

ANTWERP TOWNSHIP
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Office Hours:
Mon., Wed., Thurs.
7:00 a.m. – 5:00 p.m.
Tuesday: 7:00 a.m. – 6 p.m.
Fridays: Closed
Closed for lunch M, T, W, Th
11:30 a.m. – 12:00 p.m.

ANTWERP TOWNSHIP ZONING BOARD OF APPEALS MEETING
THURSDAY MAY 25, 2017
approved

Chairperson Gary Stock called meeting to order at 6:30 pm.

Board Members Present: Gary Stock – Chair, Heather Mitchell-Secretary, Ron Stoyhoff, Phil Tarchala

Guests Present: 22 including Sarah Hartman, Attorney Straub, Seaman & Allen

Motion by Tarchala, second by Stoyhoff to approve the agenda as presented. All voted in favor. Motion carried.

Motion by Tarchala, second by Stoyhoff to approve minutes from January 26, 2017. All voted in favor. Motion carried.

Communication/Announcements: We are currently looking for a member for the ZBA. Anyone interested should submit a letter to the Township Office.

Chairman Stock called the meeting to order at 6:31 pm. Public Hearing called to order.

New Business:

- A. Appeal by Jon Sytsma from decision made by Antwerp Township Board of Trustees approval of a site condominium project, Silver oaks Condominium, concerning parcel 80-02-002-002-01, generally located at CR 652 and 48th Avenue.**

Jon Sytsma: Initial site plan for Silver Oaks Site Condo has been approved by the Planning Commission and Township Board with a straight street layout that stretches for almost a mile. Alternative options have been presented to Planning Commission.

*Chairman Stock inserted that our goal this evening is to determine if something with the original process was wrong and went through what the ZBA can consider in order to overturn original February recommendation for approval by the Planning Commission and subsequently the Township Board.

Jon Sytsma: Contention is the neither the Planning Commission nor the Township Board considered how the streets are laid out and affect the adjacent subdivisions. Jon provided a map demonstrating how traffic flows might change with the addition of Silver Oaks Site Condo roads.

The existing Silver Oaks Blvd is approximately 1,000 ft. long. With the addition, the road will be approximately 4,100 ft. The addition will lend itself to increased speeds for a road that is 20' +/- . The PC and TB failed to consider the connecting streets and realize that Silver Oaks Blvd will be used as a through street. The connections to Silver Oaks and to Brownstone merely create more traffic for roads that haven't been built for such speed or activity. Within current zoning ordinance, new neighborhoods should not produce or encourage through streets and this is exactly what will happen. Original plat stubs encourage this specific issue current zoning dictates it can't do. Therefore, there needs to be a change in the alignment of the road or for the connections to be removed all together.

Whitney DeCamp: Resident from Brownstone Subdivision. Concerned about increased traffic with possibility of roads connecting. Ms. DeCamp feels there is a safety factor that is being ignored if roads are connected as many children play in the area and currently don't have to deal with high speed traffic. Also concerned about the aesthetics of the neighborhood with the roads connecting.

Jon Sytsma: Planning Commission recommended approval of the site condo unit without taking into account distance of driveways, multiple street accesses, and that local streets are arranged to encourage instead of discourage use by through traffic. The Antwerp Township Land Division and Subdivision Ordinance which has been adopted does not comply with the recommendation of approval of the site condo.

Susan Batten: Silver Oaks resident is concerned with high speed traffic along the road that would be developed with the new site condo. There are currently lots of pedestrians and without sidewalks; the side of the road is used. Introducing such high speed traffic increases the chances of a pedestrian being hurt.

Janae Resh: Silver Oaks resident and lives on the cul-de-sac property. Shares concerns over the increased traffic and potential speeding. Benefit of the Silver Oaks subdivision is the one way in and one way out. Kids riding bikes are ok as cars aren't currently speeding through, with a smaller subdivision, you know all the cars, and can watch out for each other. Additional access is not something that is wanted and the straight stretch of road isn't wanted either. Doubts that emergency vehicles would use that route for emergencies.

Susan Batten: Frustrated because they residents of Silver Oaks never received notification that a Site Condo was being developed. Just because it was a site condominium does not preclude notification.

Chairperson Stock: Unfortunately, the current ordinance does not require notification for a site condominium. The Township has heard the concern and is confident that when the Planning Commission hears that it needs to be changed, they will act.

Sarah Hartman: A site plan condominium has a legal distinction and requirements as adopted within the Antwerp Township Land Division and Subdivision Ordinance do not apply to this situation. Developers choose a site condominium path because it is simpler for ownership purposes. Planning Commission and Township Board met all legal requirements.

Jon Sytsma: The requirements need to change. Site Condos are used because it's easier for developers to come in and do whatever they want.

Question was raised as to what time meeting started. Agenda stated 7:00 pm.
Meeting adjourned at ~~6:54~~ 7:00 pm.

Chairperson Stock called the meeting back to order at 7:00 pm.

Chairperson Stock gave an explanation of the meeting. The Zoning Board of Appeals will uphold or overturn the decision made in February by the Planning Commission to recommend approval and later approved by the Antwerp Township Board of Trustees of the Silver Oaks Site Condominium based on four criteria.

1. Decision was arbitrary or capricious
2. Decision was based on an erroneous finding of a material fact.
3. Decision constituted an abuse of discretion.
4. Decision was based on erroneous interpretation of the Zoning ordinance or zoning law.

Any decisions made by the Planning Commission and/or Township Board after the February decision are not pertinent to this evenings discussion.

Chairperson Stock asked those participating to state their names.

Chairperson Stock called the Public Hearing to order at 7:03 pm.

Tammie Wood: Asked if Jon Sytsma could recap his previous responses as she had just arrived. The agenda mailed to her indicated that the meeting would begin at 7:00 pm.

Chairperson Stock offered apologies but that meetings has just recently switched to 6:30 pm.

Jon Sytsma: referenced a letter he wrote to the Township indicating that the decision by the Planning Commission and Township Board violated 11.6H and 11.1C of the Zoning Ordinance. If the current Silver Oaks Blvd would be extended it would be the longest and straightest stretch of road in Antwerp Township. The decision to allow this type of road layout violated current zoning and has an adverse impact on adjacent neighborhoods, specifically Silver Oaks and Brownstone Subdivisions. Connections were originally stubbed so that continued progress could be made however; this connection would simply function as a through street, adverse to what the current zoning desires.

Tammie Wood: Feels personal rights are being violated. Ordinances are supposed to protect you from this type of development and this development, as approved, poses a threat to property values and children. The current road is not in good shape and is not designed to handle heavy traffic.

Chris Secor: Agrees with Tammy. The entrance into Silver Oaks subdivision will encounter much more traffic. The road is already crumbling and it just received general maintenance less than two years ago.

Gina Schiming: Everyone is good friends and has great relationships with kids. There are 30-40 houses with school age children. Each have the ability to have kids as young as 4-5 ride around the neighborhood. If this road opens up to another development, lose safety factor. Kids need to be able to run and play. Asking developer to consider adding walking paths in between two developments instead of a continuation of actual road.

Chairperson Stock: ZBA doesn't have the ability to propose a better way, can only overturn or uphold February decision.

Betty Bianco: Has great concern that no one knew what was going on in February and the lack of due process. People choose to live in Silver Oaks for specific reasons. Property values will go down as a result of Silver Oaks Blvd connecting to new development.

Janae Resh: Surveyors were out in previous months and could only tell her that they were working on a job for a new development for Powell Custom Homes.

Chairperson Stock: Ordinance should require notification, but as it is currently written does not. Planning Commission would be open to changing that.

Sarah Hartman: Notice as required was posted at the Township Hall. The site condominium is not a subdivision and therefore not required to be noticed to adjacent property owners. Process is that Planning Commission holds a meeting, makes a recommendation, to Township Board and Township Board makes final approval.

Chairperson Stock: Explained the standards of review for the Zoning Board of Appeals including the process of Planning Commission and Township Board. If the ordinance had called for notification to adjacent property owners and the Township failed to send notification, then there would be grounds for appeal. In contrasting a site condominium and subdivision, posting requirements are the same, but adjacent neighbor notification is different. A plat is required to be noticed, site condo is not.

Nick Simkus: It's an unreal expectation that people would check the website on a monthly basis.

Chairperson Stock: Shares that opinion. Planning Commission will review and make necessary changes.

Janae Resh: The fact that a subdivision requires a notification, but a site condominium development doesn't is nuts.

Barb Fitzpatrick: Questions on deed restrictions and how they apply to this situation.

Brian Clancy: Question on meeting notice requirements.

Heather Mitchell: Special meetings are required to be posted at least 18 hours prior to the meeting. Regular meetings have to be posted annually at the beginning of the year stating dates, times, and places. Agendas are also posted each month. The law doesn't stipulate a specific time frame prior to each meeting other than if it's a special meeting or a rescheduled meeting. Agendas are posted outside of the Township Hall and on the website as soon as they are available.

Jon Sytsma: Township is required to notice as specified in the Land Division and Subdivision Ordinance. Referencing 11.6 H "Vehicular and pedestrian circulation layout" and 11.1 C "minimize adverse impacts on adjoining or nearby properties, the Planning Commission and Township Board made a decision based on erroneous findings of material fact. The new development will have adverse effects and will decrease property values. With the loss of only one entrance and exit and speeds reaching 55 mph, a through street has been created, and is contrary to the spirit of the current ordinance. The ordinance specifically calls the Township Board to review the arrangement of the public, private, or other common ways for vehicular or pedestrian circulation respective of the pattern of existing or planned streets and pathways in the area. The width of the streets and drives shall be appropriate for the volume of traffic they will carry.

Tom Barbarini: Residents have expressed need for other alternatives and would ask that they be considered. If there are multiple entrances to the new development, why are connections to other subdivisions even necessary? There is a safety factor that becomes relative and is not being considered. Valid points have been made about notification and feels Powell Custom Homes could offer goodwill by including a dog park, walking paths, or another alternative to express desire to keep small neighborhood atmosphere.

Susan Batten: Questions relative to site condominiums versus subdivision and control of Homeowners Associations versus architectural control committees.

Betty Bianco: Deed restrictions need to be enforced within the subdivision.

Randy Powell: One outlet to Silver Oaks and one outlet to Brownstone was approved. Has no desire to connect but wasn't given that option as current zoning requires it. Van Buren County Road Commission might require it no matter what the decision is from the Township Board.

Barb Fitzpatrick: Question to Randy as to what his decision would be if Van Buren County Road Commission approves all alternative plans submitted by Powell Custom Homes.

Jon Sytsma: Issue with Larry Hummel not caring about safety. Unfortunately, Van Buren County Road Commission has final approval. Powell Custom Homes just trying to meet Antwerp Township ordinance. Need to take concerns about approvals to Planning Commission for future approvals because that's the only way to see change. They set the policy.

Public Hearing closed at 7:38 pm

Ron Stoyhoff indicated that we need to follow recommendations as set by Zoning Administrator/Planner as we invest in a firm/person who has the education to understand all the varying capacities of zoning. Process was explained in that the Zoning Board of Appeals would take each condition and reach consensus after discussion. Chairperson Stock read the memo as sent by David Jirousek, Williams and Works, dated May 23, 2017.

The ZBA may reverse a decision if it meets one (1) or more of the following conditions:

1. Was arbitrary or capricious (The decision was seemingly made at random or by chance. For instance, a decision-making body did not consider the standards of approval within the zoning ordinance or disregarded them. A decision was made by considering a different set of standards or none at all.)

An application for a Site Condominium Plan for 36 unit single family detached residential ~~developed~~ development was approved by the Township Board on February 14, 2017. The Zoning Administrator/Planner and the Planning Commission recommended approval.

Planning Commission and Township Board made decision in accordance with current Zoning Ordinances pertaining to Site Plan Condominium Review.

All members of ZBA feel the decision was made according to standards of approval within the zoning ordinance. Consensus is that the answer to the question is no. This decision was **not** arbitrary or capricious.

2. Was based on an erroneous finding of a material fact. (The decision was based on an incorrect assumption or understanding. For example, if an understanding was believed to be "fact" but was actually not actually accurate or true.)

The Township Board approved the site condominium plan with the following conditions:

1. Trees along the rear yard of lots 27-29, 30-32, and 66-69 shall be preserved for wildlife habitat and a buffer between the development and Brownstone and Silver Oaks.
2. Prior to any development or sit clearing, barrier fencing shall be installed at the limits of soil disturbance adjacent to priority protection areas, per the Zoning Ordinance.
3. The master deed shall be reviewed by the Township Attorney.
4. Outside approvals shall be granted before the issuance of building permits:
 - a. Fire Department
 - b. Road Commission
 - c. Drain Commission
 - d. Health Department

The approval assumed that if redesign was necessary due to outside agency review, the site condominium plan would be required to be formally amended by the Township.

Phil Tarchala: Decision was made based on all facts presented to us and they were accurate.

Chairperson Stock: There is an understanding that the Van Buren County Road Commission will review road layout and appropriateness of plans. Township authority does not extend into arrangement of roads or requesting sidewalks be placed in a development. We make decisions trusting that the Road Commission, and any outside agency, will do the job they are tasked to do. Township does not have authority to confirm or deny a road, as Van Buren County Road Commission makes decision.

Phil Tarchala: Requesting a different layout of roads or loss of connections can't apply to the February decision because it doesn't change required review and approval of Van Buren County Road Commission. Planning Commission didn't do anything wrong in recommending approval of site condominium plan as presented. Changes to the notification process can apply to future projects, but can't overturn a decision based on something residents feel we *should* have done when it wasn't legally required. However, changes to notification process will be made. It is frustrating to think that the Road Commission could ignore safety factors and need to look into independent review of roads outside of their agency. All that being said, Planning Commission and Township Board did not error in tasking Road Commission to review and approve road design and layout.

Ron Stoyhoff: Discussed development of standards for approval within Planning Commission pertaining to Site Condominium plats. Reasons for stubs within subdivisions are for snowplowing and safety factor regarding the number of driveways on primary roads. Roads are made to have specific requirements and establishing different concepts such as curves can go a long way in slowing traffic.

Appellant frames an argument on Section 11.1C and 11.6H. Section 11.1 C is an "intent" statement concerning the purpose of the site plan review. Section 11.6H is a discretionary standard of approval, meaning there are no requirements within Section 11.6. Township officials are required to review proposed developments and consider "respect" for the street ~~pattern~~ pattern, the "appropriate" volume of resulting traffic and a "reasonable" pedestrian system. Unlike subdivisions which have specific design requirements (Chapter 5 Subdivision Design Requirements) site condominium developments are subject to standard in Chapter 11 Site Plan Review.

Standards generally relate to subjective, discretionary review authority while requirements relate to objective, non-discretionary review.

All members of the ZBA feel the decision was made with correct understanding and accurate facts. Consensus is that the answer to the question is no. The decision was not based on erroneous findings of a material fact.

3. Constituted an abuse of discretion. (The decision was not within the purview or authority of the decision-making body to act in the manner that they did. There was a clear intent to act in a manner contrary to law and zoning rules and processes.)

Planning Commission and Township Board acted well within their authority as noted by process followed for site plan review. ZBA reached a consensus that the decision did not constitute an abuse of discretion.

4. Was based on erroneous interpretation of the Zoning Ordinance or zoning law. (The interpretation of the requirements and standards for site condominiums was incorrect, or was based on incorrect interpretations of the Planning Commission and the Township Zoning Administrator/Planner.)

Ron Stoyhoff: Cannot find where this condition would hold water as each board did their job.

Phil Tarchala: cannot overturn a decision when all standards as required were met by developer and Township authorities. Regarding Section 11.6H, the width of the streets and the volume, the intent of the ordinance was not missed in the decision by the Planning Commission or the Township Board.

Ron Stoyhoff: Van Buren County Road Commission makes the decision regarding the specifications and layout of roads. The Township has the ability to make recommendations but not the authority. That's why conditions of approval include outside agencies. Van Buren County Road Commission is conducting a traffic study and will review the outcome of that study. Decision will be made based on finding of that study.

General Discussion: If we deny the appeal, everything moves forward as approved. ZBA must find that the criteria as mentioned cannot be true. If we overturn the decision, ZBA needs to have an explanation for decision so that site condominium plat can be reapplied for through Township. Administrative appeals are explained within Section 13.4 of the Zoning Ordinance.

Motion by Stoyhoff, second by Tarchala to uphold decision made by the Antwerp Township Board approving a site condominium plat, Silver Oaks, parcel 80-02-002-002-01 located at CR 652/48th Ave based on the finding that the decision doesn't meet the criteria of Section 13.4 within Antwerp Township Zoning Ordinance specifically it was not arbitrary or capricious, it was not based on an erroneous finding of a material fact, it did not constitute an abuse of discretion, and it was not based on erroneous interpretation of the Zoning Ordinance or zoning law. All voted in favor. Motion carried.

Appeal is denied, however, ZBA makes two strong recommendations to the Planning Commission and Township Board that notification requirements are reviewed and amended and apply to all types of developments and to improve the process of review for safety, design and layout of all developments. ~~Also asking Planning Commission and Township Board to review process of approving an authority within of design and layout of roads. Assumption made each time is that outside agencies are doing their job to their fullest capabilities. Can Planning Commission take more authority in road design and layout with an update in the ordinance? Currently if design meets all standards, have no authority to deny. Will work with David Jirousek to make change, if able. We appreciate all public input. This is how change comes about.~~

Pending Business: None

Any Other Business: None

Meeting adjourned at 8:27 pm.

Respectfully submitted by,

Heather Mitchell / Secretary