

**Brunswick Hills Township Board of Zoning Appeals
Public Hearing Meeting Minutes
Township Hall
October 12, 2022**

Call Meeting to Order

Chairman, Cliff Kersten called the Brunswick Hills Township Board of Zoning Appeals public hearing meeting for October 12, 2022 to order at 7:00 p.m.

A roll call of the board was executed.

Board Members in Attendance: Cliff Kersten; Ron Wetterman; Ann Barron; Gregg Timura

- **Alternate Board Members in Attendance:** Mark Jeffers (recused himself as the board was hearing his case)
- **Others in Attendance:** Evelyn Czyz, Zoning Inspector; Wes Humphrey, Assistant Zoning Inspector; Trustee Trica Murphy; Trustee John Witthuhn; Trustee Christina Kusnerak; Assistant County Prosecutor, Brian Richter; Christine Schirripa Court Reporter; Linda Kuenzer, Secretary.

Mr. Kersten called for Mrs. Jeffers and/or her attorney or both to step forward. Mr. Kersten stated he had two (2) questions to ask. We have a quorum but not a full board. They would have the option of hearing the case with the four (4) board members or wait until they would have a full board and hear the case at the November 2, 2022 meeting. Attorney Oberholtzer asked who the fifth board member was. Mr. Kersten said Mr. Schigel; however, he was in an accident and unable to be there. Mr. Oberholtzer stated they were prepared to move forward. Mr. Kersten stated that with having four (4) board members, in the event of a tie vote, 2-2, it would result in a no vote and confirmed that they still wanted to go forward. Mr. Oberholtzer stated yes.

The Brunswick Hills Township acts within the regulations of Sec. 519 of the Ohio Revised Code.

APPROVAL OF MINUTES

1. Approval of the September 7, 2022 Public Hearing Meeting Minutes

Mr. Kersten asked if there were any corrections. Being none, Mr. Kersten asked for a motion to accept the minutes as submitted.

Motion to Approve Minutes: Mr. Wetterman moved to accept the minutes written by the secretary. Mr. Timura seconds. **Roll call:** Mrs. Barron-yes; Mr. Wetterman-yes; Mr. Timura-yes; Mr. Kersten-yes.

One rule we will be follow tonight is there will be no conversation talking among people in the audience. Will not be permitted to be walking around to go and talk to someone while the meeting is in process. Failure to obey these rules and you will be asked to leave.

Mr. Kersten stated that he assumed that our alternate, Mark Jeffers would be recusing himself due to the fact Mr. Jeffers is one of the applicants. Mr. Jeffers stated yes.

NEW BUSINESS – PUBLIC HEARING

Mr. Kersten stated we have a situation that has been brought up here tonight, if this is a legal meeting. Was the application submitted in the time period. We will address that first. Whether this board will continue with this hearing or will we reject the appeals application if it was filed on time. Attorney Richter stated that the question is whether the board has jurisdiction to hear the case.

1. **Lynette Jeffers, 4744 Sleepy Hollow Road, PP#001-02C-17-029, Zoning RR, Administrative Appeal**

Mr. Kersten swore in Mr. Humphrey for the remainder of the meeting.

Mr. Humphrey stated they had a scenario where the application was dropped off to Sally (Brunswick Hills Administrative Assistant) on August 19, 2022, along with the check, by Mt. Oberholtzer or a representative of his firm. She date stamped it. My response to the application, there is an email in your packet that states attorney Oberholtzer denying our request for Ag exempt. We have found no proof of Ag exempt. That was my response and it was dated July 22, 2022. The other item is Section 1004; the applicant has twenty (20) days to appeal. Mr. Kersten interjected it is twenty (20) calendar days. Mr. Humphrey stated it exceeded the twenty (20) days, the application for the appeal. Mr. Kersten asked what the date was for the appeal? Mr. Humphrey stated it was received and date stamped August 19, 2022. Mr. Kersten asked what was the total number of days. He had come up with twenty-eight (28) days. Did that sound right? Mr. Humphrey stated yes. Mr. Humphrey also said that the date was also stated on the application under reason for the appeal, they were appealing the decision of July 22, 2022. Mr. Kersten stated that they were then nine (9) days past the filing deadline. Mr. Kersten stated that in Article X, Section 1004 of our Zoning Resolution that *Appeals shall be made no later than twenty (20) calendar days after the date of the grievance.*

Attorney Richter questioning Mr. Humphrey stated just for clarification, you sent the email on what day? Mr. Humphrey replied Friday, July 22, 2022, at 11:49 a.m. to JeffersandSons@gmail.com. This was the email used throughout the communications. Attorney Richter asked why Mr. Humphrey used that email. Mr. Humphrey responded why? He did not know but was authorized under the Ag Exemption Authorization and Declaration of Powers, where it is notarized June 7, 2022 which states *“Furthermore, I authorize my son Mark D. Jeffers (also a Trustee) to be included in on all correspondence, conversations, meetings, and decisions as pertaining to the Jerry & Lynette Jeffers Family Trust for which the property of 4744 Sleepy Hollow Road Medina, Ohio 44256 (Parcel 001-02C-17-029) which is currently owned.* Attorney Richter asked who had signed the document? Mr. Humphrey stated Lynette Jeffers and Mark Jeffers. This is also in your packet. Attorney Richter asked again, when was the email sent and to whom. Mr. Humphrey stated the email was sent on July 22, 2022 to JeffersandSons@gmail.com. Attorney Richter asked whose email that was and Mr. Humphrey replied Mark Jeffers. Attorney Richter asked what happens to an email if it is sent back? Mr. Humphrey replied it rejects. Either from a typo or email does not exist. Mr. Richter asked and did that happen? Mr. Humphrey replied no.

Attorney Richter asked Mr. Humphrey about another letter he referred to with an arrow? Mr. Humphrey stated yes, it was the same email, from Mark Jeffers to Gena Weber, counsel@medinalaw.com, Lynette Jeffers and Mark Jeffers, subject, bunkhouse, stating Attorney Oberholtzer, “Here is the email from Brunswick Hills Township, denying our request for AG Exempt”. Then the arrow down to email from myself stating “Dear Mr. Jeffers, we have found no proof for the Ag Exempt on the new dwelling so we are following the Zoning code Section 303-6-C of the Zoning Resolution which I have attached a copy with this email”. Thanks Wes Humphrey Asst. Zoning Inspector. There is a copy of that in your packet and it’s about two (2) dwellings on the same parcel.

Attorney Richter showed Mr. Humphrey a document marked Exhibit 1 asking Mr. Humphrey what the document was. Mr. Humphrey stated it was the Authorization and Declaration of Powers. Attorney Richter asked if this was the document you read earlier? Mr. Humphrey stated yes, it’s the one I read before.

Attorney Richter showed Mr. Humphrey a document marked Exhibit 2 asking Mr. Humphrey what the document was. Mr. Humphrey stated it was the email from July 22, 2022, 11:49 a.m.

Attorney Richter showed Mr. Humphrey a document marked Exhibit 3 asking Mr. Humphrey what the document was. Mr. Humphrey stated it was the written response from Mr. Humphrey. Attorney Richter asked what was at the top of the email. Mr. Humphrey replied, Mark Jeffers, Jeffersandsons@gmail.com, Wednesday August 3, 2022 11:33 a.m. Attorney Richter asked what the email indicated. Mr. Humphrey stated “Here is the email from Brunswick Hills Township denying our request for AG Exempt”. The email was to Attorney Oberholtzer.

Attorney Richter asked when the appeal of his decision was filed? Mr. Humphrey stated August 19, 2022.

Mr. Humphrey asked if there were any other questions from the board. Chair Kersten said no. Mr. Humphrey was excused.

Mr. Kersten asked if Attorney Oberholtzer had any questions. Attorney Oberholtzer stated his name (John Oberholtzer) with the law firm Oberholtzer & Filous. Mr. Oberholtzer stated he understood what the prosecutor has presented to the Zoning Board of Appeals. We object to that of course. We would indicate that the appeal was timely filed. More importantly we would indicate to the board We would argue that the email of the decision was not legally sufficient to start the time period running on the notice of the appeal. We would like to still present our evidence this evening into the record in the eventually that it is determined that the appeal should have been considered we will at least take into evidence. But that is of course up to the board to decide. Obviously if you decide that the appeal is not timely filed and will not let us present evidence, then we can't, and then we will have to appeal the notice and if we were right, we would come back and take evidence at a later time. So, I guess what our proposal is let us produce the evidence and then you can have the hearing then you have had everything presented to you to make a decision. I can certainly understand you would not make a decision until you've had a decision from the court as to the sufficiency of the legal notice. I think a board has the responsibility to very clearly give a notice, and it should be in writing, in the mail among other things, several notices but it should at least be by mail and then direct the notice to the person submitting the application, Lynette Jeffers. I realize there is a document in here that suggests that Mark Jeffers can be informed but I don't think that constitutes him as the party that should receive the notice. I'm not going to belabor the point. The prosecutor feels legally we have no basis but that of course is up to the board to decide. I would ask that we be allowed to present our testimony as we are ready to proceed. Mr. Oberholtzer thanked the board for listening.

Mr. Kersten asked if there was anyone else that wished to make a comment.

Attorney Richter asked if Mr. Oberholtzer had any questions for Mr. Humphrey. Or if Mr. Oberholtzer had any witnesses that he would want to present at least for the issue that the board was addressing. Attorney Oberholtzer stated no, he felt the issues have been squarely presented to the board. No further questions for Mr. Humphrey, no witnesses to present on the subject. The documents are clearly there. The first basic question is an email sufficient notice in the decision of the Zoning Inspector. I think that's a legal issue. I do have witnesses to proceed on the issue that was subject of the hearing this evening. I think for the economy standpoint we should take that testimony this evening, but obviously those are board decisions. I have no further questions. Mr. Kersten thanked Attorney Oberholtzer.

Attorney Richter suggested that the board needs to make a decision as to whether this was timely filed and whether the board has jurisdiction to hear this case in the first place. Certainly, depending on how you decide, Mr. Jeffers, or through Attorney Oberholtzer, have the right to appeal within a certain time period with the Court of Common Pleas. Do you know what your Zoning code says. I would just read for the board out of Ohio Revised Code 519.15, in consideration of the board making its decision it says, "***Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds***". I just wanted to let the board know that in consideration of its decision. Mr. Kersten thanked Attorney Richter.

Mr. Timura asked do we have anything that states whether something is formally sent – how that must be sent? Attorney Richter stated that the statute does not state that, it states after the decision. I understand what Attorney Oberholtzer is saying these days many things are done by email. I would argue that for these purposes email would be sufficient.

Mrs. Barron asked Attorney Oberholtzer if he did not feel that an email was adequate notice, then why did he file the appeal? Attorney Oberholtzer stated he had no other way to proceed, I felt I had to file something.

I took what I felt was the appropriate statutory remedy to get us here. I'm here to hear all the issues and of course that's been raised as one. With what I had I felt that was what I needed to do. Is it perfect? The only person that's going to tell us what's perfect and what isn't is if we go beyond tonight, it's going to be some judge. I hope that answers, thank you. Mrs. Barron thanked Attorney Oberholtzer.

Mr. Kersten stated that with all the evidence that the board has received and the testimony tonight, I feel that the appeal is not a valid appeal and it was filed too late. So, on that statement I will make a motion.

MOTION FOR ADMINISTRATIVE APPEAL FOR 4744 Sleepy Hollow Road

Motion: Mr. Kersten motioned that the board reject the appeal as not being a valid appeal and not being filed within the time limit according of Article 10, Section 1004, 20 calendar days. Mrs. Barron-seconds. **Roll Call:** Mr. Wetterman-no; Mr. Timura-yes; Mrs. Barron-yes; Mr. Kersten-yes.

Mr. Kersten asked to have the vote read. Vote was 3 yes votes, 1 no vote.

Mr. Kersten stated that the appeal presented to the board is hereby rejected and will not be heard by the Brunswick Hills Township Board of Zoning Appeals.

Attorney Oberholtzer stated he would like to offer a proffer of testimony of evidence and present it to the court reporter. Attorney Richter questioned what testimony? Attorney Oberholtzer stated he would like his client to testify as to why this is agriculturally exempt. Attorney Richter stated he would object to that because the board has already indicated and voted that they would not hear the case. Mr. Kersten stated that on the advice of our attorney, I object and will not permit the evidence to be heard. Attorney Oberholtzer stated he wanted it on the record he was prepared to proffer into evidence that Mrs. Jeffers would testify that this was a farm of long-standing use in the community. Attorney Richter stated again he would object. Mr. Kersten interjected that he objected. We were not hearing any testimony about a farm or bunk houses or anything. This hearing tonight was on the legality of an appeal. We rejected the appeal and as far as I am concerned, it's over. Attorney Oberholtzer asked if he (Mr. Kersten) was refusing to allow him to proffer his testimony. Mr. Kersten stated yes.

A five-minute recess was taken at 7:31pm.

Reconvened at 7:38

ANNOUNCEMENT OF NEXT MEETING DATE: Wednesday, November 2, 2022 @ 7:00 p.m.
Mrs. Kuenzer informed the board that she will not be at the November 2, 2022 meeting.

MOTION TO ADJOURN

Mr. Wetterman moved to adjourn. Mr. Timura seconds. **Roll Call:** All in favor to adjourn. Meeting officially adjourned at 7:40 p.m.

Respectfully Submitted,

Linda Kuenzer, Zoning Secretary

Cliff Kersten, Chair

Date

Approved November 2, 2022