

GET PROOF OF THE FACTS !!!!

The following paragraphs are intended to clarify any misinformation that has been distributed by opponents regarding the Township Fact/Fiction Cards:

At four different public meetings held in June of this year to discuss the proposed update to the Route 40 Land Use plan, residents wanted more information about sewer coming to Brandt. They suggested “send postcards” and “use some of that 3.8 mil levy money” and “give us the facts”. In an effort to keep costs low, the trustees chose to send out the Fact/Fiction postcards only to residents who live in the area most directly affected by the sewer – namely the southeast portion of the township. Five Fact/Fiction postcards were sent out, beginning in August, one about every 7 to 14 days. The final postcard was sent to ALL Bethel residents and summarized the three main / important facts on the Brandt sewer issue.

Recently, negative propaganda regarding these informational postcards was distributed by other candidates. BELOW IS THE PROOF BACKING UP THE FACTS!!

Township Trustees cannot order or prevent sewer in the township. See attached documentation (*attachment A*) regarding the letter from the Ohio EPA to the Miami County Commissioners on 7/22/09 which states:

“Unsanitary conditions exist when inadequate or failing “on-site” wastewater treatment systems discharge untreated and partially treated wastewater to area storm sewers, ditches, and waterways. These conditions, which result in black discharges containing high levels of fecal bacteria with sewage odors, are present in the communities of Brandt and Phoneton.”

The EPA determined that on-site septic systems in Brandt are failing as stated in the excerpt from the above letter. The Ohio EPA had the same unacceptable test results as the Miami County Health Department and the Miami County Sanitary Engineer.

Attached are results from testing conducted by the Sanitary Engineer (*attachment B*).

Will I be required to connect to water? *NO!!* According to the Miami County Prosecutor, who has thoroughly reviewed the Miami County – Clark County sewer contract – NO! His Opinion #09-42 (see *attachment C*) states:

“No, there are no Federal or Ohio state laws that require a property owner to connect to a public water supply when that supply is accessible to that property. There is, however, a statute that permits a municipality to require a resident of that municipality to connect to the public water supply when accessible. R.C. § 7”

-> (FYI: *Bethel Township does not contain any municipalities*)

“No, the Agreement does not require such a property owner to connect to a public water supply. It requires Clark County to supply water, if such a property owner connects to a public water supply.”

“No, a board of county commissioners cannot require connection to a water line.”

Additionally, Brandt has had water available from Clark County since 2003. Only a small percentage of homes in Bethel Township have connected to water.

Is there a plan to run sewer on 40 west to Phoneton? The “misinformation” states there is a “Development Plan” which calls out an extension of the *water* to Phoneton. There is no “Proposed Development Plan” for water. There is a plan to have a package plant in Phoneton with onsite drip dispersal system to address the *sewage* issue. This project is still in the planning stages.

This project can stop annexation of the Phoneton Area and Wiley Industrial Park to Huber Heights.

Land Use - “a tool to guide future land use decisions”. It is just a tool and is NOT binding. A recent example where the zoning board and the trustees have deviated from the current land use plan was a decision made in September 2009. Instead of “New Urbanism” as designated on the map, the land was subdivided into “traditional neighborhood”. Reference **Case #ZA-02-09** available at the Township office.

Residential property owners can apply for a variance. The purpose of the sewer in Brandt is to remedy a health hazard which occurs when homes do not have enough land to adequately support their own septic system. Thus there are guidelines in place to receive a variance from connecting to sewer.

Misinformation – “The Township could have chosen a better technology @ a lower cost”:

False ! - The Package Plant solution would have discharged treated wastewater into the stream behind Friendship Park and would have placed a wastewater treatment plant in the park. Ohio EPA seeks to minimize discharge points into Ohio waterways. Therefore, according to the Ohio EPA, who issues the permits, Clark County Wastewater Treatment Plant is the better solution because it does NOT add an additional discharge into a waterway and **the total purchase and maintenance cost of both solutions was similar.**

OhioEPA will not issue a construction permit: Bio-Membrane Technology (BMT) does have some technical advantages over the Clark County Wastewater Treatment Plant, but technology is not the only factor involved when making a permit decision. The OEPA **considers technology as well as environmental factors and cost.** The estimated cost of the BMT package plant was \$1.5 Million (source: MCSE, March 2008) as compared to an estimated cost of \$1.2 Million (Source: MCSE, September 2009). Therefore, according to the OEPA, *who issues the permits*, Clark County Wastewater Treatment Plant (CCWTP) is the better solution because it does NOT add an additional discharge into a waterway AND the cost of CCWTP is lower.

Map and Agreement: According to EPA regulations, a Wastewater Treatment Plant must be sized for 4 times the estimated daily volume. The Miami County Sanitary Engineer has said that within the next 5 to 20 years the following areas could have sewer from Clark County: Sunshine Trailer Park, Wonderway, Mann Road and Bethel School. It is illogical to renegotiate a contract every time an additional need arises. With these other **potential** areas it would be shortsighted of the County Commissioners just to plan for the 80 homes in Brandt.

IF EVER NEEDED – Sunshine Trailer Park currently has several ongoing wastewater treatment violations – it will need sewer. The “Development Plan” is a Dick/Fessler rename for the “Strategic Land Use Plan” – **trustees don’t DEVELOP LAND – property owners do!!!**

If Dick and Fessler really “**stand behind their research**”, why didn’t they invite the *Ohio EPA*, the *Miami County Commissioners*, the *Miami County Health Department*, the *Miami County Sanitary Engineer* and/or the *Miami County Prosecutor* to this meeting?

If “**TRUTH MATTERS**” wouldn’t you, as an informed voter, want to hear the information presented by all people who have been working on the project? Not just from those who are running for public office?

In their campaign literature, Dick / Fessler state “If the incumbents are re-elected, it will be a mandate for development”. If Dick and Fessler are elected will they “mandate country”? How will they do this since those are **not powers granted to Trustees?** Will this “mandate country” apply to all parcels or just selected parcels? Will the “mandate country” apply to the lot Fessler currently has for sale on 201 that is zoned light industrial?

The information distributed by Kama Dick and Diana Fessler is wrong and has no validity. If those candidates were able to stand by their statements, they could face their opponents and the entire community in an open “Meet the Candidates” forum, but instead have chosen to talk with only those they can deceive.

Don’t be deceived on November 3rd. — Get the facts for yourself!

You are invited to a open community event, “Meet the Candidates” night hosted by the Bethel Historical Society on Thursday, October 29th at 7 p.m. in the Bethel Auditorium.

Call the people who are working on these projects:

Ohio Environmental Protection Agency, Joe Miller 285-2109

Miami County Health Department, Jeff Koehl 440-5460

Miami County Sanitary Engineer, Pat Turnbull 440-5654

Miami Count Commissioners: Jack Evans, Ron Widener, Bud O’Brien 440-5900

Miami County Prosecutor, Gary Nasal 440-5960

Bethel Township Administrator, Mike Gebhart 845-8472

Bethel Township Director of Planning and Zoning, Andy Ehrhart 845-8472

GET THE FACTS AND MAKE YOUR OWN DECISION!!!

A

ATTACHMENT A



State of Ohio Environmental Protection Agency

Southwest District Office

401 E. Fifth St.
Dayton, Ohio 45402

TELE: (937) 285-8357 FAX: (937) 285-6249
www.epa.ohio.gov

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korteski, Director

July 22, 2009

Miami County Commissioners
201 West Main Street
Troy, OH 45373

**RE: Bethel Township
Unincorporated Areas
Brandt and Phoneton
Miami County**

CERTIFIED MAIL

Ladies and Gentlemen,

This letter is provided to encourage the Miami County Commissioners and the Miami County Sanitary Engineer's Office to continue to work towards the correction of unsanitary conditions in the unincorporated communities of Brandt and Phoneton in Bethel Township. Unsanitary conditions exist when inadequate or failing "on-site" wastewater treatment systems discharge untreated and partially treated wastewater to area storm sewers, ditches, and waterways. These conditions, which result in black discharges containing high levels of fecal bacteria with sewage odors, are present in the communities of Brandt and Phoneton.

Most properties in Brandt and Phoneton have sewage systems that are at least twenty years old, some of which discharge to area storm sewers and tiles. Ohio EPA believes that these communities' small lot sizes, lack of isolation distances from buildings and property boundaries, inadequate replacement area, and limiting soil conditions, prevent individual on-site sewage systems from continuing as a feasible sewage treatment alternative in Brandt and Phoneton. The installation of a centralized wastewater collection system will correct unsanitary conditions resulting from substandard wastewater treatment systems. Further, discharge of untreated wastewater to waters of the state is a violation of Ohio Revised Code 6111. When necessary, Ohio EPA can proceed with enforcement action to require elimination of these conditions.

Ohio EPA understands that the Miami County Sanitary Engineer's office has been actively preparing plans to address these conditions in Brandt and is in the early evaluation phase to address the conditions in Phoneton as well. Again, we encourage the County to proceed with these projects to address the area wastewater treatment concerns while being mindful of the designated 208 facility planning areas. Continued

Miami County Commissioners
July 22, 2009
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progress will reduce the need for enforcement by Ohio EPA. Should you have any questions, please contact Joe Miller in the Division of Surface Water at (937) 285-6109.

Sincerely,

Thomas A. Winston, P.E.
Chief, Southwest District Office

cc: Miami County Health Department
Miami County Sanitary Engineer's Office
Bethel Township Trustees

ATTACHMENT A



OFFICE OF
**COMMISSIONERS OF MIAMI
 COUNTY**

Sanitary Engineering Department
 2200 N County Rd 25-A • Troy, Ohio 45373
 (937) 440-5653 • Fax (937) 335-4208

Brandt Sewers Preliminary Design and Storm Sewer Sampling
Project Update: September 11, 2007

Currently the Unincorporated Village of Brandt, located in Bethel Township, in Miami County, has no central sewer service. Approximately 250 residents and businesses (100 properties) in Brandt utilize on-site (Septic Systems) wastewater treatment that is regulated by the Miami County Health Department. Due to the age of most of the properties, most of the sewage systems were constructed prior to many of the modern rules for wastewater disposal that exist today and most of the systems do not meet current Health Department Requirements. Replacing the antiquated systems in most cases is not an option as most of the Village lot sizes are not large enough to allow for a modern on-site wastewater disposal system to be installed.

The goal of the Miami County Sanitary Engineer's Department (MCSE) is to remedy the environmental hazard of the failed and inadequate on-site disposal systems by installing centralized sewer at the lowest possible cost.

The Preliminary Study has been awarded to LJB, inc. a Civil Engineering Consulting Firm out of Dayton, OH. The results of the Study are expected by winter 2007-08, with Design scheduled to start by Spring of 2008.

Several sources of funding sources were researched by the MCSE department to install the sewer system at the lowest possible cost. Four years ago the Miami County Sanitary Engineer's Office obtained \$340,000 of grant and \$500,000 of 0% loan money from the Ohio Public Works Commission. Through preliminary work earlier this year by MCSE, it was determined that Brandt is also eligible for additional 0% loans from the OEPA and up to a \$600,000 grant from the Ohio Department of Development under a program titled the Community Development Block Grant for Water and Sewer. The two key qualifiers for both of these programs is economic need of the community and the environmental hazard that exists.

Earlier this year, Bethel Township completed an Income Survey of Brandt to demonstrate economic need. To demonstrate an environmental hazard, Miami County Sanitary Engineering, with the guidance of the OEPA and the Miami County Health Department, conducted three dry weather sampling events of the Community of Brandt's storm sewer. The water that was collected from the storm sewers was heavily contaminated with Fecal Colliform, E. Coli, Total Nitrogen, and BOD, which demonstrates the hazardous environmental condition created by untreated human waste bypassing the antiquated on-site wastewater systems and entering the Storm Sewers of Brandt.

(B)

Brandt Storm Sewer Sampling Program Synopsis

Methodology

A series of water samples were collected from three sites in Brandt, Bethel Township, Miami County, Ohio. The samples were collected between 7/9/2007 and 7/13/2007 by Miami County employees Bryce Carmichael, and Brian Ely. The samples were collected on three different days with no precipitation twenty four hours prior to any of the collections. Upon completion of the collections each day the samples were driven to Brookside Laboratories, Inc. in New Knoxville, Ohio for analysis. There were four different samples taken at each site on each sampling day, to be processed for different water contaminants. The samples were assigned a unique sample number and marked for a specific procedural analysis. One sample was tested for nitrate and total nitrogen. The second sample was tested for biochemical oxygen demand or BOD₅. The third sample was tested for Fecal Colliform content. The fourth sample was tested for E. Coli content. All samples were collected from Brandt storm sewers and analyzed for the afore mentioned constituents. The first set of samples was collected on 7/9/07 between 9:04 and 9:28 A.M. The second set was collected on 7/10/07 between 9:04 and 9:25 A.M. The third set was collected on 7/13/07 between 8:51 and 9:06 A.M.

Sampling Sites

Brandt sampling site number one is located in the northwest corner of the community park, north of Church Court. These samples were collected from a culvert flowing into the creek. Brandt sampling site number two is located in the alley running parallel to U.S. 40 between U.S. 40 and Walnut Street, and intersected by Third and Fourth Streets. These samples were collected from a storm sewer manhole located in the middle of the alley. Brandt sampling site number three is located on the south side of U.S. 40. These samples were collected from a culvert by the side of the road and flowing into a small creek that passes under U.S. 40. See Figure 1 for exact locations.

Results

It is assumed that if the storm sewers tested positive for Fecal Colliform, E. Coli, elevated nitrogen, or BOD₅ that widespread septic system failure has occurred throughout the storm sewer service area. As the data in Table 1 indicates, all three sampling points in Brandt, on all three days tested positive for Fecal Colliform and E. Coli. Furthermore elevated total nitrogen and BOD₅ levels were present as well. These results indicate that a large percentage of the properties in Brandt are discharging raw untreated sewers into the community's storm sewers. This indicates widespread failure of the existing on-lot systems throughout Brandt.

C

Brandt Sampling Program- TABLE 1

Site Number	Sample Number	Sample Date and Time	Procedure Name	Result
Brandt #1	B-1	7/9/07 9:04 AM	Nitrogen-Nitrate	0.19 mg/l
Brandt #1	B-1	7/9/07 9:04 AM	Nitrogen-Total	46.93 ppm
Brandt #1	A-1	7/9/07 9:04 AM	BOD	41.1 mg/l
Brandt #1	0-2	7/9/07 9:04 AM	Fecal Coliform	2419.6 MPN/100 ml
Brandt #1	M-3	7/9/07 9:04 AM	E. Coli	2419.6 MPN/100 ml
Brandt #2	B-2	7/9/07 9:18 AM	Nitrogen-Nitrate	0.15 mg/l
Brandt #2	B-2	7/9/07 9:18 AM	Nitrogen-Total	52.78 ppm
Brandt #2	A-2	7/9/07 9:18 AM	BOD	39.6 mg/l
Brandt #2	A-23	7/9/07 9:18 AM	Fecal Coliform	>2419.6 MPN/100 ml
Brandt #2	K-3	7/9/07 9:18 AM	E. Coli	2419.6 MPN/100 ml
Brandt #3	B-3	7/9/07 9:28 AM	Nitrogen-Nitrate	0.38 mg/l
Brandt #3	B-3	7/9/07 9:28 AM	Nitrogen-Total	7.75 ppm
Brandt #3	A-3	7/9/07 9:28 AM	BOD	11.52 mg/l
Brandt #3	Z-1	7/9/07 9:28 AM	Fecal Coliform	>2419.6 MPN/100 ml
Brandt #3	D-2	7/9/07 9:28 AM	E. Coli	>2419.6 MPN/100 ml
Brandt #1	C-1	7/10/07 9:05 AM	Nitrogen-Nitrate	7.99 mg/l
Brandt #1	C-1	7/10/07 9:05 AM	Nitrogen-Total	11.04 ppm
Brandt #1	D-1	7/10/07 9:05 AM	BOD	3.94 mg/l
Brandt #1	Y	7/10/07 9:04 AM	Fecal Coliform	1986.3 MPN/100 ml
Brandt #1	X-2	7/10/07 9:04 AM	E. Coli	1299.7 MPN/ 100 ml
Brandt #2	C-2	7/10/07 9:13 AM	Nitrogen-Nitrate	0.23 mg/l
Brandt #2	C-2	7/10/07 9:13 AM	Nitrogen-Total	5.67 ppm
Brandt #2	D-2	7/10/07 9:13 AM	BOD	7.59 mg/l
Brandt #2	T-2	7/10/07 9:12 AM	Fecal Coliform	>2419.6 MPN/100 ml
Brandt #2	X-1	7/10/07 9:12 AM	E. Coli	>2419.6 MPN/100 ml
Brandt #3	C-3	7/10/07 9:25 AM	Nitrogen-Nitrate	0.7 mg/l
Brandt #3	C-3	7/10/07 9:25 AM	Nitrogen-Total	17.56 ppm
Brandt #3	E-3	7/10/07 9:25 AM	BOD	14.13 mg/l
Brandt #3	M-2	7/10/07 9:24 AM	Fecal Coliform	>2419.6 MPN/100 ml
Brandt #3	D-3	7/10/07 9:24 AM	E. Coli	>2419.6 MPN/100 ml
Brandt #1	F-1	7/13/07 8:51 AM	Nitrogen-Nitrate	4.37 mg/l
Brandt #1	F-1	7/13/07 8:51 AM	Nitrogen-Total	5.74 ppm
Brandt #1	G-1	7/13/07 8:51 AM	BOD	5.52 mg/l
Brandt #1	I-2	7/13/07 8:50 AM	Fecal Coliform	>2419.6 MPN/100 ml
Brandt #1	J-3	7/13/07 8:50 AM	E. Coli	1203.3 MPN/ 100 ml
Brandt #2	F-2	7/13/07 8:59 AM	Nitrogen-Nitrate	1.94 mg/l
Brandt #2	F-2	7/13/07 8:59 AM	Nitrogen-Total	2.66 ppm
Brandt #2	G-2	7/13/07 8:59 AM	BOD	2.15 mg/l
Brandt #2	U-2	7/13/07 8:58 AM	Fecal Coliform	1046.2 MPN/100 ml
Brandt #2	W-2	7/13/07 8:58 AM	E. Coli	2419.6 MPN/100 ml
Brandt #3	F-3	7/13/07 9:07 AM	Nitrogen-Nitrate	0.87 mg/l
Brandt #3	F-3	7/13/07 9:07 AM	Nitrogen-Total	25.63 ppm
Brandt #3	G-3	7/13/07 9:07 AM	BOD	26.28 mg/l
Brandt #3	L-2	7/13/07 9:06 AM	Fecal Coliform	>2419.6 MPN/100 ml
Brandt #3	E-2	7/13/07 9:06 AM	E. Coli	1203.3 MPN/ 100 ml

October 14, 2009

Opinion No. 09-42

**SUBJECT TO ATTORNEY-CLIENT
PRIVILEGE
NOT FOR PUBLIC DISSEMINATION**

Michael Gebhart, Administrator
Bethel Township
8735 South Second Street, Brandt
Tipp City, OH 45371

Mr. Gebhart:

I am in receipt of your letter of August 19, 2009, in which you request an opinion regarding water lines. More specifically, you ask three questions about whether a property owner may be required to connect to a public water line. First, you ask whether there are any laws that require a property to owner to connect to a public water supply when that supply becomes accessible to that property. Second, you ask whether the sewer agreement between Miami and Clark counties requires a property owner who is receiving sanitary sewer service to connect to the public water supply when available. Finally, you ask whether a county, by legislative action, may require a property owner to connect to a public water supply. I have reviewed the relevant laws, and I offer you the following discussion.

This office was unable to locate any state or Federal law that requires a property owner to connect to a public water supply when that supply becomes accessible to that property.

Therefore, the answer to your first question is no, there are no state or Federal laws that require connection to a public water supply.

I will address your second and third questions together as they both regard the same topic: may a county require a property owner to connect to a public water supply either by agreement or legislation. It should be noted that a board of county commissioners is a creature of statute, and, therefore, possesses only the authority that is expressly granted to it by statute, or is, by implication, necessary to the performance of the authority granted to it thereby. State ex rel. Shriver v. Bd. of Comm'rs (1947), 148 Ohio St. 277, 74 N.E.2d 248. Therefore, the first issue that must be addressed is what authority does the Board possess in regard to the provision of water.

A board of county commissioners has the authority to operate a public water supply. R.C. § 6103.02(A). A board of county commissioners has the authority to contract with another public entity to operate a public water supply. R.C. § 307.15(A)(1); R.C. §§ 6103.20-6103.22. A board of county commissioners may also assess the cost of constructing public water facilities and distribution to the owners of the properties that would benefit from the establishment of the public water supply. R.C. § 6103.05. A board of county commissioners may adopt rules and regulations regarding the maintenance, the protection and the use, including connection to and the termination of the connection, of its public water supply. R.C. § 6103.02(C).

Among all of the statutory provisions that concern the operation of a public water supply by a board of county commissioners, not one provision authorizes a board of county commissioners to require a property owner to connect to an available public water supply. If a board of county commissioners cannot require a property owner to connect to the water supply, a board of county board cannot enter into an agreement with another board of county commissioners that would requires connection. Despite this, it appears that the Sewer Agreement between Clark County and Miami County, a copy of which you provide with your letter, requires property owners who receive sewer service from Clark to connect to Clark County's public water supply.

Division F of Section III of the Contract reads "That if CLARK COUNTY provides wastewater treatment service to any area of Bethel Township in MIAMI COUNTY that same area shall be required to purchase water from CLARK COUNTY pursuant to the Water Agreement between the parties hereto, unless otherwise agreed to in writing by the parties hereto." Because a county board of commissioners has no authority to require a property owner to connect to the county's water lines, this section of the Agreement must be read as requiring that a property owner who receives sewer service from Clark County to purchase water from Clark County if the property owner ever seeks to connect to a public water supply.

Based on the foregoing discussion, it is my opinion, and you are hereby advised your questions may be answered as follows:

"Is there any Federal/State code/law that requires a resident to tap into a water line if it is accessible to their property?" No, there are no Federal or Ohio state laws that require a property owner to connect to a public water supply when that supply is accessible to that property. There is, however, a statute that permits a municipality to require a resident of that municipality to connect to the public water supply when accessible. R.C. § 7

"In the Sewer Agreement between Clark County and Miami County, approved through the Miami County Commission Resolution 09-08-1111, does Page 6, Section III – Clark County and Miami County Agree – Item F obligate a Bethel property owner who has public sewer, provided through Miami County, to also have to hook in to public water?" No, the Agreement does not require such a property owner to connect to a public water supply. It requires Clark County to supply water, if such a property owner connects to a public water supply.

"Barring any law or agreement, can a county, by legislative action, mandate a property owner to connect to a public water source?" No, a board of county commissioners cannot require connection to a water line.

If you have any further questions, please feel free to contact this office. I thank you for your attention to this matter.

Sincerely,

Gary A. Nasal
Miami County Prosecutor

GAN:jrd/