

**BERLIN TOWNSHIP TRUSTEES**

**7:00 p.m.**

**Regular Meeting**

**October 9,**

**17**

**HELD AT:** Berlin Township House, 3271 Cheshire Rd., Delaware, OH

**CALL TO ORDER:** Ron Bullard, Trustee Chairman

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Steve Flaherty

**ROLL CALL:** Ron Bullard, Steve Flaherty, Adam Fleischer and Claudia Smith, Fiscal Officer.

**ATTENDANCE:** Joe Pichert, Joe & Toni Korleski, Rita & Ray Armstrong, Martin Savko Jr., Martin Savko Sr., Archie Foor, Mark Fowler, Robert Yaptanges, Aaron Roll, Melissa & Shawn Wright, Brad & Yuli McElroy, Michael Shade, Tom Scharschmidt, Mike Spain, Amy & Greame Quinn, Dave Mrowzinski, Tom Grube, Pat Paykoff, Tina Pryjda, Matt & Mason Hildebrand Christina Littleton, Paul & Kim Hilerbrant, Jim & Carol Anne McConnell, Mike & Jenny Black, Kimberly Woodbridge, Chris Paykoff, John Foster and Jeff Chokreff

**PUBLIC COMMENT:** Bullard asked if there were any public comments. Hearing none they proceeded to the next item on the agenda.

**RESOLUTION 17-10-03 APPROVE THE 9/25/2017 MEETING MINUTES AND DISPENSE WITH THE READING**

Motion: Flaherty  
Second: Fleischer  
Vote: Bullard Abstain, Flaherty yes and Fleischer yes

**RESOLUTION 17-10-04 APPROVE THE 10/2/2017 EMERGENCY MEETING MINUTES AND DISPENSE WITH THE READING**

Motion: Bullard  
Second: Fleischer  
Vote: Bullard yes, Flaherty Abstain and Fleischer yes

**FISCAL OFFICE:**  
**September Bank Statement and Electronic Payment List – Signed by the trustees.**

**OLD BUSINESS –**

**Cemetery Updates/Columbarium's –** Flaherty said he did not have anything new.

**Updated Website/Hall Rental Calendar –** Flaherty said it is not live yet but should be soon and asked Smith if she was able to get to the Google calendar. Smith said it was not working when she checked last week. Flaherty said he added people and that it should send an invitation. He will check again.

**Mowing RFP –** Flaherty said they had Irwin get quotes on mowers and they need to decide if they want to get internal or external help. When we first analyzed it we were talking about one person and now we are talking about two, one full-time and at least one part-time seasonal for the mowing. This changes things as we would be paying more in salaries and benefits. Bullard said we would want to contract out the weed application so our people would not need to get licenses for the chemical application. Flaherty said he spoke with Irwin about this and he didn't seem to think that would be a big deal as the other townships do it and they just go and get certified. We just need to see what a sprayer costs.

**Color Copier –** Smith said she sent them the quote from MT Business to get a color copier which would be either \$28 or \$38 more a month. She said previously Rippel was printing a lot of stuff in color and she thinks she has stopped that so do we still need to get a color copier. Flaherty said he noticed that the monthly zoning report was still printed in color. Bullard said let's see if we can get the number of color copies down. Heid said he has cut down on the number of color copies he makes from printing pictures. Fleischer said we should see what happens in the next six months.

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**CEMETERY –**

**SPBRA** – Smith said the resolution for the special cemetery fund expires in November so we need to decide whether we want to renew it or not. Bullard said he was thinking the financing from the Columbariums would come from this fund. Smith said any balance in the fund shall be transferred back to the fund were it was originally transferred from if not used by the expiration date so if we are not going to get the Columbariums this year the money goes back to the general fund. Flaherty said we can order them and pay the deposit this year.

**FIRE DEPARTMENT:** Assistant Chief Pichert said invitations have gone out for the open house to the vendors to attend and the fire levy information has been posted to Facebook and will be going out in the newsletter.

**ROAD DEPARTMENT:**

**Piatt Road Cooperative Agreement** – Flaherty asked Fowler if he had a chance to look at it and he said he would now. He said Riedel asked if they wanted to put the multi-use path along the eastside of Piatt Road. Bullard explained to the audience what the Piatt Road Project entailed.

**2018 Road Improvement Program** – Flaherty asked if Irwin had submitted it yet and Bullard said no.

**Rules of Use of Township Vehicles** – Bullard said he contacted Fowler and asked for some guidance as far as being about to take a township vehicle home and in talking to Genoa Township they used to allow employees to take it home but the auditor indicated that that was income and it changed their position and they stopped doing it. Flaherty said Orange still does it and Smith said no they do not. She checked with all surrounding townships and none of them allow it. Flaherty said he received different information about Aaron at Orange taking the vehicle home. Bullard said we need to work on getting the value for the township and rules around doing such.

**Ditch Cleaning – 3 B’s & K Rd -**

**RESOLUTION 17-10-05 APPROVE \$4,900.00 TO GLENN EXCAVATING TO CORRECT THE DRAINAGE PROBLEM ON THE EAST SIDE OF 3 B’S & K SOUTH OF BERKSHIRE MIDDLE SCHOOL**

Motion: Bullard  
Second: Flaherty  
Vote: Flaherty yes, Fleischer yes and Bullard yes

**\*\*\*\*7:30 P.M. TIME CERTAIN\*BZC 17-006 BOATMAN INC ZONING HEARING\*\*\*\*\***

Bullard asked Smith if the hearing had been property advertised and Smith said it had. Bullard said they have read the file and seen a lot of information from the applicant as well as the residents. He turned the meeting over to Mr. Shade who made a brief presentation explaining the meetings that went on with the Berlin Township Zoning Commission and stating that after they reviewed it all, it was approved. He said in all his years he has never been before the zoning commission of this township where there was more kind, more care taken by the commission in taking in everyone’s input. Flaherty said the traffic count only took into account their business and asked if it took into consideration any other business locating near them. Shade said they have worked with ODOT on the entire corridor and is a work in progress. When they looked at the traffic count they were not meeting peak hours for the county to do a full-fledged study. He said they meet with ODOT and they know the area is going to grow and that the county is going to build a sewage treatment plant, one of their goals is to avoid traffic lights as long as possible and keep free flow of traffic. Flaherty said we are heavily involved with the county with the 36/37 corridor who is going out for a study to figure out how it should be developed. He said they can’t control traffic but they control the zoning. It would be up to the Department of Transportation and we would be an active participant to ensure that safety does happen. He said they have committed to the requirements to putting in the deceleration lane for the turn. Flaherty said they are looking at putting in a different type of containment system that currently only exists in Washington D C and the EPA in Ohio had not seen it yet and asked if there has been any more dialogue with Ohio EPA. Savko said not at this point but the technology and setup they saw is far more superior than any they have seen around here.

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Fleischer asked if their particulate recovery system was the Cheney system and Savko said their system would probably be made by Stevens as they have been switching over their other plants to this system as they have tremendous power and their dust collection process will all be enclosed.

Bullard said on item 10 the wording is a little loose and a lot of times these properties change hands. It states that the property owner will install something like a Cheney system or the best filter system or recapture system under the same terms as approved by the Ohio EPA and he wants it understood that they want the best system for collecting dust in the area. Shade said the problem is this is a new system. Fowler said that system is so new the Ohio EPA has not approved it yet so there is a possibility that they may say this one is not approved. Savko explained how the system works and stated that he wants to capture the particulate and have it brought back down and put into a bag house where they can get the material and put it back up into the silo, they don't want to send any particles out at all and they don't want anyone climbing the silos. It would be a close looped system in a close looped building so the dust would not go outside the building. Fowler would work on writing something up.

They discussed the mounding and trees and Bullard said he had a problem with blue spruce as they don't live very long around here. Shade said they reason they did that was because a resident wanted them, they are evergreen type trees that serve as an additional filter and they will put in whatever they want them to. Flaherty said the plans call for Norway spruce. Savko said they can put in a mix of trees.

Fleischer asked what their planned operating hours for the business would be and Shade 6:00 a.m. until 6:00 p.m. but in the winter it may be shorter. The only times they would go outside of those time frames would be if there was an emergency situation and they needed a roadway open. Shade said the staff comes in at different times, not all at the same time. Saturdays would be open 6:00 a.m. to noon on a limited basis. Shade all lights will be dimmed at 9:00 p.m. with the exception of the need of your fire department. Until the water tower is installed on the property they have agreed to serve as a backup if any fire department needs water at any time. The plant will shut down and they can take the water. Savko said if there was a state of emergency somewhere in the general area they would have to be open in the mile of the night.

Bullard said he wants to make sure that the deed for the backage road is covered at some point as they see the need for a backage road, that's the reason it's in the comprehensive and use plan and the reason we got it in the county thoroughfare plan because we didn't want 36/37 to turn into another Morse Road. Shade said they have no problem tendering a deed the problem is if they are tendering it to ODOT or who. Bullard said if we don't have it in the plan it will never happen. Shade said it was in there and they agreed to it and his client stands ready.

Bullard asked for comments from the audience. Jeff Chokreff said one of his concerns is with the zoning change going towards industrial, is like use going to continue development over time. As we go to industrial from farm residential use and we expand that industrial use, what is next. Flaherty said there are an array of different industries that can come. We have planned industrial in our zoning text and any partial can be transformed into any other type of zoning that we have in our zoning text. The county is doing a study for the 36/37 corridor and we are at the input stage but that does not help with this zoning application. Chokreff said once this is zoned industrial our tolerance for noise, dust and everything will be set at industrial standards as part of the zoning changes and as a resident he has a concern as this could be an industrial complex before he knows it. Bullard said that is what planned industrial is but you have to come to the zoning commission to get the plan approved and that is the reason for the buffering between the districts is to separate the residential districts from the planned residential or planned commercial or planned industrial.

Another resident said since the county is looking at the 36/37 corridor could this be perceived as being a little bit premature in changing this zoning until we know what the overall county plans are going to be for that. Bullard said the plan that the county is developing is in the future and it may happen or it may not happen but we cannot delay action just because there is something else coming down the road that might change it, we have to operate on what's going on right now that's the way state law is written for townships. Flaherty said the plan is just a suggestion or a guide. It is based on what we

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know ODOT wants, as they want it to remain a through corridor and want as little lights as possible. It will remain a 60 mph corridor with minimal lighting. The land along 36/37 has always been planned commercial or industrial use and property owners have the right to develop the land as they see fit. Flaherty said what they have to analyze is, is it an approved zoning application in our township.

Graeme Quinn asked if the plan is still to have the trucks turn right and go to Lackey Old State and hang a U-turn. Bullard said it doesn't have to be at Lackey Old State but can be at any of the crossings. He said it's a compromise that he doesn't think anybody likes but it's a compromise and is what ODOT is requesting at this time. Flaherty said once the backage roads are build you'll have an intersection with a light, but that is in the future.

Kimberly Woolbridge gave the trustees a letter that that she said she tried to email it but it was sent back by our server. The trustees took some time to read the letter silently and Bullard asked Fowler if he wanted to take a look at it. Bullard said he wanted to clarify one of the comments about Buckeye Tractor and stated that they wanted to make some changes, the original zoning which was put in place and they were grandfathered in so they were there to do whatever business was there at that site. Buckeye Tractor came to the zoning commission and got the PID zoning for their property probably fifteen to twenty years ago. The reason they have the PID zoning is because they came and got that zoning and got out of the grandfathered issues that they had with the property that was there. They could not expand or do a lot of things with it so when they went to the PID which allowed them to expand and that occurred. They did not always have PID. Woolbridge asked if there was any stipulation on the use fifteen years ago. Bullard said the plan is the stipulation. Woolbridge said they used it commercially. Bullard said they can use it commercially, but the plan is what they operate with.

Brad McElroy said Bullard said and several of the zoning commission members said no one was happy with the compromise made about the U-turn. Bullard said the state law says that townships cannot make decisions based upon traffic. They do not have the ability to decide if they like or not. McElroy said he is thinking about the residents and school buses and safety issues around that and suggested that avoiding the problem all together is an acceptable solution. Bullard said traffic is not something that townships can make decisions on. McElroy said the buffers are at minimal at best and he heard this morning that per the EPA 10 tons of dust are released per year to people that are 100 yards or less from this facility and this is not acceptable and he would like them to take that into consideration. Flaherty said trustees are guided by state law that says you're not allowed to do anything unless it deliberately tells you that you can do it. If it doesn't say you can do it, you can't do it. He stated that Home Rule was on the ballot a few years ago and we tried to enact it so we had more authority to govern ourselves. Because that failed by the residents we are limited to what we can statute wise with things like this. Now that it has become an issue it has become a reactive approach instead of a proactive approach. Flaherty said we give the right to a property owner to rezone their land and the other statute that is out there is a referendum which allows the residents to say we know the zoning commission has the right to do it, we know the township trustees approve the right to do it, we don't want it and then it goes to the residents for a ballot.

Graeme Quinn referenced sections of the Berlin Township Zoning Code that list the requirement for a preliminary development application requiring a traffic impact study. So he understands that the application is to provide a preliminary impact analysis and as such the application is incomplete and any approval would be a violation of 21.5 A. Bullard said the reason they send it to Regional Planning is for them to ask for the traffic study. Graeme said it is in the township resolution requiring the application to include a preliminary traffic impact analysis and that is not being provided so the application is incomplete. Shade said he disagrees with that as his client submitted to the township a traffic analysis done by MS Consultant and the reason a full impact analysis was not done is because we did not meet peak hour requirement to have it done. They also have a provision in there that you can have it done by an engineer and does not require an analysis by the Delaware County Engineer's office or ODOT. Bullard said it goes to Regional Planning and each of them look at it before the meeting where they can bring it. Shade said the report that came from Regional Planning had five items and one of them was that they recommended that we strongly communicate and have ongoing discussions with the Ohio Department of Transportation and they have done that. Shade said regarding the letter from Woolbridge they provided their email address, fax numbers, phone numbers and when he left the office today at 5:00 p.m. he had no letter and so they did not have an opportunity to review her

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comments, to oppose or discuss those comments. Flaherty said the proper avenue to submit the letter would have been at zoning before it comes to the board. What they are reviewing is if the zoning board made the correct decision for approving an application. Woolbridge said as you can see in the first few pages it was concerning things that actually happen at the zoning hearing. In light of them being appointed she thought that maybe the trustees or someone in an elected position should see how the proceedings were handled. Flaherty said we do appoint the zoning board but they cannot be present at the meetings. She said there were a lot of things that occurred that were disparaging throughout the whole process. She referred to the informal meetings that were held where Shade was able to speak and the residents did not know anything about it. Flaherty said at that time it was not an active application and therefore it was not required to be on an agenda.

Tina Pryjda said Mr. Savko has said that he would commit to the best technology at the time but in the same conversation he told us that he knows the technology in Washington D.C. is the best but he has already upgraded five plants this year without that technology. Savko said they were upgrading plants earlier in the year and they just found that technology. Savko said they started the process at the first of the year and he just found the new technology recently. Flaherty said Fowler has been working on the new wording for us. Bullard said we can't dictate what the EPA will do but what we can do is work with the applicant that they put the best piece of equipment in there as possible and that is what we are doing.

Mike Spain asked what basis they would have to deny the application. Bullard said three things: Safety, morals and health. Quinn said the truck U-turns doesn't fall under safety. Bullard said the courts are very clear that the trustees are not allowed to make a decision on based on roads. Quinn asked if safety is one of the factors to make their decision, safety of what? Bullard said if you were sticking a dynamite plant next to a child care center we could say that is probably not a safe thing to do.

Kimberly Woolbridge and Tom Scharschmidt voiced their concerns for having a concrete plant so close to a state park and for the visitors coming there. Fowler said their advice is the first step is to look at the zoning resolution and if it meets that then it's a no brainer and what you have to determine, if you agree with the zoning commission decided. Fleischer asked Fowler what the consequences would be if they did not follow the criteria outlined in the zoning code to deny an approved application. Fowler said what they have seen in the past is that the applicant has sued the township for non-compliance and told of a case that happened to Powell. If it meets the zoning code, then it's a pretty easy case for the court to look at.

Fowler said Mrs. Woolbridge included something about storm water permits so he wanted to tighten up number 12 which talks about the applicant agrees to obtain all necessary Ohio EPA permits, he would like to add including storm water permits and apply for all required permits. Shade said since this is a preliminary plan it does not require the scrutiny that will take place with the final development plan process.

Bullard said they would take a short break for the Delaware County Prosecutor Mark Fowler and the applicant's attorney Michael Shade to meet to make the changes to conditions #10 & #12.

They returned from break and Fowler read the changes into the record.

New Conditions Exhibit #17:

#10

The property owner or its tenant of parcel A will install at its sole expense all dust control equipment and/or filters required by the Ohio EPA and regularly inspected by the Ohio EPA. Applicant/owner will submit an application to the Ohio EPA to install the new particulate recapture system (known as the "Cheney System") before the Final Development Plan will be approved. If the Cheney System is not approved, the applicant/owner will install the best available closed loop filter system that is approved by the Ohio EPA. If no closed loop system is approved by the Ohio EPA applicant/owner will install the best particulate recapture system that is approved by the Ohio EPA. Applicant /owner will keep the system operational at all times for the entire existence of the plant.

#12

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The property owner or its tenant will obtain all necessary Ohio EPA approvals, federal permits, state permits and local permits and storm water permits before the plant goes into operation and will operate the plant in full compliance of the required permits at all times.

**RESOLUTION 17-10-06 ADMIT THE LETTER OF OPPOSITION FROM KIMBERLY WOOLBRIDGE INTO THE MEETING AND MINUTES EXHIBIT #16**

Motion: Flaherty  
Second: Fleischer  
Vote: Flaherty yes, Fleischer yes and Bullard yes

**RESOLUTION 17-10-07 ADMIT THE MODIFICATIONS TO ITEMS #10 & 12 AS AGREED UPON BY TOWNSHIP COUNSEL AND PROPERTY OWNERS COUNSEL AS EXHIBIT #17**

Motion: Flaherty  
Second: Bullard  
Vote: Fleischer yes, Bullard yes and Flaherty yes

**RESOLUTION 17-10-08 ADMIT THE SIGN-IN SHEET FROM TONIGHTS MEETING AS EXHIBIT # 18**

Motion: Flaherty  
Second: Bullard  
Vote: Fleischer yes, Bullard yes and Flaherty yes

**RESOLUTION 17-10-09 APPROVE BZC CASE 17-006 BOATMAN INC WITH EXHIBITS 1 THRU 18 WITH MODIFICATIONS OF THE BZC'S RECOMMENDATION WITH THE NOTES CHANGES TO REZONE THE PROPERTY AT 5427 S.R. 37 EAST DELAWARE OHIO FROM NEIGHBORHOOD COMMERCIAL DISTRICT & FARM RESIDENTIAL DISTRICT TO PLANNED INDUSTRIAL DISTRICT**

Motion: Flaherty  
Second: Bullard  
Vote: Bullard yes, Flaherty yes and Fleischer yes

**Update Hall Rental Form –**

Bullard asked Fowler about adding to the hall rental form a hold harmless clause. Fowler said they are making changes to Oranges as it is not a good idea to put that for profit companies can't rent the hall. He said the statute says that not for profit companies may be preferred, it does not actually ban for profit companies from renting the hall. Smith said our form says "No organizations operating for profit" can rent the hall. Fowler said we will want to take that out. Bullard said he preferred the wording in the Allen Township form as it makes it easy to understand and asked Fowler to come up with something for us.

**ROAD DEPARTMENT CONTINUED -  
Tractor Swap –**

**RESOLUTION 17-10-10 APPROVE \$2,220.00 TO PARROTT IMPLEMENT CO FOR 2018 JOHN DEERE 4052R TRACTOR WITH TRADE-IN OF 2017 JOHN DEERE 405R TRACTOR**

Motion: Bullard  
Second: Flaherty  
Discussion: Flaherty said this is trading in our 2017 tractor for a new 2018 tractor under state bid. Bullard said he asked Irwin how much a filter would cost and was told \$700 plus the cost of the oil.  
Vote: Bullard yes, Flaherty yes and Fleischer yes

**TRUSTEE ITEMS –**

**Solicitation Ban by Transient Vendors –** Bullard said they received an email from the prosecutor that state law says the ban we have on solicitation is not legal anymore so he directed Irwin to take the signs down. The sheriff nor the prosecutor would enforce it anymore as it once was. Bullard will work on this.

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**ZONING DEPARTMENT:**

**Administrative Review Charges** – Bullard asked Heid to explain what he was looking for. Heid said currently there is a charge for an administrative review where a developer will bring in plats of subdivisions and ask him to pre approve them before they put them in Mylar. They may come back six months later and ask him to review the Mylar and it is not clear on the zoning fee schedule whether he should charge for the re-review. Bullard said he thinks he should charge for it. Heid said it happens rarely and he thinks it should be left up to him as it depends on how much they are asking him to review and the time span between the two reviews.

**RESOLUTION 17-10-11 APPROVE ADJUSTING THE ADMINISTRATIVE REVIEW TEXT ON THE BERLIN TOWNSHIP ZONING FEE SCHEDULE TO READ ADMINISTRATIVE REVIEW FEES SHALL BE CHARGED ANYTIME THE ZONING INSPECTOR HAS TO REVIEW DOCUMENTS SUBMITTED BY APPLICANT, THIS FEE MAY BE WAIVED AT THE ZONING INSPECTORS DISCRETION**

Motion: Flaherty  
Second: Fleischer  
Vote: Flaherty yes, Fleischer yes and Bullard yes

Bullard asked if we wanted to approve the Piatt Road cooperative agreement since Fowler has reviewed it. Bullard said Fowler said it was good as is except for the multi-use trail. Flaherty said he thinks it is worthy of us to put it into the engineering and committing to a multi-use trail along Piatt Road. Bullard said it adds the first multi-use trail to our maintenance issues. Flaherty said the way Fowler said it is worded is that we are committing to engineering of it and the grading, we are not committing to the actual paving of it, construction of a bridge or connection so he thinks it makes sense to do it during this process then go back later and do another engineering study.

**RESOLUTION 17-10-12 APPROVE COOPERATIVE PROJECT AGREEMENT FOR PIATT ROAD IMPROVEMENTS AS PROVIDED TO US BY DOUG RIEDEL AND REVIEWED BY THE COUNTY PROSECUTOR**

Motion: Bullard  
Second: Flaherty  
Vote: Flaherty yes, Fleischer yes and Bullard yes

**FUTURE MEETINGS:**

- 10/23/17 Trustee Meeting
- 10/29/17 Open House
- 11/13/17 Trustee Meeting

**LATE ITEMS:** Flaherty said they received the September monthly zoning report.

**RESOLUTION 17-10-13 MOTION TO ADJOURN**

Motion: Bullard  
Second: Fleischer  
Vote: Fleischer yes, Bullard yes and Flaherty yes

Meeting adjourned by Vice Chairman Flaherty at 10:35 p.m.

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Ron Bullard, Trustee

ATTEST:

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Steve Flaherty, Trustee

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Claudia Smith, Fiscal Officer

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Adam Fleischer, Trustee