



October 27th, 2023
Berlin Township
3271 Cheshire Rd.
Delaware, OH 43015

Dear Residents,

Over the last year and a half, your Board of Trustees in Berlin Township has been involved in multiple cases litigating with TowerCo. LLC, 2013 (Herein referred to as “TowerCo.”) (3), a private, for-profit, multimillion dollar corporation, and the Olentangy Local School District (OLSD) Board (1). These cases are all related to a partially constructed cellular tower on the property of the new Berlin Middle School.

In 2021, TowerCo. claims to have leased a portion of the land owned by the OLSD Board. In accordance with the Ohio Revised Code (ORC 519.211), they notified the Township and adjoining property owners about the construction of a cellular tower. In that code, if either the adjoining property owners or a township board object to the proposed location, there is a process that is to be followed in accordance with state law. In this instance, both the neighbor who sold the land to OLSD for the middle school, as well as members of the Board of Trustees, objected to the location of the proposed tower in the interest of the health, safety and welfare of the children, teachers, and the general public in Berlin Township.

Rather than continuing to follow the state statute and rather than continuing with the local Township process in keeping with standard practices, TowerCo. asserted that because they are building on school district owned land, they are immune from having to follow state or local zoning (per *Brownfield v. State*, 63 Ohio St. 2d 282). As a result, it is the Township’s contention that TowerCo. bypassed Township approval and obtained a building permit from the Delaware County Department of Building Safety. When it was brought to the attention of the County Building Department that the Township had objected and did not approve of the construction, the Building Safety Department placed the permit on hold and caused the construction to be halted. This action was not requested by the Township.

Based upon the assertion of immunity, the Township was limited in what actions it could take to ensure zoning compliance in the interest of safety. As a result, the Township initiated a claim in the state court against TowerCo. and the OLSD Board to compel them to follow the zoning process. In that case, all parties agreed to not proceed with the construction on the tower and maintain “status quo” until the case was resolved. In response, TowerCo. eventually filed a claim in federal court again asserting *Brownfield* immunity and claiming they did not have to follow the state or local zoning process. Following that, an individual representative from TowerCo. initiated a second state lawsuit against the Township and two board members.

It is the Township's position that applying Brownfield immunity to a private, for-profit, non-government entity that is engaged in non-school related activities is an overreach and that, at any point in time, TowerCo. simply could have gone through the Township zoning process to work together with the Township. In fact, this is the first case known to the Board in which this company has made such a claim of immunity in leasing land from a school board. However, if the claim of Brownfield immunity succeeds it could have far-reaching and widespread implications for the kinds of partnerships schools can enter and who may claim immunity from zoning at potential other locations in Berlin Township and even throughout the entire state.

Because these cases involve the OLSD Board, the Delaware County Prosecutor recused himself from assisting the Township due to a conflict of interest. The only options available to the Township were to either engage with third-party counsel or allow the construction of a tower that did not follow state law or local zoning and for which the Township has safety concerns. The Township Board is aware of the unfortunate reality that it must spend taxpayer money to defend the safety of its citizens. Furthermore, the Township Board finds it alarming that at any point in time, the current OLSD Board could have sought to terminate what appears to have been an invalid lease or, as the landowners, compel TowerCo. to follow the state law and local zoning resolution. The OLSD Board could even have worked with the Township to resolve multiple safety concerns related to the cellular tower's current location. But, instead, the OLSD Board expended taxpayers' dollars in modifying the originally approved lease and defending the construction of a cellular tower which neighbors and the Township have expressed concerns for the safety of children, teachers, and the public. In fact, during the week of October 23rd, 2023, the construction of the tower appears to have resumed despite the agreement to maintain the status quo in the state court case.

The Berlin Township Board of Trustees is not opposed to cellular towers and is not opposed to filling gap coverage areas. In fact, the Township Board has identified alternate locations that an expert has advised could provide comparable or better coverage with a tower that may be consistent with the Township's zoning resolution and placed in a safer location. At this point in time, the fundamental question is whether TowerCo, as a private company that is leasing land from a school district to engage in non-school related activities, is entitled to immunity from state law and local zoning or whether they should have to follow the process outlined in the Ohio Revised Code and the Berlin Township Zoning Resolution. Your Board of Trustees is resolved in the fact that outstanding safety concerns remain and will continue its efforts to act in the interest of the health, safety and welfare of the children, teachers, and the general public in Berlin Township.

Respectfully,

The Board of Trustees, Berlin Township