

**Record of Proceedings:**  
**West Chester Township Board of Trustees –**  
**Public Hearing on Crossings of Beckett - Case #ZMA 05-13**

**March 4, 2014**

Convene: President Lang convened the meeting at 6:00 p.m.

Roll Call: Mr. Lang, Mr. Welch, and Mr. Wong responded.

Pledge of Allegiance: Lead by Joan Powell and repeated by those present.

Mr. Lang declared open the Public Hearing for Zoning Map Amendment, Case No. #ZMA 05-13, the Crossings of Beckett. He then explained the Board's process for addressing the pending application: the Board would not make a decision that evening and they may or may not close the hearing that evening. He said they would make a decision at the next meeting on March 11<sup>th</sup> if they closed the hearing that evening, but if not, they would continue the hearing at the March 11<sup>th</sup> meeting and make a decision at the March 25<sup>th</sup> meeting. Mr. Lang then asked staff to make their presentation regarding the zoning application.

**Staff report:**

Mr. Behrmann stated that the subject property is located on the east side of State Road 747 and the south side of Tylersville Road. He identified the applicant as Silverman and Company. Mr. Behrmann stated that the applicant is requesting a Zoning Map Amendment for 36.29 Acres from R-1A to C-PUD, and Preliminary Development Plan approval for a retail development that includes a Kroger Marketplace with a fuel center as the anchor tenant. Property to the west is zoned C-PUD and R-PUD; property to the south is zoned C-PUD; properties to the east are zoned R-PUD and R-1A; property to the north is zoned R-1A. Mr. Behrmann presented the staff report including a PowerPoint presentation that included: aerials, current Zoning Map for the area, proposed zoning, the Zoning Plat, Proposed Land Use Plan for the site, and proposed Preliminary Development Plan – noting it entailed approval for a retail development that included a Kroger Marketplace with a fuel center as the anchor tenant, additional retail space, as well as out lots. He also presented staff comments, outside agency comments, and site views. Curb cuts, traffic signaling and access points were identified and defined. He said the applicant proposed to develop the site in two separate phases, the south side termed Phase 1 and the north side termed Phase 2. He also presented the Proposed Land Use map, noting the western portion was identified for "Community Mixed Use" and the eastern side was identified for "Residential Transitional", and giving definitions for both. He then referenced the Comprehensive Land Use Plan and accompanying definitions for the subject property. Mr. Behrmann said the Ohio Department of Transportation (ODOT) and the Butler County Engineer Office (BCEO) submitted approval letters for the Traffic Impact Study with conditions. Landscaping, freestanding signage, permitted usage, lighting, pedestrian access, FEMA documentation, flood studies and stream buffering issues were also communicated.

He said the West Chester Township Zoning Commission and the Butler County Planning Commission addressed the application on January 27, 2014 and January 14, 2014 respectively, and they both recommended approval with conditions. He concluded by saying the Resolution that would be read at the conclusion of the hearing is the Resolution that was recommended for

approval by the West Chester Township Zoning Commission, and expressed the options available to the Board.

The Board was then given the opportunity to ask questions of staff. Mr. Welch questioned the style of signage, general size of business that would locate in the out lots, exterior construction materials, elevation change due to flood mitigation, and impact of additional landscaping. These were addressed to Mr. Welch's satisfaction. Mr. Lang asked if there was any concern with storm water drainage. Mr. Behrmann answered that question, as well as to Mr. Welch's inquiry about left turn egress onto Rt. 747 from the property.

Mr. Lang then invited the applicant to address the Board.

Tim Burgoyne, 9545 Kenwood Road, Cincinnati, Director of Site Acquisition Development for Silverman Company, introduced himself and the other members of their contingent. He proceeded to talk about their efforts to respond to community input concerning their development, adding that the plan they were addressing was a result of those meetings. He stated those changes included eliminating the out lots proposed on Tylersville Road and replacing them with five acres of buffering, replacing the full access on Tylersville Road with a right-in and right-out only, changes to the internal roadways, and increasing the green space of the project by 50% to 22.4% of the development. He then introduced Etta Reed to discuss traffic issues.

Etta Reed, 6900 Tylersville Road, Mason, Vice President of Transportation Engineering for Bayer Becker, said they were responsible for preparing and obtaining approval of the Traffic Impact Study for the subject site. She reviewed the history of the submittal and the approval process for the Traffic Impact Study. She then introduced Bob Garlock to discuss the Land Use Plan.

Bob Garlock, 6900 Tylersville Road, Mason, Vice President of Planning and Landscape Architecture for Bayer Becker, said they were responsible for the land plan that had been presented. He reviewed the existing plan in the area, the proposed Preliminary Development Plan - including the buffering, landscape plan, and the overall layout - and how he believed the applicant was in compliance with the Land Use Plan. He referenced the rezoning of the Duke medical office building as being in conformance with the Land Use Plan as an office development. Mr. Garlock said he believed these various factors, including buffering, was consistent with the Land Use Plan. He then introduced John Del Vern.

John Del Vern, 6900 Tylersville Road, Mason, civil engineer with Bayer Becker. He explained the flood water permitting/application process and presented a copy of the permit they received from the Butler County Flood Plain Administrator. He said they're prepared to submit any additional permits that might be required, though he didn't anticipate any such need. He then returned the presentation to Mr. Burgoyne. **(Approximate 1 hour video marker.)**

Mr. Burgoyne then said the Duke medical office development was approved without any buffering requirement, and proceeded to summarize the requirements for their application. He said their development would help West Chester move forward, and concluded by asking the Board that they, the applicant, be given an opportunity to respond to any subsequent questions or

comments that should arise, including by the opponents. Mr. Lang advised him as to the procedure. Mr. Burgoyne said there might be a need for clarification. Mr. Lang responded the Board would decide as to whether or not to permit it, and then asked the other Board members if they had any questions for the applicant.

In response to Mr. Wong's question, asking what would happen to the existing Kroger building if they moved, Mr. Burgoyne introduced Don Barnett to the lectern.

Don Barnett, 1014 Vine Street, explained that he's a Kroger employee responsible for overseeing surplus properties resulting from Kroger developments. He explained their redevelopment options, given their long term control of the properties as well as their marketing initiatives. In response to additional questions, he said they have a lease for the existing Beckett Kroger location to 2022 with five 5 year renewal options beyond that, conceivably extending to 2047. He responded to the question as to what happens to their locations once they leave, including their experience with their former location in Liberty Township. Numerous related questions followed.

Mr. Burgoyne returned to the lectern and responded to Mr. Wong's assertion that he was not satisfied that the applicant could not put in a buffer in Phase 2 when they develop Phase 1. He said they're using standard industry expansion practices and gave additional reasoning why they couldn't meet that requirement. Mr. Burgoyne also commented on future alternative scenarios to developing Phase 2, adding "zoning runs with the land". To Mr. Lang's question as to whether there was a guarantee that Phase 2 would ever happen, Mr. Burgoyne said there was no absolute guarantee, adding it was not likely that corner would never get developed. In response to Mr. Welch's question as to the term of their option to purchase the subject property, he said they have about 3 years. Mr. Welch asked for clarification: Mr. Burgoyne affirmed that they would have about 3 years to decide to buy and develop Phase 2. He said they were highly incentivized to do that and noted a number of development requirements. In response to Mr. Lang's question as to whether they had any plans to move the utilities along Rt. 747, he responded they had none. He responded to questions about sidewalks, as well as development timing of the out lots.

Ms. Reed then returned to address questions about traffic, as did Mr. Burgoyne.

Jim Vedas, Beckett Kroger store manager, responding to Mr. Welch's question about employment, said the current store has just over 200 employees -70% are fulltime/30% part-time - and the new Marketplace would have between 350 and 400 associates. The ratio would entail fewer fulltime employees.

In response to Mr. Welch's question Mr. Burgoyne explained the characteristics of residential development in relation to retail development, saying the latter helps the value of the former.

**(Fiscal Officer Note: there was an approximate 10 minute break beginning at 7:56 p.m.)**

Following the break Mr. Lang asked for Proponent Comments.

**Proponent Comments** (Fiscal Officer Note: All persons who spoke on this issue after Mr. Burgoyne are documented here, followed by summarized comments \*\*):

Steven Hunt, 2700 US Bank Building, Cincinnati, attorney for the West Chester Village Market; **(Approximate 2 hour video marker)**; David Labus, 8000 Park Place; Jim Vedas, Beckett Kroger store manager; David Pitts, 8859 Eagleview Drive; Scott Quinn, 7545 Foxchase Drive; David Weirich, 7435 Foxchase Drive; Lyle Styles, Duke Realty, 4555 Lake Forrest Drive, Blue Ash; Beth Surber, 8138 Tollbridge Drive; Trina McCormick, 4387 Lees Pointe Court; Mel Spencer, 8903 Eastwind Way; Ken O'Leary, 8507 Park Place Circle; Lisa Parks, 8701 Park Place Circle; Richard Miller, 8058 Jeannes Creek Lane.

\*\* Comments/Issues Summarized: Supported by the West Chester Village Market project across the street; has adequate green space and buffering; a developer with a proven track record; would be a first class amenity; concerns of the Park Place developer have been met; expressed a need for more landscaping behind the Marketplace beyond a single row of evergreens; drainage concerns had been researched; need for adequate buffering addressed; over 2,000 Kroger online customer surveys were received in 2013 with many indicating a need for a larger store; a petition with over 1,000 signatures favoring the development was submitted; provides additional parking, fuel pumps, etc.; access road requirement to Beckett Road has been fulfilled; closer than the Yankee Road Kroger where fuel points can be used; people opposed to change will eventually enjoy it; additional tax revenue may help offset personal tax increases; the Foxborough HOA Board unanimously supports; the corner will eventually be developed and this is a good option; Duke Realty is supportive though they want the brick and masonry requirement applied to the fuel center, storage facility concession fulfilled, and access on the south side within 370' of Rt. 747 not be restricted; the tenant would not make a decision that would hurt the community; supports the jobs that would be created as an associate and as a resident; will have a more positive effect than negative; Kroger has always felt what is good for the community is good for Kroger and not visa-versa; wanted to be sure West Chester stays alive, progressive, and fresh; likes proximity to businesses; the old store is inadequate.

Having no one express a desire to express additional proponent comments, Mr. Lang then closed the proponent comments portion of the hearing and opened the opponent comments portion of the hearing.

**Opponent Comments:**

Tim Mara, 1600 Scripps Center, 312 Walnut Street, Cincinnati, said he represented many of the opponents to the zone change, and communicated the following points he wanted to emphasize and raise: he referenced Section 26.11 of the West Chester Township Zoning Resolution which identifies the required conditions for approval of a Preliminary Development Plan. He specifically identified Section 26.111 regarding consistency of a Planned Unit Development with the adopted West Chester Township Land Use Plan. He then read the definition and distinction between "Community Mixed Use" and "Residential Transitional" relative the plan. He read a portion of a report from the Butler County Planning Commission staff that said the proposed plan "appears to not be consistent with the adopted Land Use Plan". Mr. Mara noted the Board had recently affirmed the Land Use Plan. He referenced the Butler County Engineer's report with the original application that said the development could be too dense to adequately service

existing development traffic in 2035. He said the buffering along Tylersville Road would only happen when and if Phase 2 development actually occurs, questioning when that would ever happen. He questioned further the proposed buffering. He expressed his opinion that the existing Kroger would be vacant for a long time and the impact of reduced "foot traffic" on surrounding stores. He concluded by noting the number of "no" votes and abstentions by members of both the Butler County Planning Commission and West Chester Zoning Commission, saying "they both had great concerns".

Bill Stabler, 3333 Richmond Road, Beechwood, Ohio, identified himself as being with Mid-America, owner of the shopping center where Kroger is currently a tenant. He said they bought the shopping center because Kroger was a tenant there, adding they're the best tenant a landlord could have. He said that once you as the landlord lose an anchor store like Kroger you will never recover. Mr. Stabler related his experience with losing major tenants and the impact on smaller, surrounding tenants. He said that if Kroger moved his shopping center would look like the Biggs center within two years, and referenced the former Kroger location in Liberty Township. In response to Mr. Welch's question, as to whether he could make an agreement with Kroger, Mr. Stabler said he spoke to them last fall and they had no interest in remaining at their current location. He said any prospective tenants will want to be at the new Liberty Township development. He concluded by saying that if Kroger moved from his shopping center it would be "dead" for 25 to 30 years. **(Approximate 3 hour video marker.)**

(Fiscal Officer Note: All persons who spoke on this issue following Mr. Stabler are documented below, followed by their summarized comments \*\*):

Matt Tomaszewski, 7251 Overland Park Court; Tom Breon, 5052 Park Ridge Court; Mark Haverkos, 7356 Wethersfield Drive; Beth Morris, 7559 Hunters Trail; Pat Miller, 7271 West Hartford Court; Nathan Schaff, 7821 Pullbridge Court; Tom Eggert, 7672 Wethersfield Drive; Carol Replogle, 5069 Westsand Court; Deb Lawrence, 7399 Wethersfield Drive; Steven Harris, 7759 Wethersfield Drive; Bob Simons, 7292 Wethersfield Drive; Larry Brown, 5087 Park Ridge Court; Eric Hopkins, 4571 Kohls Court; Bill Schaffer, 4584 Kohls Court; Michelle Trikby, 7609 Hunters Trail; Rebecca Harris, 7759 Wethersfield Drive; Shirley Rozensweig, 5090 Westsand Court; Tim Lava, 4883 Brantford Court; Ron Replogle, 5069 Westsand Court.

\*\* Comments/Issues Summarized: It's not the kind of development anyone would want within a mile of their house; most of the stores by the former Kroger store in Liberty Township are vacant; there isn't a business case for developing Phase 2 given all its green space because it's not economically feasible; safety is a concern given the proximity of two schools and pedestrian traffic; a petition with the signatures of 654 West Chester residents in opposition to the project was submitted; residents are interested in compliance with the Land Use Plan; the plan is 100% commercial rather than mixed use; approval would suggest a lack of foresight; don't allow our Rt. 747 to become another Colerain Avenue; possibly Phase 2 could be done before Phase 1; the intersection of Rt. 747 and Tylersville was recently reported in the local media/Channel 19 to be among the most dangerous intersections; traffic will impact more property owners than are aware of the issue; Kroger is a great company, but they are profit driven as a public company; the topography drops about 20' from the north side of the property to the south side such that there is inadequate dirt for proper drainage; retention ponds are a safety issue for children; the

applicant's estimated tax revenue figure of \$475,918 was challenged and calculated to be \$36,994; the Traffic Impact Study was cited as a deliberate attempt to ignore the concerns of the community and the Land Use Plan; the Butler County Engineer's Office has guidelines for what a Traffic Impact Study should address with respect to safety – asserting it did not provide accompanying data; the quality of Trustee questions were impressive and suggests they understand people's concerns; **(approximate 4 hour video marker)** people that live next to the development are the ones that will bear the negative impact; there is the potential housing values will go down; there is no guarantee the buffer would ever be built; due diligence has not been performed; maintain the current zoning; surprise that the Foxborough HOA supported the project – as a member he received no notification; we need to solve the problem of a diminished need for big box stores since more products are being sold online; there was a lack of questions at previous Zoning Commission meetings; neon retail signs visible from their home would be unattractive and harm its marketability; the land across from the Skyline on Rt. 747 is viable; egress left from Wethersfield will be hampered; the topography might cause flood and noise problems; research indicates property values will decrease for residential properties adjacent to this kind of development.

Having no one express a desire to express additional opponent comments, Mr. Lang then closed the opponent comments portion of the hearing and opened the neutral comments portion of the hearing.

**Neutral Comments:**

Kara Scheerhorn, Millcreek Watershed Council of Communities, 1223 Jefferson Avenue, Reading, Ohio. (Mr. Welch and Mr. Wong approved allowing her to speak though she did not meet the criteria to comment). Ms. Sheerhorn said the Millcreek Watershed Council of Communities represents the 34 communities in the Millcreek watershed, they're in favor of economic development, but expressed a concern as to whether or not there would be any mitigation of the encroachment into the 75' buffer, and questioned where water would be diverted until the retention pond in Phase 2 was developed.

No one expressed a desire to make additional neutral comments.

Mr. Lang then noted that the applicant requested an opportunity to rebut. He said the Board would take an approximate 5 minute break to consult with the Township attorney on their request, adding that the Board would allot the same amount of time to the opponents if the Board approved a rebuttal by the applicant.

**(Fiscal Officer Note: there was a 5 minute break from 10:51 to 10:56 p.m.)**

The Board reconvened and Mr. Lang said the three Trustees spoke to their attorney individually in order to comply with the law, and the attorney said it was up to the Board members to determine if they would permit a rebuttal. Mr. Lang then asked the other two Trustees for their opinion: Mr. Wong and Mr. Welch indicated they had already been well informed. Consequently it was determined there would be no additional comments/rebuttal. Mr. Lang then asked the other two Trustees if they needed any more clarification from staff on any points

presented during the proponents' or opponents' testimonies. He also advised them to avoid deliberations. Mr. Wong and Mr. Welch said they had no further questions. Mr. Lang then asked them if they feel they needed to continue the hearing or if they are ready to officially close the hearing. Mr. Wong and Mr. Welch said they were ready to close the hearing. Mr. Lang concurred. Mr. Lang then asked staff to conduct the first reading of the Resolution.

Thereupon Mr. Behrmann read as follows:

"Resolution No. 07-2014- Resolution approving a Zoning Map Amendment from "R-1A" to "C-PUD" and Preliminary Development Plan for Case ZMA 05-13 – Crossings of Beckett. Now therefore, be it resolved that on the basis of the above actions and findings, the West Chester Township Board of Trustees does hereby concur with the recommendation of approval of the West Chester Township Zoning Commission and does hereby approve the proposed Zoning Map Amendment and Preliminary Development Plan for the aforesaid application with the following conditions ...” Mr. Behrmann subsequently noted there were 18 conditions on the Resolution.

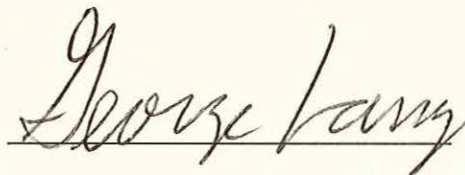
Mr. Lang then explained that the Board could not thereafter take new testimony or information, and advised everyone that they should not attempt to provide the Board with such information because they could not accept it. He then said the Board would make a decision on the application at the next Board meeting on March 11<sup>th</sup>. Mr. Lang then declared the hearing closed at 11:01 p.m. while expressing his respect and appreciation for everyone's civility and participation in the democratic process.

**Respectfully Submitted,**



**Bruce Jones, Fiscal Officer**

**Approved,**



**George Lang, President**