpoint on which he talked to his clients to say no there is nothing to say we can't do this and in fact in this county we have done this in communities that is what is so frustrating and so that is where we are today but by saying okay we are going to just go this other route you are now encouraging the next developer or someone else who may not have the community's best interest to shortcut this process of getting out there in the community and having these meetings. He said obviously you have to go through some but it would just be a formality and then a lawsuit is filed and he thinks that is the frustrating part.

Mr. Otero said what he understands is that the deed restrictions weren't enforceable, it wasn't an answer that you couldn't rezone.

Mr. Fitzsimmons said he absolutely respects what Mr. Flynn and Mr. Otero are saying and understand, he lived on that side of the fence for 15 years so he knows how that works and he thinks that the frustration at the end of the day, that is either you or people who may be watching this may have with respect to the way the development happens in townships and the fact that it sets up this adversarial relationship if you take the statutory approach or the clear statutory approach is not something that the question for change or a request for change needs to go to the township, the request for change for that process needs to go to the state of Ohio as created the statutory animal of the township and there is clear case law that says that townships are only authorized to do the things they are explicitly authorized to do under the code and the other is frankly to the prosecutor's office and to the decision that was made by the prosecutor and so to the extent that there are people who maybe are looking at this and saying yes it may be anti-development but we want to protect the poor townships that don't know what they are doing from acting if we want change and it is ultimately looking to the township isn't the right approach because they can only do what they are obligated to do and the state is the only party that can change that and statutorily create the system that you are going down the road or frankly the prosecutor's office who could perhaps take a little more consistent approach to looking at this issue and so he understands the frustration from your perspective and he thinks the townships share that perspective.

Mr. Markley said two points really quick for Mr. Flynn, we are more aggressive in our proactive approach and we are going to look at that, he is not overly concerned on someone shortcutting the process let's say coming from out of town and saying they are going to develop this come hell or high water, we are not your neighbor, we are not your friend, we are not collaborating with you, we are just going to ram rod this through, you can be prepared for a fight, we will fight it. He said we have demonstrated that we will fight, Bainbridge as you know Mr. Flynn has a tremendous history in the courts and Mrs. Benza knows that first hand so if it is not something the township wants or the trustees want, it will be fought and it will be fought hard so given our approach with you, he hopes you see that there is a clear difference, he appreciates the concern relative to those coming in but that is not why he is here today.

Mr. Flynn said it wasn't so much the fact that he would expect Bainbridge to fight and fair enough over their zoning it is the fact that you lose the collaboration sometimes in that process and then as an attorney he understands what the risks and rewards and costs are to communities and to clients when you litigate, he is not saying that is where this is going by any means, he is not saying that is where the next one is going but a settlement is often times the way to go and this makes it real hard in the process that is set up. He said we can talk in theory.

Mr. Markley said we talked to Mr. Dave Dietrich about this and he gets very frustrated with this process because we all are very familiar with the terms of developer agreements and in municipalities, he is not sure about Home Rule but in municipalities the mayor and the law director and perhaps the city planner, maybe a councilman and a developer all sit in a room, they hatch out what it is that is going to work and what is not going to work, they come out, the mayor gives comments to council, council votes on it or

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planning commission or whatever and the project has a list of restrictions, conditions, upon which the developer or development phase. He said the township, as much as he has pushed to have development agreements and work with the state representatives to change that and Mr. Dietrich, a long time planner for Geauga County would love to see development agreements appear in the Ohio Revised Code, it doesn't exist so we will collaborate on every level, we are looking for ways to collaborate and he thinks your case for him will resonate as a paradigm shift in the kind of experience he has had with our legal advice, it is a paradigm shift for him recognizing that he is more comfortable getting a perspective from outside of our community at times so that he can have fresh eyes looking in, we are a conservative county but there is a much bigger world out there and the state of Ohio has a lot of experience with much larger townships than us and as a result we can tap into that experience and utilize it to benefit Bainbridge and the residents and so his paradigm shift is such that we need to kind of look beyond what is currently available to us for advice and continue looking for fresh ideas.

Mrs. Benza said she wants to expand on that real quick because she doesn't know how much you know, she spent a lot of time researching what happened a couple of communities north of us, actually reached out to them and had them dig back through their records from 2008, she had them pull from a verbatim transcript of their public hearing when they considered it at the zoning commission and at the township trustee level as well, they did a heck ton of leg work to dig up those records and send them to her which she shared with her colleagues. She said we tried to wrap our head around and this is exactly what Mr. Markley said in terms of a paradigm shift where are now, we asked specifically what was it, what changed from when that was approved, why can't we because frankly the verbiage in the deed restrictions is almost identical so we reached out and said we did all of the research, here is the product that was handed down to another community a decade ago and in terms of zoning a decade is not that long so can you help us understand what it was that changed and the answer that we were given was no, we are not going to look.

Mr. Markley said there is no reason why this wouldn't have worked, there is no case law that is against it, there is no legitimate argument why this wouldn't work so asked us what is the risk, the risk is people that we rely on for our guidance did not allow it.

Mrs. Benza said they did not get a clear answer and that is what we talked about at the beginning.

Mr. Markley said it is not your fault and it is not our fault so we are looking for our options in order to continue to facilitate something that the work you have done thus far.

Mr. Otero said maybe we need to reach out back to them to have them look at that, not for this project but for future projects.

Mrs. Benza said you can try and good luck and if you are successful let us know.

Mr. Flynn said he has spoken to all of you individually, he sees you in the community and he has spoken obviously to his clients a lot and we appreciate the due diligence you have done for this project even when given what maybe we can all agree is in an opinion that is questionable, because of that you dug farther, you looked into it deeper, unfortunately it didn't necessarily come to fruition because you have that out there and that is the elephant in the room so he understands that and he thinks his clients understand that but he does and he thinks they really appreciate the amount of legwork you have done thus far and he suspects that this is going to be an ultimate win for the community and he hopes you understand their frustration.

Mrs. O'Brien said completely.

Mr. Flynn said he has sat in this room a lot and masks and no masks and everything else in between so it is a long process and it could be short, like Mr. Fitzsimmons said it is probably up to the legislature to do that ultimately but at this point it is what it is and we do appreciate the effort.

Mrs. O'Brien said thank you.

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Mrs. Benza said 505.17 requires that 15 day.

Mrs. O'Brien said right, there is a process now.

Mr. Markley said why don't we call for a vote of the issue and then we can talk about whatever and Mr. Fitzsimmons can elaborate whatever he believes to be available to the public and go from there.

Mrs. O'Brien said normally we have a resolution but don't, we could call it a resolution, but do you want to do a resolution to approve the proposed zoning amendment Z-2020-4. She asked if there is a motion to approve the proposed zoning amendment Z-2020-4.

Proposed Zoning Amendment Z-2020-4

Mr. Markley moved to approve proposed zoning amendment Z-2020-4.

Mrs. Benza seconded the motion.

Vote: Mrs. Benza, nay; Mr. Markley, nay; Mrs. O'Brien, nay.

Mr. Markley said to Mr. Fitzsimmons, the next step that you are willing to share publicly.

Mr. Fitzsimmons asked if the motion failed.

Mrs. O'Brien said yes, the proposed zoning amendment Z-2020-4.

Mr. Fitzsimmons said his understanding from a non-attorney client privileged perspective is that if Mr. Otero and his team would like to appeal that decision, it is not really an appeal, he would be entitled to file a most likely a declaratory judgment action in the Geauga County Common Pleas Court and at that point upon filing that would kick in the ability that the township has under the Ohio Revised Code to negotiate a consent judgment entry. He said he would envision that if Mr. Otero decided to take that approach that that consent judgment entry would look very much like the proposed deed restrictions just with a different cover, an artful way of saying it, which would be a pretty quickly arrived at document at which point if that was negotiated fully, the township would be obligated to provide a 15 day notice because it would involve a rezone before the township could take a formal action on any consent judgment entry. He said after that 15 days and the hearing they would vote either yes or no to approve the consent judgment entry and if it were approved here there would be a 10 day statutory period before, after the approval, but before the document was submitted to the judge, assumed the case was assigned, for approval so you would be looking at roughly 25 to 30 days from whenever the parties were able to negotiate a consent judgment entry if that is the approach that is taken.

Mr. Markley said based on a calendar so to speak if hypothetically if an action were filed on Monday we would receive notice of that, is that how that works.

Mr. Fitzsimmons said you would receive notice and he is sure that Mr. Flynn would send us a courtesy copy and once we have notice of the filing we would be entitled to have any settlement discussion with them at that point.

Mr. Markley said following that notice we would then be able to open up discussion.

Mr. Fitzsimmons said yes, once we have a copy and he informs us it has been filed notwithstanding that we have not received a copy from the county we would be entitled to have a discussion with them, all those discussions would be inadmissible to the extent that they proceeded forward but if you filed on Monday, the 19th and the parties were able to negotiate a consent judgment entry that looked much like the prior deed restrictions by say Friday, the 23rd that would leave about a two week notice which would put it out to by his calculations November 6th for an initial hearing and again this is all subject to scheduling November 6th for the public hearing and he believes it would be November 18th give or take the 16th if you were to immediately provide the publication notice that is required before something gets to the court so he thinks it would, assuming it moved quickly and assuming

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schedules it seems like something that could be done certainly by the end of November if all of the scheduling worked together.

Mr. Markley said right around Thanksgiving. He said he also wants to confirm with Mr. Fitzsimmons that the action, if an action were taken on Monday then our meeting or any meetings we would hold would be in executive session under pending litigation.

Mr. Fitzsimmons said yes.

Mr. Markley said okay so all of those discussions would then be, we would call a special meeting and executive session 121.22(G)(3).

Mr. Fitzsimmons said there is no question that that section of the code would allow an executive session for a filed action.

Mr. Markley said he thinks we have a fairly open gap of time with the Geauga Lake issues before us right now, the next group that wants to come before us isn't until the week of October 26th and he is just saying available for meetings and again it is dependent on what you wish to do after this meeting and presuming that that is the case he knows that his time is freed up a little bit.

Mr. Fitzsimmons said from his perspective if Mr. Flynn were to file on Monday he assumes that the township would like him to continue representing them at least on this case and he would be available in that circumstance to jump on getting something done quickly.

Since there was no further business to come before this special meeting of the Bainbridge Township Board of Trustees, the meeting was adjourned at 9:56 A.M.

Respectfully Submitted,

Janice S. Sugarman,
Fiscal Officer, Bainbridge Township

Date

Date

Date

Minutes Read: _____

Minutes Approved: _____