

BERLIN ZONING COMMISSION (BZC)

Regular Meeting

August 13, 2009: 7:00 PM

1 This meeting was held at the Berlin Township Hall, 3271 Cheshire Road, Delaware, Ohio
2 43015.

3
4 **CALL TO ORDER**

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6 The meeting was called to order by Chairperson Rick Sedlacek at 7:00 PM.

7
8 Ms. Yorko led the meeting attendees in the recitation of the Pledge of Allegiance.

9
10 BZC Members Present: Rick Sedlacek (chairperson); Jerry Valentine (vice-chairperson);
11 Jim Hahn; Kristin Yorko; Rae Ann Kerlin; Betty Bringardner – first alternate; Toni
12 Korleski - second alternate.

13
14 Also present: Zoning Inspector Ray Armstrong, Zoning Clerk Lisa Knapp

15
16 Mr. Sedlacek read the adopted BZC policy statement for the meeting, as printed in the
17 agenda.

18
19 **PROOF OF LEGAL NOTICE PUBLICATION**

20
21 Zoning Clerk Lisa Knapp provided proof of publication for the legal notice for this
22 meeting, which was published on July 30, 2009 in the Delaware Gazette, providing
23 notification of the meeting date, time, and items for discussion.

24
25 **APPROVAL OF MINUTES**

26
27 The minutes from the 7/21/09 BZC meeting will be approved at the next meeting.

28
29 **LEGAL NOTICE**

30
31 **BERLIN TOWNSHIP ZONING COMMISSION NOTICE OF PUBLIC MEETING**
32 The Berlin Township Zoning Commission will hold a public hearing on August 13, 2009
33 at 7:00 p.m. at the Berlin Township House located at 3271 Cheshire Road, Delaware,
34 Ohio 43015 in order to consider an application, designated as Case Number 99-004,
35 Amendment #2, filed by Julie Borgquist, 242 Sonoma Drive, Delaware, OH. The
36 applicant is requesting a change of use of 1.78 acres currently zoned Planned Commercial
37 and Office District (PCD) known as Parcel #41821002001000, 28 Lackey Old State
38 Road, Delaware, OH, for a child care and learning center. The text of this proposed
39 change of use will be available for public examination from July 31, 2009 through
40 August 13, 2009, inclusive; Monday through Friday, from 7:30 a.m.-5:00 p.m. at the
41 Berlin Township Zoning Office located at 3271 Cheshire Road, Delaware, Ohio 43015.
42 Continued discussions regarding the revisions associated with the text of the
43 Comprehensive Land Use Plan (CLUP) will include the goals and visions as well as
44 community facilities and open space and recreation. Additionally, discussions will
45 continue on possible changes as a result of the recently completed Business Community
46 Forum. The person responsible for giving notice of the public hearing by publication is
47 Cathy Rippel. Questions concerning this matter should be directed to the Zoning Office at
48 740-548-5217. Township residents are encouraged to attend.

49
50 Berlin Township Zoning Commission
51 Rick Sedlacek, Chairman

52
53 **MEETING ATTENDEES**

- 54
55 • Chris Acker, 90 Lackey Old State Road, Delaware, Ohio 43015
56 • Nicki Acker, 90 Lackey Old State Road, Delaware, Ohio 43015
57 • Teresa Stuckey, 192 Lackey Old State Road, Delaware, Ohio 43015
58 • David Stuckey, 192 Lackey Old State Road, Delaware, Ohio 43015

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- 59 • Toni Korleski, BZC second alternate member, 3584 Greenville Drive, Lewis Center,
60 OH 43035
- 61 • Joe Korleski, BZC second alternate member, 3584 Greenville Drive, Lewis Center,
62 OH 43035
- 63 • Tom Lawson, 4586 Liberty Road, Delaware, Ohio 43015
- 64 • Ron Borgquist, 242 Sonoma Drive, Delaware, Ohio 43015
- 65 • Julie Borgquist, 242 Sonoma Drive, Delaware, Ohio 43015
- 66 • Eric Rickabaugh, 244 S. Old State Road

AGENDA ITEM: BZC #99-004 CHANGE OF USE

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69
70 Julie and Ron Borgquist, 242 Sonoma Drive, Delaware, Ohio 43015 presented the
71 application and answered questions from the Commission.

72
73 Ms. Borgquist said that she and her husband wish to open a child care center at 28
74 Lackey Old State Road. The facility will be a small, private center and will be licensed
75 by the state. Mr. Borgquist said the smaller split-level building will be used to care for
76 about 35 children. If enrollment expands in the future the other existing building on the
77 property, which is 2 stories tall, may be used.

78
79 Mr. Sedlacek asked if the applicants wished to present any other information. Ms.
80 Borgquist said that the hours of use for the child care center were indicated in the
81 application and will be the typical operating child care hours of Monday-Friday and she
82 intends to have 30-40 full-time children and 6-8 staff members. The outside playground
83 area details were also included in the application.

84
85 Mr. Sedlacek asked whether the applicant would rent or lease the property. Mr.
86 Borgquist said the property would be leased from Meridian Homes.

87
88 List of Exhibits

- 89
90 1. Application of minor amendment dated 07/24/2009, *submitted with application*
91 *dated 07/24/2009.*
- 92 2. Table of content page, *submitted with application dated 07/24/2009.*
- 93 3. Description of change of use, *submitted with application dated 07/24/2009.*
- 94 4. Description of 1.786 tract, "Exhibit A" from Scioto Land Surveying dated
95 08/17/1987, Plat Plan of parcel "Exhibit B" from Scioto Land Surveying dated
96 08/17/1987, (2-pages), *submitted with application dated 07/24/2009.*
- 97 5. Site plan with proposed playground plan, & current site plan, (2-pages), *submitted*
98 *with application dated 07/24/2009.*
- 99 6. Letter from Delaware General Health District, Steve Burke, to Tom Brown (2-
100 pages) dated 06/17/2009, *submitted with application dated 07/24/2009.*
- 101 7. Letter from Berlin Township Fire Department, William Bechstein, *submitted with*
102 *application dated 07/24/2009.*
- 103 8. Black & White aerial view of parcel, photo dated April 2008, *submitted with*
104 *application dated 07/24/2009.*
- 105 9. Colored aerial view of parcel, photo dated April 2006, *submitted with application*
106 *dated 07/24/2009.*
- 107 10. List of current mailing addresses within 200 feet of proposed parcel, dated
108 06/29/2009, *submitted with application dated 07/24/2009.*
- 109 11. Ohio Department of Job and Family Services Childcare Licensing Rules (23 pages),
110 *submitted with application dated 07/24/2009.*
- 111 12. Proof of request via email in the *Delaware Gazette* dated 07/28/2009.
- 112 13. Notice of Hearing to applicant dated 07/30/2009.
- 113 14. Certified mail receipts dated 07/29/09, and landowner letter dated 07/30/2009 (2-
114 pages).
- 115 15. Proof of publication in the *Delaware Gazette* dated 07/30/2009.
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COMMISSION CONSIDERATION

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Mr. Sedlacek began the Commission review with Exhibit 3. Ms. Kerlin said she was concerned that the day care could exceed the septic capacity, and she asked how the applicant could guarantee that there wouldn't be more usage. Mr. Borgquist said he spoke with the property owner and the parties agreed that if there seemed to be an issue with the septic system in the future, the applicant would pay to have a company extract the system more often as necessary. It is in the kids' best health interest to ensure that the facilities are functioning in a pristine manner, and the business could not afford to have something like that happen; if it did, the parents "would go nuts". The cost is only about \$200.00 per extraction.

Mr. Sedlacek said that the Commission assumes that the applicant expects to care for 30-40 children at the center, and the application states that some children will be in diapers. Mr. Borgquist said that about 10 kids would be infants and about 30 children would utilize the bathrooms. He said he spoke with Tom Lawson, the co-owner of the property along with Tom Brown, regarding converting a bathtub area to a boy's urinal which require only a half gallon per flush, as opposed to a flush toilet which uses about 1.5 gallons per flush. Thus the applicant can do some things to modify the water usage of the property by making adjustments to the bathrooms.

Mr. Borgquist said the Commission may be concerned that the center will use water to wash dishes, etc. However, food will not be made at the facility but will instead be carried in and there will be bottled water for children. The applicants don't feel this will be a major issue, but if it does the applicants do have a contingency plan.

Mr. Hahn asked if the lease agreement "indicates the 25." Mr. Borgquist said, "Yes," and said that he has met with the Delaware Health District (DHD) four or five times regarding this issue. Mr. Sedlacek said that that type of situation is usually considered by the Commission when there is a change of use. Mr. Hahn asked that it be confirmed that the lease agreement indicates that the sewer pumping is agreed to and who will pay for it.

Mr. Sedlacek said that the review process for this type of application typical results in issues and things that the Commission will request that the applicant comply with. The list of items will be documented and signed by him and the applicant, and then become part of the record. He requested a copy of the lease agreement.

Tom Lawson, 4586 Liberty Road, Delaware, Ohio 43015, co-owner of the property, said that the DHD has been in contact several times regarding this and until this year his company had a license to install such systems; he is well aware of the problems which septic systems can create and what the remedies are, as well as the preventative measures which are necessary to avoid problems.

Mr. Sedlacek said that the first item on the list of items to comply with will be to "Repair and maintain the septic system as required." Mr. Hahn said that could also be part of the lease agreement.

Ms. Yorke asked if the text should indicate that the applicant has stated that all food will be catered, that clothing will not be washed, etc. and also that there will be bottled water only. Mr. Sedlacek said that information would be added to item #1 on the list of agreed-upon items: the applicant will have only catered food and bottled water.

Ms. Kerlin said that the information in the application regarding the entering and entering route said that cars will enter in a semi-circle closest to Routes 36/37; however, she thought the entry was off of Lackey Old State Road. Ms. Borgquist clarified that this meant that traffic would be coming towards Routes 36/37 on the north end of the property, and the staff will park on the south side of the area. Ms. Kerlin asked if there would be a change to any of the existing parking on the property or whether the existing roadways would be altered. Ms. Borgquist said they would not be.

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178 Mr. Valentine said that the application did not ask for changes in several areas which he
179 felt to be negative. For example, the application states that lighting will be from 6:00
180 AM to 7:30 PM. It is light during some seasons at 6:00 PM, but in the winter time it gets
181 darker earlier and that could be dangerous because there is so much traffic in that area
182 and there are so many kids at the center. He asked about having outside lighting. Mr.
183 Borgquist asked if he was referring to parking lot lighting. Mr. Valentine said that he was
184 referring to the entryway and driveway area; this is a very busy area and the last time it
185 was discussed blacktopping the driveway was suggested. The location is great but there
186 could be problems in the future.

187
188 Mr. Borgquist said lighting wasn't discussed much but there will be lighting at the top of
189 the roof which will be visible to entering and existing traffic. Mr. Lawson said that light
190 may be burned out. Ms. Kerlin asked if there was a pole light. Mr. Lawson said he
191 believed it was a halogen light on the side of the house. Mr. Valentine said it has always
192 been used for minimal traffic in that area. Mr. Lawson said they are high-pressure
193 sodium lights but they have all been turned off because there was too much lighting for
194 the prior use. Ms. Kerlin asked if it was lighting of the grounds. Mr. Lawson said it was
195 too much lighting and made the building look like a "UFO." Mr. Lawson said that the
196 last plan addressed the parking area and there was a timeline which is supposed to be
197 worked on over a period time and the economy was expected to be recovered by now.

198
199 Mr. Lawson said that the lighting plan included plans to turn the lighting off so it wasn't
200 so "beacon-like." Mr. Sedlacek asked the applicant if item #2 on the list of agreed-upon
201 items could be that the applicant will investigate additional down lighting per the code to
202 see if something could be added. He shared Mr. Valentine's concern about putting kids
203 at risk when it is dark and cars are pulling in and out of the property.

204
205 Mr. Borgquist agreed and said that perhaps adding lighting at the point of the top of the
206 house, directed towards the parking lot, would probably add a safety feature. Mr. Hahn
207 reminded him that the lighting must not shine on the neighboring properties. Mr.
208 Sedlacek asked that the applicant read the zoning resolution and meet with Mr.
209 Armstrong to ensure that the lighting meets the requirements of the zoning resolution.

210
211 Ms. Yoroko asked whether the lighting should be turned off after hours. Mr. Sedlacek said
212 it could be on a timer for the sake of the neighbors.

213
214 Mr. Sedlacek asked if the applicant had any plans to reduce the dust on the gravel
215 driveway which increased traffic will generate. He said that paving had been mentioned,
216 and there is also a product which could be sprayed on the drive as well. Twenty-five cars
217 using the driveway over a 30-minute period could generate additional dust for the
218 neighbors. Mr. Lawson asked for more details. After discussion, a person later identified
219 as Chris Acker said that a product, which was unintelligible to the Clerk, can be used and
220 that it is EPA-approved.

221
222 Mr. Sedlacek said that item #3 would be to investigate how the dust from the gravel
223 driveway could be controlled. Ms. Kerlin said that the gravel driveway would seem to be
224 a potential issue for children with allergies, and the dust will cover the property,
225 including play equipment, etc. Mr. Borgquist said that 30-40 parents will not be entering
226 and exiting at once, and it is rare that two parents come at the same exact time. If the
227 business expands in the future more improvements could be added, such as a paved
228 parking lot, but he is limited right now. If it ever became a problem the applicants would
229 work to solve the problem. Also, if it became an issue the parents would be the first to
230 complain, he pointed out.

231
232 Mr. Valentine was concerned about children entering and exiting the facility which is
233 near Routes 36/37, and keeping the children in a fence will help but the diagram indicates
234 a sidewalk along Route 36/37. Mr. Borgquist responded that there is a fenced area all the
235 way up to the front door. There is also a split-rail fence along the front of the parking
236 area but it does help to corral the children and there is also a hedge row.

237

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238 Mr. Valentine asked whether the children would enter the building at the front of the
239 building. Mr. Borgquist said that he didn't think that the playground area would block
240 the back entrance. Typically the younger children will come in the back door near the
241 garage which was finished, and the older children would probably come around the front
242 part of the building.

243
244 Ms. Kerlin asked if the necessary licenses and inspections would cover safety issues such
245 as those mentioned. Mr. and Mr. Borgquist said, "Yes," and that those restrictions may
246 be even stricter. Ms. Kerlin asked if the applicant could show a copy of the licenses. Ms.
247 Borgquist said that she hasn't applied for those licenses yet, contingent on approval of
248 their request. Mr. Kerlin asked if copies of the licenses could be presented to ensure that
249 they have been approved.

250
251 Ms. Kerlin suggested deferring to the licensing body to ensure that the facility was safe
252 for the children. Mr. Sedlacek asked that item #4 on the list of agreed-upon items be to
253 obtain a copy of the license and make it a part of the package.

254
255 Mr. Sedlacek asked whether the garage was finished. Mr. Borgquist said that it is and
256 that it is heated with a separate heating unit. Mr. Sedlacek said the third paragraph
257 indicates the existing road sign will be used to market the child care center. He asked if
258 that was the Meridian Homes sign on the north end of the property. Ms. Borgquist shook
259 her head "yes." Mr. Sedlacek asked if the text for the sign would be modified to include
260 both entities. Mr. Borgquist said that was correct. Mr. Sedlacek said the application
261 didn't seem to mention any new signs, so he assumed there would be no new signs.

262
263 Mr. Lawson said that the sign in the front was approved and there is also the ability to put
264 a sign of about 90 SF on the Lackey Old State side of the property. He asked if the
265 applicant would be able to install a sign on the front of the building. Mr. Sedlacek said
266 that it would have been best to have submitted it with the application but because it is not,
267 item #5 of the list of agreed-upon items will be to ensure that any additional signage will
268 be approved by the zoning inspector.

269
270 Mr. Borgquist said that this is the time of year when people are seeking childcare because
271 school will be starting again in 3 weeks, and a 3' by 6' banner has been used at the
272 facility, and he is trying to determine what type of signage could be used if this
273 application is approved before people have already selected their childcare facilities for
274 the year. He would like to hit the ground running and was concerned that if he cannot his
275 business will "be in the hole until next spring." A web page will be set up as soon as
276 possible. Mr. Sedlacek said that the applicant will need to work out the timing and the
277 Commission is concerned that everything is done properly, and that he contact Mr.
278 Armstrong for those concerns.

279
280 Mr. Sedlacek said that the application indicated that there will be 5 parking spaces, but it
281 also indicates that there will be 6-8 employees. He asked if there would be no more than
282 5 employees at the facility at any one time. Ms. Borgquist said that was correct, and that
283 the 6-8 employees included both full-time and part-time staff. Mr. Sedlacek said the
284 application indicated that the parking spaces will be on the south side of the property but
285 he didn't see their location. Ms. Kerlin said they were 7-11. She asked if most people
286 dropping off their children will drive up to drop the kids off. Ms. Borgquist said there are
287 plenty of spaces to park in on the north side of the property. Ms. Kerlin said the
288 application indicated that traffic will enter in a semi-circle and she thought there may be a
289 drop-off. Ms. Borgquist said that she just wanted to provide the concept of how parents
290 would drive in.

291
292 Ms. Yorko said that the application indicates that there will be no other modifications or
293 deviations from existing lighting; however, new lighting is indicated in Exhibit 5 as
294 "Lithonia" lighting on the buildings. Ms. Borgquist said that one is existing lighting and
295 the other lighting would be new. The second sheet is the proposed playground plan.

296

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297 Ms. Yorke asked what the material for the playground would be. Ms. Borgquist said
298 mulch would probably be used. Mr. Borgquist said that some of the existing grass would
299 remain and the playground surface would have to be acceptable to the state of Ohio. Mr.
300 Sedlacek asked whether that should be item #6 on the list of agreed-upon items and Ms.
301 Yorke agreed. Mr. Sedlacek said the playground should be made of approved materials.
302 Ms. Borgquist said that all features of the playground would be part of the licensing.
303

304 Ms. Yorke said she was very concerned about the septic system and the applicant's
305 calculation. Mr. Sedlacek said most of the Commission had that concern, but if the
306 applicant states that the septic system is sufficient and it is made part of the requirements
307 in #1 that should cover it. Mr. Lawson said the septic system is inspected annually. Mr.
308 Hahn asked if the building has only been used as a model home. Mr. Lawson said,
309 "Yes," and that it has been used very sparsely.
310

311 Mr. Hahn said that the application states that the applicant hopes to pick up a bus stop to
312 Delaware schools, and he asked if most customers would come from the Delaware area
313 rather than Olentangy schools. Mr. Borgquist said that was what he assumed but a lot of
314 response has also been received by Olentangy parents; she has also since learned that
315 Delaware schools do not bus that far south.
316

317 Teresa Stuckey, 192 Lackey Old State Road, Delaware, Ohio 43015, asked how long the
318 applicants have been preparing for the business, as it seems to her that there are many
319 aspects of it which have not been confirmed or completed. Ms. Borgquist said she was
320 waiting to find out the results of this hearing, as they cannot move forward unless the
321 development plan is approved. Mr. Borgquist added that they have been working on
322 opening a child care business since 2004 and had also been considering opening a
323 franchise child care business, and for about 1.5 years have been working on their own
324 childcare business with the proposed name of Willow Bee.
325

326 Ms. Borgquist said she has been a director for Children's World for 6 years and since she
327 had her own children she has been working in daycares on and off; she doesn't care for
328 corporate centers and feels that small private centers provide a more communicative
329 environment for parents. She has always wanted to open her own day care center and
330 now has found a good location for it.
331

PUBLIC COMMENT

332
333
334 Chris Acker, 90 Lackey Old State Road, said he is the first adjacent house to the subject
335 property, and he thanked the Commission for the opportunity to address the application.
336 He is the property owner which will be most affected by the proposed change and he
337 asked that the Commission give considerable weight to his comments as he will have to
338 "take the brunt" for the activities on the subject property. He said that at this time he
339 doesn't support the efforts to rezone the subject property because he doesn't know much
340 about what will happen.
341

342 Mr. Acker said he checked into the regulations of Ohio Department of Job and Family
343 Services, the licensing committees of the state of Ohio, he contacted his attorney, and
344 there are some issues. He asked whether the proposed facility is a drop-in facility, a
345 parent cooperative or child care center, a part-time child care center, a school child care
346 center, etc. and he said that those uses all require different types of licenses. Is it a type A
347 or B childcare home facility? Each license has a different set of regulations which
348 govern it.
349

350 Mr. Acker said the age group of the children will determine the number of cots required
351 for preschool children. Other requirements include medical personnel, parental
352 involvement, food service operating license, operating hours (which he said seems to be
353 12 hours per day, 5 days a week, 60 hours a week). The child population and staff ratio
354 need to be considered, and there will be 40 people present 5 days per week, 12 hours per
355 day. The type of facility has a great bearing on the type of facility which the Commission
356 will consider approving, as well as the building and fire departments. It is his

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357 understanding that the state of Ohio will approve a license but the inspecting will be
358 approved by Berlin Township.

359
360 Mr. Acker said that state law specifies that outside play areas must be available at a child
361 care facility for use when the weather permits. This means the construction of a fenced-
362 in area and he asked about the zoning requirements for fences in Berlin Township. He
363 said a four-lane highway is located nearby and Lackey Old State is not a playground;
364 there is more traffic on that road than most roads in the county.

365
366 Mr. Acker said there is the issue of increased sewage. He said to his knowledge the
367 properties have not been allowed to be rented residentially because there is only a single
368 sewage system. Mr. Lawson said that zoning only is required. Mr. Acker said that 40
369 people using the building 12 hours per day won't use as much sewage as 4-5 people who
370 use the system continuously every day? He said he failed to see that and would
371 investigate the matter with the DHD.

372
373 Mr. Acker said that the two homes on the property haven't been sold as residential units
374 based on the zoning and that could be changed. His main issues are that in the 3 homes
375 contiguous to the subject property there are no children. He spent half a million dollars
376 for his property and home for the peace, solitude and quietness, and now he is being told
377 that there will be 40 kids running around 12 hours per day, inside or outside, he has
378 concerns. Mr. Sedlacek asked him to wrap up his comments as his 3 minutes are over.

379
380 Mr. Acker said that he requested respectfully that the Committee deny the request due to
381 the issues for which answers have not been provided and because the child care business
382 will adverse affect his property.

383
384 Mr. Sedlacek said that the application did include a letter from the township fire
385 department and also the regulations from the Ohio Department of Job and Family
386 Services. He wasn't sure what Mr. Acker meant by Berlin Township doing the
387 inspecting; it will do the fire inspection, and Delaware County will inspect the building.
388 The sewer issue has been addressed and the playground will be addressed later. He asked
389 for the applicants to address Mr. Acker's comments. He asked what type of license the
390 applicants would request.

391
392 Ms. Borgquist said it would be a full and part-time center and the Commission asked for
393 a copy of licenses as part of the requirements. She said the applicant will be required to
394 follow all rules, including staff to child ratios, etc. Mr. Sedlacek asked how often the
395 facility would be inspected. Ms. Borgquist said a full inspection would be conducted to
396 obtain license approval, and the facility will be inspected every 6 months, as well as
397 surprise pop-in visits.

398
399 Ms. Stuckey asked about the lot in-between the two houses and the first house; she asked
400 whether it would be possible to expand to that area. Mr. Lawson said that could not
401 occur without a rezoning as it is zoned as a residential property. Mr. Sedlacek said that
402 this is not a rezoning; the property was already rezoned as a commercial development and
403 so the property owner is allowed to conduct commercial activity without rezoning the
404 property. The township rules specify that when a drastic change in use, such as from a
405 model home to a day care, that the Commission must approve it.

406
407 Mr. Acker said that when there is a 2-3" rainfall, the lot between his house and the
408 subject property becomes a "lake" and a kid that gets in there would be in trouble. Mr.
409 Sedlacek said that nothing could be built on that property without approval by the
410 Commission. Mr. Borgquist said he and Ms. Borgquist would be happy to respond to
411 Mr. Acker's concerns, and he understands that Mr. Acker will be directly affected by the
412 childcare and he is probably concerned about noise. He said he will not ignore his
413 concerns and he would do whatever he needs to do for the request to be acceptable to
414 him. Mr. Sedlacek said that many of Mr. Acker's statements were comments. Mr. Acker
415 said that he spent a lot of money to have peace and quiet and he wasn't sure he would
416 have peace and quiet any more.

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418 Mr. Hahn said that technically a gas station or fast food restaurant could be built on the
419 property and that would be more of a nuisance than a day care. Ms. Stuckey asked what
420 else could be built on the property. Mr. Sedlacek said that the NAICS code was used to
421 create the list of about 50 different uses which are allowable under the property's present
422 Planned Commercial zoning. The Commission's job is to evaluate the application to see
423 whether it falls within the zoning requirements and also that all Commission issues and
424 items are completed.

425

426 Mr. Borgquist said that if Mr. Acker had concerns in the future such as from noise or the
427 view, he wouldn't have a problem with installing items such as arborvitae trees, etc. to
428 help. He doesn't want a battle between the neighborhood and the daycare center. Mr.
429 Sedlacek said that if the property owner was requesting a rezoning to commercial and the
430 adjacent property was residential they would be bound at that time to do buffering.

431

432 Mr. Bringardner said she thought that Mr. Lawson had mentioned paving the driveway
433 and parking areas. Mr. Lawson said that in the original plan a timeline of 4 years was
434 approved to have paving and he thought the economy would recover and that only model
435 homes would be used on the property. However, times are tough and so part of the
436 property will be leased out to help carry his company through hard times.

437

438 Mr. Sedlacek asked how long the lease period would be. Mr. Lawson said that would be
439 determined after this hearing and it would mostly depend on how much modification will
440 be necessary; if a lot of work is done then a longer-term lease will be necessary. In
441 reality, a lease is only as good as the facility can stay in business.

442

443 Mr. Hahn said that if a large corporation was requesting plan approval, he would have
444 expected all the details to be completed at this time; trying to start a small business is
445 different and he can appreciate that the applicants would like to find out their odds for
446 approval before spending even more money to meet requirements from the Commission.
447 Thus he is more lenient on allowing the applicants more time, although he is not lenient
448 on relaxing the requirements. The list of items provided in the application would seem to
449 be sufficient at this time, in conjunction with a list of further requirements by the
450 Commission, especially given the current economy. He had no problem with the
451 applicant coming in step by step and spending money for each step. He said the concerns
452 expressed at this hearing are valid and they are also the Commission's concerns. He said
453 that if the Borgquists are good business owners they will also become their concerns.
454 Mr. Hahn said he formerly counseled small businesses through the Service Corp of
455 Required Executives so he has an idea of what the applicants are up against. Likewise the
456 adjacent property owners' rights are also important. However, the neighboring property
457 owners are located against this commercially-zoned area and the quiet will end once
458 sewer is extended.

459

460 Mr. Acker said it may or may not, and this commercial area is an island surrounded by
461 residential units. Mr. Sedlacek said that the township's Comprehensive Land Use Plan
462 indicates this, and that 700' to the north and 700' to the south will be commercial use in
463 the future, although the timing is not known at this time. Mr. Hahn opined that it will
464 probably occur piece-meal, like the subject application.

465

COMMISSION CONSIDERATION (CONTINUED)

466

467
468 Mr. Sedlacek said that Exhibit 5 includes on the first page the proposed items and the
469 second page seems to be the existing plan. Ms. Borgquist said that was correct. Mr.
470 Hahn said that the exhibit is not as complete as expected but he understands why. He
471 asked whether the house to be used for the subject day care was the one closest to Lackey
472 Old State Road. Mr. Borgquist said, "Yes." Mr. Hahn noted that it is a concept drawing,
473 not a working drawing.

474

475 Ms. Yorko asked whether the 2-story home still operates as a model home. Mr. Lawson
476 said, "Yes" and that the office is located there but office hours are no longer held because

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477 so few people come in. Ms. Yorke asked if visits are by invitation or appointment only.
478 Mr. Lawson said that was correct and a sign to this effect is located on the door. If the
479 economy picks again the model home will be fully staffed again but he grew tired of
480 paying employees to read books all day. Ms. Yorke asked if the sidewalk was being
481 removed so it is separated. Mr. Lawson said that was correct.

482
483 Mr. Sedlacek asked if the playground would be fenced. Mr. Borgquist said that was
484 correct and that it will be a white picket-style fence, most likely 4' in height and made of
485 vinyl. Mr. Valentine asked if that was from the notes that indicate playground on the
486 right side. He asked about the display area indicated on the plan. Mr. Borgquist said the
487 plan says "future display" and that was from a previous plan. Mr. Valentine recalled that
488 the prior plan had indicated that may be a place to display swing sets and other items to
489 generate revenue and clarified that was not part of this application. Mr. Lawson said that
490 was correct and that he had no plans to do that at this time.

491
492 Mr. Sedlacek asked that item #7 on the list of agreed-upon items include the specifics of
493 the fence. Mr. Borgquist said it would be white in color, 4' in height, picket style, and
494 made of vinyl. Mr. Sedlacek said that the application did not include that detail. Mr.
495 Valentine said that the application indicates that the playground will be 30' by 158', and
496 he asked if that was correct. Ms. Borgquist said that was correct. Mr. Sedlacek stated
497 that the township does not require zoning permits for fencing and a fence can be installed
498 anywhere. Ms. Borgquist said that licensing will require the fencing but a certain design
499 is not required; however the height will be specified. She did include in the text that it
500 will be white vinyl and 4' in height. Mr. Sedlacek said that issue may already be covered
501 so #7 is not required.

502
503 Mr. Sedlacek said he was concerned about traffic and he didn't see a traffic pattern
504 indicated. He asked whether parents would pull in and stop or make a u-turn; he visited
505 the property yesterday personally and he asked for a traffic pattern so parents will know
506 which way to enter and exit the property. He also would like to see a sign for the parking
507 spaces indicating "parking for employees." He asked if the applicant was stating that
508 parents would park in those spots and escort their children into the facility. Ms.
509 Borgquist said that the license requires that parents escort their children into the facility,
510 and some parents will stop in the curved area while others park in the parking lot. Mr.
511 Sedlacek said that if more than 5 parents came in at once there could be a problem. Ms.
512 Borgquist said that she knows from her experience that that many parents won't come in
513 at once.

514
515 Mr. Sedlacek asked if any of the parking places near the other model home would be
516 used. Mr. Lawson said, "No," and said that would be outside the terms of the lease. Mr.
517 Sedlacek said a future display area could be provided for this applicant.

518
519 Mr. Valentine said that Exhibit 3 states that, "We will have parents and teachers enter the
520 driveway in a half-circle closest to Route 36/37 and exit around and out." He said that
521 seems to be a reference to a turnaround; however there are no half-circles in the diagram
522 and a more clear way of describing that would be that parents will park and walk their
523 children in. Ms. Borgquist explained that she was just trying to indicate how the parents
524 would come into the facility. Mr. Valentine said that the six parking spaces are not
525 actually marked in the gravel. Mr. Borgquist said it may be possible to mark the parking
526 spaces so people have a better idea of where they should park.

527
528 Mr. Hahn suggested that parents come in from the north and then exit where parking
529 area #7 is and down past the other drive; this would help alleviate congestion. Mr.
530 Borgquist said a fence outlines the entire parking area so signs could be installed
531 indicating the parking numbers.

532
533 Mr. Sedlacek said that item #7 on the list of agreed-upon items would be to provide
534 signage for parking,
535

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536 Mr. Valentine asked what would occur in the model home which is still to be used which
537 would affect the same issues being discussed for the daycare. He asked if that would still
538 be run as a model home. Mr. Lawson said that it would be used by appointment only,
539 and perhaps people may visit up to 3 times per week for 15 minutes. Mr. Lawson said
540 that the state licensing laws have been reviewed for the septic system, and low-flow
541 toilets could be used if possible. If business picks up and the model home is staffed more
542 often, there would be no more than one employee in the model at one time. Also, it
543 would only typically be open 6-8 hours per day. Mr. Sedlacek asked that he contact the
544 zoning inspector if that use was changed.

545
546 Dave Stuckey, 192 Lackey Old State Ro, Delaware, Ohio 43015, said he has lived at his
547 home for many years and has watched the traffic grow in that area. He was concerned
548 that a driver coming off of Routes 36/37 could potentially get stuck and not be able to get
549 off the freeway. In the morning especially there is a lot of truck traffic. Mr. Sedlacek
550 said it seems to only be about 60 feet from Routes 36/37 to the entrance.

551
552 Mr. Lawson said that the entry is past the existing sign, which is about 100' from the
553 right-of-way. Mr. Sedlacek said the drawing says 65.36'. Mr. Lawson said he just
554 realized it is only about 25' from the road right-of-way. Mr. Sedlacek said it is only
555 about 60-65' and 6-7 cars could fill that fast if they had trouble coming in.

556
557 Mr. Acker asked if the situation could cause a problem for school busses. Mr. Valentine
558 said there are some school busses which get onto Routes 36/37 from there but there are
559 no stops in the area. Mr. Lawson said the driveway couldn't be moved due to the culvert
560 located in that area and then a guardrail for the culvert is located there. Mr. Stuckey
561 asked a question about traffic numbers and growth. Mr. Sedlacek said that would be an
562 issue for the county. Mr. Sedlacek said that is the responsibility of the county engineer.

563
564 Ms. Kerlin asked if there were many cars coming off of Routes 36/37 onto Lackey Old
565 State Road in the morning or whether most drivers were going through that area to the
566 interstate. Mr. Acker said he can't get out of his driveway sometimes in the morning
567 because there are so many cars using the road and they are going south.

568
569 Mr. Stuckey said that the issue on the interchange is that people don't know how to cross
570 over and this development will add more traffic to the area; there is already a lot of traffic
571 in that area.

572
573 Eric Rickabaugh, 244 S. Old State Road, said he lives about 5 houses south of the subject
574 property. His main concern is the traffic, which is already very bad in the evening. The
575 proximity of the property to Routes 36/37 will create an additional hazard for that
576 intersection, which is already too dangerous. He said that traffic heading north on
577 Lackey Old State will have to turn left into the parking lot and that will back up traffic.
578 He noted that many high school students drive through that area in the morning. He
579 noted that he moved to this area for the quiet atmosphere and although he is not against
580 daycare for children, but it could affect his property values and cause noise problems and
581 he didn't want to see that happened.

582
583 Mr. Rickabaugh said that he didn't want a fast food restaurant on the site, but it would
584 probably be quieter. Ms. Kerlin said the traffic would be worse and that type of business
585 would create more problems. Mr. Sedlacek said that is the neighbors' preference but the
586 property is already zoned in the commercial district.

587
588 Mr. Borgquist said that he understands that people are worried about noise, but 40
589 children located in the center only during the center's open times won't interfere with
590 evening and quiet times to the same extent as the existing traffic noise from Routes 36/37
591 and the surrounding area, including semi-trucks and motorcycles. The surrounding noise
592 will probably "drown out" the noise from the children. Mr. Borgquist said that the
593 requirement is 30 minutes twice per day of outside playtime and only about 10 children
594 will be outside at a time. Mr. Sedlacek said there may be different groups of kids outside

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595 at a time so there would be about 10 kids outside most of the day. Ms. Borgquist agreed
596 with that statement.

597

598 Ms Bringardner asked where the white, 4' fence would be located. Mr. Sedlacek said it
599 would be located around the playground. Ms. Borgquist said the fence which is labeled
600 "playground" will be the playground fence. Mr. Borgquist said it will be a 30' by 158'
601 fence to be located on the back side of the split-level building, surrounding nearly
602 everything except for the former garage area. He said that is plenty of space and meets
603 the state of Ohio standards for 40 children.

604

605 Mr. Armstrong said the traffic and usage on Lackey Old State Road is controlled by the
606 county because it is a county road, and Routes 36/37 are controlled by the state of Ohio.
607 The township could ask for a traffic study to obtain counts, which may result in the
608 update of the figures and could change the future timing of the light to be located in that
609 area.

610

611 Mr. Armstrong said that regarding the paving for the driveway the following condition
612 was approved for Amendment #1 on 10/09/07: "The first 20' of the entrance drive into
613 the model house will be paved from the right-of-way of Lackey Old State Road. The
614 balance of parking area and driveway will not have to be paved unless the residential lot
615 immediately south is approved for residential housing, or the access road shown on the
616 comprehensive land use plan is built, or 48 months have passed." He noted that 48
617 months would be 10/09/11. The first 20' of the driveway is already paved and the
618 condition refers to the remainder of the driveway. Ms. Borgquist added that if there were
619 safety issues regarding the children and parents are complaining the driveway could be
620 paved earlier than required. Mr. Sedlacek said that everybody here would like to see the
621 driveway paved already.

622

623 Mr. Sedlacek asked if there were any questions for Exhibit 6, which is a letter from the
624 DHD. He said that the letter provides specifics as to what the septic system would
625 handle, and he said that the applicant would not exceed that amount. The Commission
626 has also requested at this hearing an agreement by the Commission that the septic system
627 will be taken care of.

628

629 Ms. Yorko asked whether the applicants have had conversations with the DHD. The
630 Borgquists said they had not and that the property owner had. Ms Yorko said that 10
631 gallons of use per day per student is indicated in the letters, and the applicant has stated
632 that there will be 30-40 students. Some of the children will be in diapers, but the letter
633 states that the use will be for a day care so the DHD is probably already taking that into
634 consideration. Mr. Lawson said that is from the EPA guidelines for a standard daycare
635 center which has laundry facilities, dishwashing, etc.

636

637 Ms. Yorko asked if the daycare would have a washer and dryer. Mr. Lawson said, "No"
638 and that there is no washer/dryer hookup in the building because it was built to be a
639 model home. Those guidelines are set by the Ohio Environmental Protection Agency
640 (EPA) and that is what is used to begin with, and then annual inspections will be held
641 later to determine the level of "harm" to the system and the EPA could decide that the
642 system is inadequate for the current use. For example, if there were 180 kids and the
643 system "is being failed," the EPA would require that the system be upgraded. If the user
644 is abiding by the rules set forth by the EPA and the system still has failed, the EPA will
645 allow the user to modify the system to accommodate the use. He would identify any
646 problems early as it is much easier to fix something that goes wrong rather than waiting
647 until it actually fails.

648

649 Ms. Yorko asked where the system is located. Mr. Lawson said it is located in front of
650 the 2-story model home on the western side of the day care.

651

652 Mr. Sedlacek said that the Berlin Township Fire Chief Bill Beckstein wrote a letter
653 indicating that the fire department does provide fire protection for the subject location,
654 and if the property is approved for the proposed use an annual fire inspection will be

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655 required. Mr. Hahn asked whether the fire inspector had already expected the building.
656 Mr. Armstrong said it has been inspected.

657
658 Mr. Hahn said the vacant lot indicated on the provided aerial map seems to be right in
659 line with what one would want as an access road for the commercial property. Mr.
660 Lawson said it is slated to be on the south side of the commercial property because the
661 residential lot which exists is actually platted in a subdivision and any modifications
662 which need to be made to the vacant lot would have to go through the county engineer's
663 office and it would be a major modification of the subdivision. Mr. Hahn agreed and said
664 that when the subdivision is developed an access road alignment will be developed. Mr.
665 Lawson said that people at the county engineer's office have stated that when that is done
666 for commercial purposes a "berm" will be built which is 8' high between the residents
667 and the commercial property, to include trees planted on the top. Mr. Hahn said the
668 driveways will not terminate on Lackey Old State Road but instead on the access road.
669 Mr. Lawson agreed.

670
671 Mr. Valentine said that he has heard that 20' of the driveway has been paved already but
672 he couldn't see it in the provided information. Mr. Lawson said it is the road itself
673 measure from the center of Lackey Old State. Mr. Valentine said it had been his
674 impression that 20' of driveway had already been paved. Mr. Sedlacek said that the
675 aerial photo seems to indicate a path or a driveway. Mr. Lawson said that is the original
676 access to the property which was installed by the original owners. It had been extended
677 to the residential lot and was moved during the prior modification.

678
679 Mr. Sedlacek asked if the applicant intended to provide buffering between the subject
680 property and the residential property to the south. Mr. Borgquist said the applicant had
681 no plans to do at this time so but if the neighboring property owners felt there were sound
682 issues he would work with them. Mr. Sedlacek said that item #8 would be that the
683 applicants will coordinate with Mr. Acker any issues or problems.

684
685 Mr. Sedlacek said that Exhibit 11 is a complete set of childcare licensing rules from the
686 Ohio Department of Job and Family Services. Mr. Hahn noted that no references to
687 parking were made and either it was overlooked or it is not an issue which is considered
688 by the State. Mr. Borgquist said he thought that was because it would be controlled by
689 zoning. Mr. Hahn asked whether Mr. Armstrong could look into this issue.

690
691 Mr. Sedlacek said that the options to the applicant at this time are:

- 692
693 1. To withdraw the application.
694 2. To request a tabling of the application so it could be modified.
695 3. To request that the Commission vote on the application tonight. The 8 issues which
696 have been agreed-upon would then be reviewed and documented and they would be
697 made part of the plan, to be initialed by the applicant and the Commission.

698
699 Mr. Borgquist said he would prefer the third option.

700
701 The Clerk reviewed the list of agreed-upon items and they were finalized.

702
703 Mr. Valentine said that if the business is done properly it will be a good addition to the
704 neighborhood; however, there are other uses which could be worse on the property.

705
706 Mr. Hahn said the business has merit and will fill a need and be a plus for the township;
707 however the applicant has much to do before the school is ready to open and it would
708 probably take several months. If the application were tabled and voted on in a few
709 months it will end up costing the applicant more money to reapply.

710
711 Mr. Sedlacek said that because there are many issues which have not been resolved, the
712 applicant runs the risk of not getting approved. If the application is tabled the applicant
713 could come back in a few months and prove that the issues have been taken care of the

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714 applicant would have a higher probability of being approved. The Commission cannot
715 table the application; the applicant would have to make that request

716
717 Mr. Lawson asked if the applicant and property owner agreed to the 8 agreements and
718 everything adheres to the zoning resolution, it would be easier for them to move forward
719 knowing what they have to do and get it done now rather than tabling the application and
720 finding out that at the next meeting that something has changed and the plan is
721 noncompliant. He would prefer to commit to the 8 items and abide by them; if these
722 items were not adhered to that would be a zoning violation.

723
724 Mr. Sedlacek said there appears to be a lot of work to be done, above and beyond the 8
725 items. Mr. Lawson agreed but said that if the application is approved the applicant can
726 start spending money to get the business started.

727
728 Mr. Acker said that if the Commission votes on this issue tonight and he finds something
729 to not be in compliance regarding the septic system, what will be done then? He will
730 definitely be investigating the matter with the state and the DHD. For example, the DHD
731 could state that the facility doesn't have the capacity for the use. Mr. Sedlacek said the
732 DHD or the state has the ability to close it down and that is not the township's area of
733 responsibility. The Commission is responsible for ensuring that the proposed use meets
734 the requirements of the zoning resolution. The Commission feels a child care facility is a
735 viable use for the property, and it has examined all the details to ensure that the neighbors
736 are protected.

737
738 Mr. Lawson said that the Commission is only regulating the zoning use for the property.
739 If the fire department, DHD or building inspectors find the facility not to be in
740 compliance they can shut the facility down. Making the property a proper working
741 business takes a lot of work, but none of that can be started without approval from this
742 Commission.

743
744 Mr. Lawson asked the Commission for a vote tonight and said that he and the applicants
745 agree to the list of 7 items. If any of those items are violated, they would be non-
746 compliant with the approved zoning. Mr. Hahn asked about voting on the issue and then
747 indicating that the 7 items need to be met within a certain number of days. Mr. Sedlacek
748 said that a plan cannot be approved conditionally but typically the Commission has
749 documented the items and made them a part of the application. He said that approving
750 the request with a time limitation for compliance with the 7 items would be considered a
751 conditional approval and that cannot be done. The list of 7 agreed-upon items would be
752 added as an exhibit to the packet. Mr. Hahn noted that the township could shut down the
753 operation if it is not in compliance with the zoning regulations.

754
755 Nicki Acker, 90 Lackey Old State Road, Delaware, Ohio 43015, said that regardless of
756 the outcome of this meeting she would really like to see a traffic study done for the area.
757 Mr. Armstrong said the township trustees could make a request for engineering. Mr.
758 Sedlacek asked if he would be able to suggest that to the trustees, and Mr. Armstrong said
759 he could do that. Mr. Sedlacek asked him to pass this information onto the trustees.

760
761 Mr. Hahn said that the 2006 traffic study done on Routes 36/37 indicated 24,400 cars per
762 day, so the traffic generated by the proposed use is less than 1% of an addition to the
763 traffic on Lackey Old State Road. Mr. Lawson said that 35 cars would be only a .01%
764 addition to the traffic on Routes 36/37. He noted that traffic studies are very expensive
765 and they aren't worth much; ODOT has a traffic study which would be very useful and
766 which is on file.

767
768 At 9:00 PM there was a 10-minute recess during which time the applicants and Mr.
769 Sedlacek reviewed the list of items. The hearing was brought back to order at 9:10 PM.
770 He asked the Clerk to read the list and said they would become an exhibit as part of the
771 application if the application is approved.

772
773

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Resolution 09-08-15-A: Approve BZC #99-004

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Ms. Kerlin made a motion to approve BZC application #99-004, a request by Julie Borgquist for a change of use at 28 Lackey Old State Road, Delaware, Ohio, for a child care and learning center. This motion is made with the inclusion of seven (7) agreed-upon items which shall be added to the application as Exhibit 16 as follows.

- 1) Submit an agreement stating that the lessees shall maintain and/or repair the septic system as required by the Delaware General Health District.
- 2) Develop a lighting plan compliant with the zoning resolution for the parking, building access and drive areas, and obtain the zoning inspector's approval for such. Also indicate that this lighting will be on as necessary during the hours of 6:00 AM to 6:30 PM on weekdays only.
- 3) Investigate a potential resolution of the parking lot dust issue.
- 4) Provide a copy of the child care license from the Ohio Department of Job and Family Services.
- 5) Any temporary signage for the property shall meet the requirements of the zoning resolution and shall be approved by the zoning inspector.
- 6) Provide directional signage on the north and south sides of the parking lot identifying employee parking and child drop-off parking.
- 7) Cooperate with the property owner at 90 Lackey South Old State Road in an effort to resolve issues or problems, if any, which may be caused by the lessees' business. This could include potential buffering of the property if noise becomes an issue in the future.

Mr. Hahn seconded the motion.
VOTE: Kerlin, yes; Hahn, yes; Yoriko, yes; Valentine, yes; Sedlacek, yes. Motion carried, application #09-004 approved with addition of Exhibit 16.
Mr. Sedlacek asked the applicant to remain to sign a paper copy of the list of agreed-upon items after it is printed by the Clerk, and it will become part of the application.

AGENDA ITEMS: STATUS REPORTS FROM SUBCOMMITTEES AND REVIEW OF CHAPTER 4 OF COMPREHENSIVE LAND USE PLAN (CLUP)

Mr. Sedlacek asked whether, given the late hour, the Commission wished to give brief status reports on the sub-committees or wait until the next meeting. The Commission agreed to wait until next month. Mr. Sedlacek said that Chapter 4 of the Comprehensive Land Use Plan would also be reviewed at that meeting.

AGENDA ITEM: BYERS REALTY REQUEST FOR EXTENSION

Mr. Armstrong said that Byers Realty Company and Greif Brothers are working on an agreement to put a forced-main sewer across a temporary easement to solve an issue until such time county sewer is available to the site. This will get the Byers property off the septic system and they will come to the Commission with a request to add more landscaping and buffering, or to request a modification of the approved plan; this remains to be determined.
Mr. Valentine asked whether Byers had requested an extension of the approved plan. Mr. Armstrong said that Byers has filed a request to extend the phase II and phase III applications, and they will come to the September 2009 BZC meeting. Byers representatives were not able to attend this meeting, he said, due to its timing.

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AGENDA ITEM – ZONING INSPECTOR’S COMMENTS

Mr. Armstrong said that a request has also been received from John Stanbaugh for industrial property located on 3 B’s and K Road, requesting an extension of the approved plan due to current economic conditions.

Mr. Armstrong said the next BZC meetings will be on 9/10/09, 10/13/09, 11/10/09, and 12/08/09, all at 7:00 PM. He thanked the Commission for changing the meeting from 9/15/09 to 9/10/09.

SYNOPSIS

ACCOMPLISHED

- BZC #09-004 was approved.

FUTURE WORK DISCUSSED AT THIS MEETING

- Work will continue on the various BZC sub-committees and status reports will be heard at the 9/10/09 BZC meeting.
- Chapter 4 of the CLUP will be reviewed at the 9/10/09 BZC meeting.
- Two extensions of approved zoning plans may be heard at the 9/10/09 BZC meeting.

There was no further business to come before the Commission. Motion to adjourn.
Meeting adjourned at 9:26 PM.

Rick Sedlacek, Chairperson

Jerry Valentine, Vice-Chairperson

Jim Hahn, member

Kristin Yorke, member

Rae Ann Kerlin, member

Attest: _____
Lisa F. Knapp, Berlin Township Zoning Clerk