



United States Department of the Interior
NATIONAL PARK SERVICE
Cuyahoga Valley National Park
15610 Vaughn Road
Brecksville, Ohio 44141-3097

IN REPLY REFER TO:

N16

February 1, 2007

Mr. Bill Goncy
Council, President P-T
Village of Boston Heights
454 E. Boston Mills Road
Boston Heights, Ohio 44236

Dear Mr. Goncy,

The National Park Service has reviewed the recommended zoning revisions for the development of the Boston Hills Country Club property at Hines Hill Road and SR 8. We are discouraged to learn that the Planning Commission has recommended a change in zoning from residential to retail business for 65 acres of the property. We believe that this particular zoning change would be detrimental to the Brandywine Creek watershed and the Cuyahoga Valley National Park. While we are supportive of efforts to develop a residential conservation development zoning overlay for your community, the current proposal falls far short of effective conservation zoning. We urge the Council to reject these recommendations as proposed. We offer the following comments that encourage watershed stewardship and planning efforts, describe our objections to the retail rezoning proposal and outline needed improvements to the conservation development zoning code.

Watershed Stewardship and Planning: This proposed development and nearby projects affecting over 800 acres of land, including the State Route 8 expansion, the American Dream Production LLC lifestyle retail center, the Boston Crossings Ltd. and Omni Realty LLC development and the proposed Wolstein Sports and Entertainment Group LLC sports complex will all place an increased burden on the stressed Brandywine Creek watershed, which passes through the Park on its way to the Cuyahoga River. As we have noted previously, the loss of open space and increases in impervious surface will likely further degrade stream and watershed health, and is expected to contribute to increased flooding, erosion and sedimentation problems. These developments will also certainly change the rural character of the area forever. In light of this ongoing development, it is critical that each community consider the incremental watershed impact of the projects they may facilitate.

On the other side of the Cuyahoga Valley, the communities of Brecksville, Broadview Heights and North Royalton have recently joined together in an effort to address the impacts past changes in land use due to development have had on storm water management and flood frequency in the similarly-sized Chippewa Creek watershed. Under the auspices of a grant received by the Cuyahoga River Community Planning Organization, these communities are now developing a plan to manage development, restore and protect natural resources and enhance economic competitiveness entitled the Chippewa Creek Watershed Planning Partnership.

The Brandywine Creek watershed communities (Boston Heights, Northfield Center Township, Macedonia, Hudson) have a unique opportunity to learn from these communities and begin similar coordination of growth in the Brandywine Creek watershed, thereby avoiding an undesirable future of trying to fix a costly problem you may otherwise be creating today. A coordinated effort to protect remaining open space, wetlands, floodplains, and headwater streams, minimize impervious surfaces, and implement best storm water management practices is required throughout the watershed before such “green infrastructure” is lost or degraded. We will continue to encourage communities to work toward this goal and would surely participate and assist in such efforts.

Northfield Center Township has already taken steps to protect shared watershed resources by recently rejecting similar rezoning requests in the Brandywine Creek floodplain. Your recent passage of a riparian and wetland setback ordinance was another important step towards maintaining watershed health. We hope that your Council continues this effort by rejecting this and other proposals to expand retail zoning acreage and by developing a sound and effective residential conservation development zoning code for your community.

Issue 1 - Rezoning to Retail/Commercial Uses: As we have stated in earlier communications, continued retail development of this type homogenizes communities and detracts from the rural character that your community and the Park values, with increasingly interrupted rural landscapes, abrupt boundaries between developed areas and park lands, and additional traffic.

Additionally, retail/commercial zoning results in very high imperviousness levels of 85% or higher. Such high levels of imperviousness are considered unhealthy for the watershed. Comparatively, your underlying residential zoning (1.5 acre lots) typically results in 10% imperviousness or less. While the conservation development zoning (discussed later in this letter) proposed for the rest of the property (100 acres) would likely improve imperviousness on **that portion** from the original zoning slightly (2-4%), this improvement in no way offsets the **major overall increase** you would facilitate by rezoning 65 acres to commercial. As a result, using these estimates, the total imperviousness from this project as proposed may **quadruple** (~60 acres) what may be expected from your original zoning (~15 acres).

While developing the final remaining green spaces around the Cuyahoga Valley, it is important that plans are designed to first minimize impacts and more importantly **improve** the conditions of the watershed through planning that includes the broader watershed perspective, protects riparian and wetland areas, encourages on-site stormwater management, and promotes the restoration of degraded wetlands and tributaries. This rezoning proposal instead facilitates additional high-impact development and we urge the Council to reject this rezoning to retail business.

If Council does decide to approve this rezoning, then we encourage the Council to require that commercial/retail zoning acreage equal to or greater than 65 acres be rezoned to residential or recreation uses elsewhere in the community as an offset to this additional watershed burden, preferably where sensitive watershed resources could be protected.

Issue 2 – Adoption of a “Residential Conservation Development” code: We are certainly encouraged that residential conservation development is being considered in your community. As we have commented previously, the application of good conservation development design principles can benefit the watershed by protecting open space and rural aesthetics, preserving wetlands, streams and other “green infrastructure”, and can reduce maintenance costs for communities (e.g., fewer roads to maintain and service) while providing for robust economic development.

The proposed ordinance meets some but not all elements of good conservation development according to experts in the field (e.g., The Countryside Program’s Conservation Development Resource Manual). Indeed, while adopting some of the major conservation provisions, the failure to follow through the code

to detail these critical provisions provides developers options that are contrary to conservation development principles. Improving this code in the ways we note below (often using text derived from the Conservation Development Manual) would more likely protect the natural and scenic values of the Village. Since the code may apply to other future developments, it is important to set the proper standards at this time.

Definitions: The Village should develop definitions for terms in the code. Some recommended definitions for items we mention in these comments are below:

CONSERVATION DEVELOPMENT: A contiguous area of land to be planned and developed as a single entity, in which housing units are accommodated under more flexible standards, such as building arrangements and setbacks, than those that would normally apply under single-family district regulations, allowing for the flexible grouping of houses in order to conserve open space and existing natural resources.

BUFFER: A designated area between uses or adjacent to the perimeter of natural features designed and intended to provide protection and which shall be permanently maintained.

OPEN SPACE: An area that is intended to provide light and air. Open space may include, but is not limited to, meadows, wooded areas, and waterbodies. See also Restricted Open Space.

RESTRICTED OPEN SPACE: Open space within a conservation development that is of sufficient size and shape to meet the minimum zoning requirements that is restricted from further development.

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

ISOLATED LAND: Any portion of the subdivision parcel that is separated from the remainder of the parcel by an excessively steep slope, water body, or other feature that would not support a road under normal building standards, rendering the portion unbuildable.

WETLAND: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Minimum Development Area [1153.08 (c) 1] – The minimum standard of 25 acres is workable in your community though you may require a larger parcel (e.g. 50 acres) to ensure that significant amounts of open space are protected when applied. Language stating that the parcel(s) should be in single ownership or a requirement that all owners are co-applicants should be added to better define the development area.

Lot Area to Open Space ratio [1153.08 (c) 3] – We are encouraged that a 40% minimum open space requirement is being proposed. Lower amounts of open space do not provide the developer the ability to provide high quality resource protection and the desired open space access for individual lots. The Village may consider a higher amount of open space (50-60%) to preserve more of the area’s rural character. We suggest the Village designate this open space as restricted open space (as defined above), indicating that it should not include marginal or incidental areas and that it should be protected from future development.

Density [1153.08 (c) 5] – Maintaining a residential density of 1 unit per 1.5 acres (or 0.67 units/acre) is a worthwhile goal as conservation development aims to be density-neutral, resulting in a density similar to your current underlying residential zoning. However, this requirement should be calculated consistent with typical development scenarios where not all land is buildable, and not be based solely on ‘gross’ area alone. Developers cannot develop in existing

rights-of way, water bodies, or areas of steep slopes and should not be able to count these areas when calculating units for conservation development either. Indeed, we suggest that you require that the maximum number of dwelling units permitted in a conservation development with smaller lots be calculated using the following language:

1. Deducting the following from the total project area:

a) Any public right-of-way within the project boundary existing at the time the development plan is submitted; and

b) The area of a floodway, designated wetlands, isolated land, slopes exceeding 25%, or waterbody. Where floodways and wetlands overlap, they shall be counted only once.

2. Multiplying the result of subsection 1 by the maximum density permitted per acre as set forth in this Section above [i.e.,0.67 units/acre].

Additionally, you should clarify in a subsection that density calculations use only the proposed residential development area in any proposed mixed development plan. In this case, only the 100 acres of residential development should be used in calculations. The 65 acres that may be rezoned retail should not be included in residential density calculations. So, for the proposed 100 acre residential parcel, the initial maximum number of units is 66, before the stated deductions are applied.

Minimum Lot Area per Unit [1153.08 (c) 6] – The proposal calls for a minimum lot area of 0.39 acres/unit, which translates to 2.6 units/acre. We support such smaller lots sizes to achieve the objectives of conservation development and minimize the development “footprint”, but the Village should consider if this size is appropriate for maintaining rural character and aesthetics of the area.

100 Feet Buffer to Residential Districts [1153.08 (c) 10] – This buffer is appropriate, but should not automatically be designated as “restricted open space” for the purposes of this code unless it satisfies the restricted open space standards we outline below.

Maintenance of Forested Areas [1153.08 (c) 11] – This requirement is a good idea, and will minimize the fragmentation of forest resources in your community. However, as currently worded, it may end up requiring forest clearing on parcels with more than 30% forest. Please clarify to maintain “30% or more” forested areas. Also, the term “forest” requires further definition and minimum standards (e.g., a narrow strip of trees would not constitute a “forest”).

Stormwater BMPs [1153.08 (c) 12] - This provision for best management practices for maintaining predevelopment time of concentration and run-off is a good idea, but is worded so vaguely as to justify most basic stormwater management practices.

Instead, we encourage you to consider for this new code a positive requirement to use “greener” constructed wetland stormwater systems, bioretention cells, bioswales, and pervious pavements where feasible that provide for on-site stormwater management, thereby minimizing additional run-off to streams. We suggest that you consult with the Summit County Soil & Water Conservation District for suggestions on how you may include these provisions in your code.

Adjacency to Open Space [1153.08 (c) 13] - Access to open space (both physically and visually) is an important element for both residents and those driving by the development. This provision is a worthy goal as it facilitates access to open space, but should not include adjacency to “buffers” as this would include adjacency to road buffers and other low quality open space. If your goal is

to provide access to high quality open space, see our comments on Open Space Inclusions below and change the wording to apply to “restricted open space.”

Open Space Inclusions [1153.08 (d)] - This section should specifically define and refer specifically to “restricted” open space. Stormwater management areas may be included in open space calculations, but only as easements and provisions for maintenance and access satisfactory to the Village are established. Public recreational areas should be capped at some small amount (e.g., 5%) to control the development of significant Recreational Uses in a Residential District.

Some language you may consider to improve the description and definition of quality restricted open space follows:

General standards: The restricted open space required in Section 1153.08 (c) shall comply with the following:

1. Restricted open space shall be designed and located to conserve significant natural features and historical and cultural elements located on the site.

2. Areas designated for restricted open space purposes may be:

a) Preserved in its natural state,

b) Designed and intended for the use and/or enjoyment of residents of the proposed development,

c) Utilized for farming when authorized in a conservation easement or in the Homeowner’s Association’s covenants and restrictions [if the Village considers agriculture an appropriate open space resource for protection].

3. Where possible, restricted open space shall be connected with open space areas on land adjacent to the development; and also shall be connected within the applicant project.

4. Sewage service, stormwater management, and/or water supply facilities may be located partially or entirely within restricted open space areas. Where such facilities are so located, easements satisfactory to the Village shall be established to require and enable maintenance of such facilities by the appropriate parties.

5. In order to encourage the creation of large areas of contiguous open space, areas that shall not be considered restricted open space include:

a) Private roads and public road rights-of-way;

b) Parking areas, accessways and driveways;

c) Required setbacks between buildings, parking areas and project boundaries;

d) Required setbacks between buildings and streets;

e) Minimum spacing between buildings, and between buildings and parking areas;

f) Private yards;

g) A minimum of 15 feet between buildings and restricted open space; and

h) Other small fragmented or isolated open space areas that have a dimension less than 100 feet in any direction.

6. Any restricted open space intended to be devoted to recreational activities shall be of a usable size and shape for the intended purposes. The maximum percentage of the total project area that may be developed for active recreation areas, including a community center, shall be 5% [or some other amount the Village finds appropriate, to limit Recreation Use in Residential districts] .

7. Any area within the restricted open space that is disturbed during construction or otherwise not preserved in its natural state, other common areas such as required setback areas, and both sides of new streets shall be landscaped with native vegetation that is compatible with the natural characteristics of the site.

8. The restricted open space, including any recreational facilities proposed to be constructed in such space, shall be clearly shown on the general development plan.

Open Space Ownership and Development Restrictions: The Village should also develop specific standards for ownership of the restricted open space and state a clear prohibition of further development of the restricted open space, supported by a legal agreement or easement. Otherwise these lands are not necessarily protected. The Village can require fee simple ownership or easements to the Village, ownership and maintenance by a Homeowner's Association, or easements held by specified outside organizations. We suggest you investigate and specify a specific and sound approach to long-term protection and management of the restricted open space. Be sure to provide the Village with the authority to approve the easement designee, as some potential easement holders are more effective in protecting easement than others. Indeed, strict standards for easement holders should be developed.

Open Space Inclusions [1153.08 (e)] – The basic residential density calculations we outlined in our comments on 1153.08 (c) 5 **already provide a 10-20% bonus** because they do not specifically exclude new roads, sidewalks, and other non-buildable areas, such as mandatory wetland and riparian setback areas. We therefore caution the Village about providing an additional significant density bonus.

Conservation development has additional inherent economic incentives. The developer typically realizes economic benefits from less clearing and grading of land and less construction of infrastructure like roads and sidewalks. These developments typically offer smaller housing products they can usually develop and sell more quickly as well.

Typically, a maximum density bonus of 10% is granted in conservation development areas to further encourage use of the overlay district provisions. Seldom, if ever do such bonuses exceed 25%. We are not aware of bonuses greater than 25% in any code in the area. The requested maximum of 50% is therefore unacceptable.

Some of the proposed provisions for density bonuses (#1, 2, 3, and 7) are so vague as to justify bonuses for almost any level of effort. Your Board of Zoning Appeals (BZA) would be forced to make many subjective decisions on granting these bonuses based on some estimation of the significance of the developer's proposed action. For example, how much extension of the Village's sewer infrastructure is worth a 5% bonus in density; or what exactly is a substantial natural feature and what type of feature deserves a 5% bonus? The Village should make specific requirements for each goal that would offer a bonus and outline how it will calculate bonuses for each one. Our experience is that without these bonuses specifically outlined, your BZA would have trouble evaluating proposals and defending decisions against alternative interpretations of the appropriate bonus.

Additionally, some provisions include bonuses for actions that do not exceed minimum standards for the code. For example, under #4 (maintenance of preconstruction forests), a bonus for protecting more than 30% of forest may be provided. Therefore, on a completely-forested parcel, given that you already have a 40% open space requirement, a possible 10% bonus for "additional forest protection" may be considered simply by developers meeting the basic open space requirement by protecting 40% of the forest.

As such, we recommend all of these provisions should be reevaluated based on the final language outlining a restricted open space definition and established only for the goals the Village deems important. Careful wording is needed to ensure that bonuses are applied only when a clear gain in value is realized.

Riparian and Wetland Setbacks: The setback provisions of your code (Section 1181) clearly applies to Residential Conservation Development areas, but could be mentioned in this code. The Village is encouraged to adopt stricter wetland protection measures for Conservation Development (e.g., requiring all on-site wetlands to be protected or requiring they be mitigated on-site).

With these improvements, the Village can establish a Residential Conservation Development overlay that protects the natural and scenic resources of the community and minimizes watershed impacts while providing for economic development. The community and its downstream neighbors would be better served with residential conservation development on the **entire parcel** that follows the good conservation design principles we have outlined. We encourage you to revise the proposed code and adopt a better version for your community.

Thank you for the opportunity to comment on the proposal. If you have any questions or need additional information, please contact Ecologist Kevin Skerl at (330) 650-5071 ext. 4.

Sincerely,

John P. Debo Jr.
Superintendent