



Dear Residents:

The Board of Trustees would like to provide an update on the litigation involving the cellular tower located at the Berlin Middle School. First and foremost, thank you to those who have taken the time to write to us, to call us, and to provide feedback, whether that feedback was just a question or to share your perspective. We are elected to represent residents and part of that job involves ensuring the safety of our community.

Recently, certain mailers addressing the cellular tower litigation have been circulated in the township by what appears to be an organization located outside of the township. Notably, this occurred approximately one month before the primary election on March 19, 2024. The Board has been engaged in the cellular tower litigation for almost two years, and during that time, to the Board's knowledge, no members of the referenced organization have reached out to the Board to determine what the township's concerns with the proposed tower are. Having said that, the Board always appreciates the opportunity to speak with residents and highlight important issues in full transparency and with accountability to the residents we represent. These events have presented a great opportunity for continued dialogue and to spotlight these important issues.

There are two issues of concern raised in the circulated mailers that the township Board of Trustees would like to address.

The first issue of concern is the assertion that Berlin Township filed a frivolous lawsuit against the Olentangy Local School District Board of Education. Berlin Township respectfully disagrees with this allegation.

In actuality, there are three lawsuits involving parties associated with the cellular tower:

- One initiated in state court by the Berlin Township Board of Trustees pursuant to state law and the township zoning resolution against TowerCo 2013 LLC (commonly referred to as TowerCo) and the Olentangy Local School District Board of Education;
- One initiated in federal court by TowerCo, the school board's purported tenant, against the township; and
- One initiated in state court by a resident of North Carolina (who, to the best of the township's knowledge, is or was associated with TowerCo) against the township.

The third referenced lawsuit initiated by the North Carolina resident has been dismissed at this time.

As it relates to the township's lawsuit against TowerCo, it is this Board's opinion that state law and the township's zoning resolution apply to TowerCo and the proposed cellular tower and that the township's zoning resolution should be followed to ensure the safety of the township's residents and those working at and visiting Berlin Middle School.

With respect to the application of state law and the township's zoning resolution, in 2021, when TowerCo notified the Board of its intent to construct a cellular tower, the Board followed the Ohio Revised Code. Objections were received and based upon those objections from both the residents and the Board, the Board followed state law and informed TowerCo it must follow the township's zoning resolution. As it relates to safety, the Board has raised what it considers to be very real concerns about the location of the cellular tower since October of 2021 including, but not limited to, the height and location of the tower as it relates to a fall zone in proximity to Berlin Middle School, its parking lot, and the nearby stadium; lighting strikes and other electrocution concerns; debris and ice accumulating on or around the tower; security measures to prevent children or others from climbing the tower; and cars parking next to the tower in the grass. Despite the Board's safety concerns and the Board's communication that the township's zoning resolution applies, construction on the tower began without the township's knowledge and approval and without resolving critical issues.

As a result of the initiation of construction of the tower, the township had to file certain litigation in state court against TowerCo and the Olentangy Local School District Board of Education to compel compliance with the township's zoning resolution. When the case was first filed by the Board, the Delaware County Court of Common Pleas issued a temporary restraining order against TowerCo and the Olentangy Local School District Board of Education. Furthermore, both TowerCo and the Olentangy Local School District Board of Education have executed an agreed court order that prevents completion of construction of the cellular tower until the state court resolves Berlin Township's lawsuit. The Board's opinion is that these orders would not have been entered if the litigation was frivolous.

As it relates to TowerCo's lawsuit against the township, TowerCo claims that Berlin Township has violated certain provisions of the federal telecommunications act. Pursuant to that litigation, the federal district court initially granted a preliminary injunction against the township. However, the township has appealed that decision to the U.S. Sixth Circuit Court of Appeals, and the appeals court has issued a stay of the preliminary injunction pending resolution of the appeal. As part of the order granting the stay, the U.S. Sixth Circuit Court of Appeals addressed certain actions of TowerCo that would appear to violate the agreed order entered in the state court action:

“The Township argues that it will be irreparably injured in the absence of a stay because the injunction prevents it from protecting its legal interests in the state-court action. It asserts that TowerCo has resumed construction on the cell tower in violation of the state court's November 29, 2022, Judgment Entry in which TowerCo and its lessor, the School District, agreed not to continue further construction of the tower pending resolution of the matters in state court. Correspondence between the parties indicates that TowerCo has, in fact, resumed construction, and TowerCo stated that it believed the district court's injunction rendered the state court's orders moot. With TowerCo using the district-

court injunction to justify resuming construction, the Township now faces the certain and immediate harm that was merely speculative when the Township asked the district court to stay its order. Any attempt to litigate the state-court matter – including seeking enforcement of the state-court injunction – would violate the district court’s injunction because it would be an attempt to prevent TowerCo from completing and deploying the cell tower. Here, the Township has demonstrated that it is being irreparably harmed absent a stay.

As the district court correctly noted, a stay of its injunction would not harm others, including TowerCo. TowerCo agreed to cease all construction activities pending the state court’s decision on the merits. That it now attempts to re-write its agreement by stating that it agreed to cease construction pending any decision by any court is, at a minimum, a misreading of the state court’s orders.”

Because the Board believes that TowerCo and the Olentangy Local School District Board of Education have violated the terms of the agreed order entered in the state litigation, it is taking further action to address this noncompliance.

The second issue of concern is the allegation that the township is wasting taxpayer money on this litigation. As of the writing of this letter, the Board has spent approximately \$210,000 on third party legal services associated with the cellular tower matters. Unfortunately, both the township and the school district are prevented from using the legal services of the Delaware County Prosecutor’s Office because it has a conflict in interest in representing both the township and the school district. As a result of the unwillingness of TowerCo and the Olentangy Local School Board to comply with the township’s zoning resolution, they have forced the township to spend taxpayer money, and the school board has spent taxpayer money in opposition, to litigate over the applicability of the township zoning resolution, which has been adopted, in part, to ensure the safety of those working and living in the township. To that end, we would not be doing our job as trustees if we did not address the very real safety concerns regarding the proposed cellular tower that the Board and residents have expressed since October of 2021.

The Board remains confident of its ability to prevail in both of these cases and will seek to recover, to the extent it can, any monies expended in pursuit of compliance with the law.

We work for our residents. We will continue to operate in good faith and balance fiscally conservative principles while ensuring the safety of the children, teachers, families, and others who live and work in Berlin Township. We welcome dialogue from any individual or organization, whether inside or outside of Berlin Township, who would like to express their opinions. We remain resolved in our approach and are open to continued engagement and transparency as we work for you.

Sincerely,

The Board of Trustees  
3271 Cheshire Rd.  
Delaware, OH 43015