

BERLIN TOWNSHIP TRUSTEES

7:00 p.m. Regular Meeting November 13, 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 Larry Buell

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

ATTENDANCE: Graeme Quinn, Chris Ingram, Liz Alexander, Martin Savko Jr, Craig Hall, Ray Armstrong, Martin Savko, Scott Belcastro, Lucas Fykes and Larry Buell

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

RESOLUTION 17-11-01 APPROVE THE 10/23/2017 MEETING MINUTES AND DISPENSE WITH THE READING

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

FISCAL OFFICE:
Trustees signed the October bank statement and electronic payment sheets.

Supply Orders Due by December 5, 2017 – Smith said that all supply orders are due by December 5th so the invoice are in by the end of the year.

Employee Evaluations Date – Smith said she didn't realize that the date for the employee evaluations was on a different date than a trustee meeting and she has something scheduled for that date and asked if the trustees wanted her to find someone else to do the meeting or change the date. Bullard said it would have to be advertised but he was okay with changing the date. Fleischer agreed.

RESOLUTION 17-11-02 APPROVE CHANGING THE DATE OF EMPLOYEE EVALUATIONS FROM DECEMBER 4, 2017 TO DECEMBER 11, 2017 AT 9:00 A.M.

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

Referendum Resolution – Bullard said we received a referendum for BZC case 17-006 Boatman Inc. with exhibits 1 thru 18 with modifications of the BZC'S recommendation with the noted changes to rezone the property at 5427 S.R. 37 East Delaware, Ohio from Neighborhood Commercial District & Farm Residential District to Planned Industrial District which was received on November 6, 2017. Bullard said we provided it to the prosecutor for evaluation and believes we should move forward with it per the prosecutors recommendation. Chris Ingram an attorney with the Vorys law firm who is here on behalf of Nicholas Savko & Sons Inc. regarding a tentative referendum of this board's approval of the zoning for 5427 S.R. 37 to transform the property from a junk yard to a revenue generating commercial business along S.R. 37. The Berlin Township Board of Trustees has an affirmative duty to determine whether the petition is valid on its face and Ingram brought copies of cases. Bullard suggested that since the trustees where not attorneys and we had our attorney here that they discuss this and come back to the board and make a recommendation. Fowler said we could continue with the meeting and they would go and discuss it. Fowler and Ingram left the meeting room.

Electric Aggregation – Belcastro discussed the bids that were received for the township aggregation program and reviewed the rates with the board. He made his suggestion to go with the 3 year tiered rate with Capital Energy.

BERLIN TOWNSHIP TRUSTEES

7:00 p.m.

Regular Meeting

November 13,

17

RESOLUTION 17-11-03 AUTHORIZE RON BULLARD ON BEHALF OF THE BERLIN TOWNSHIP TRUSTEES TO SIGN THE CONTRACT WITH TREBEL LLC TO UTILIZE THE CAPITAL ENERGY THREE YEAR FIXED TIER ELECTRIC AGGREGATION PROGRAM AS PROVIDED BY THE TREBEL HANDOUT.

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

2020 Census – Smith said she keeps receiving things about the 2020 census asking the township to participate and she spoke with Flaherty previously who thought the county did it for us but she wasn't sure and asked if they knew for sure. Bullard said he thought they did do it for us. Fleischer asked if we could discuss this at the next meeting to have time to look into it.

OLD BUSINESS –

Temporary Snow Plow Helpers – Fleischer said Irwin made a recommendation that we hire two new snow plow drivers.

RESOLUTION 17-11-04 APPROVE HIRING MIKE WALZAK AS PART-TIME SNOW PLOW DRIVER AT THE LABORER 2 RATE OF \$19.10 EFFECTIVE AFTER ALL PAPERWORK HAS BEEN SUBMITTED

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

RESOLUTION 17-11-05 APPROVE HIRING RYAN BERRY AS PART-TIME SNOW PLOW DRIVER AT THE LABORER 2 NEW HIRE RATE OF \$17.05 EFFECTIVE AFTER ALL PAPERWORK HAS BEEN SUBMITTED

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

Mowing – Bullard said Flaherty is working on getting rates.

2018 Road Improvements - Bullard said Irwin submitted the list of roads to the county and we are waiting on the estimate.

Rules of Use of Township Vehicles – Bullard said he was still waiting on Fowler.

Updated Hall Rental Form - Bullard said he was still waiting on Fowler.

CEMETERY –

Buell said he just hopes that the columbarium's have not fallen to the way side as it seems like it has and Bullard said it will not. Bullard said he received a call from a resident that would like to purchase more than five grave sites and will bring a list to the next meeting. Buell said he spoke to him also. He also stated that the cemetery looks nice and wants to thank the trustees for their support.

FIRE DEPARTMENT:

Requisitions:

Hall said the first requisition is to replace the current ballistic vests which are fifteen (15) years old and were purchased with a grant through the county.

RESOLUTION 17-11-06 APPROVE \$4,104. TO PATRIOT ARMOR FOR SIX CARRIER VESTS AND SIX BALLASTIC PLATE LEVEL IV

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

RESOLUTION APPROVE \$1,260. TO PHOENIX FIRE SAFETY OUTFITTERS FOR

BERLIN TOWNSHIP TRUSTEES

7:00 p.m. Regular Meeting November 13, 17

17-11-07 THREE DRY SUIT LINERS AND RESCUE GLOVES FOR COLD WATER/ICE RESCUE

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

Hall said he sent an email regarding the testing done on the fuel tank where they found water, rust and a little bit of algae. He got a quote from ????? to retool which was \$1,500 and asks that it be approved although he thinks they can look at alternative methods to take care of the situation. Bullard asked what the alternative methods were. Hall said he spoke to Randy Beem and would like to see if he can come out and pump it off and get the water out or we can take a pump and pump the water off. Bullard said he believes they refinish the tank on the inside and said we have not done that in the past.

**RESOLUTION APPROVE UPTO \$1,500. FOR FIRE CHIEF TO MANAGE
17-11-08 CLEANING OF FUEL TANK AND USING REFUEL SERVICES OR HIS DESIRED VENDOR**

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

Chief Hall said he and Irwin have been talking about possibly putting a gas tank in and he got quotes to look at for next year.

Fire Fighter Probations End –

**RESOLUTION APPROVE REMOVING FIRE-FIGHTERS BARCUS, SHAW AND
17-11-09 HAUSFELD FROM PROBATION TO PART-TIME FIREFIGHTER AT THE RATE OF \$13.35 EFFECTIVE NOVEMBER 19, 2017**

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

Chief Hall gave an update of the number of fire runs and said we were 50/50 with mutual aid from other departments. Fleischer thanked the fire department for another successful open house that was well attended.

Bullard returned the meeting back to the referendum resolution and Fowler suggested that they go into a brief recess so that he could discuss with Bullard and Smith what he discussed with the applicant's attorney and that he would also speak with Fleischer separately.

Recess at 7:58 p.m. Bullard continued the meeting at 8:21 p.m.

**ROAD DEPARTMENT:
Door Keypad Quote –**

Bullard said he would like to see the same thing at the township as what the fire department has. Fleischer agreed and said Stewart handles the same system but that when we got a quote previously it was expensive. Bullard said it is much easier to manage. Bullard will ask Irwin to get a new quote.

TRUSTEE ITEMS:

Marijuana Moratorium – Bullard said the prosecutor is recommending that we put a moratorium on marijuana facilities and would like Flaherty to be here.

ZONING DEPARTMENT:

Monthly Zoning Report – Smith said Heid gave her the list of comparisons but would not sign it as the figures were not correct. Fleischer said he would discuss it with them.

Returned to the referendum resolution and Fowler suggested that we allow Ingram explain his objections. Ingram said the Berlin Township Board of Trustees has an affirmative duty under Ohio Election Law to determine whether the part-petition is valid on its face. The

BERLIN TOWNSHIP TRUSTEES

7:00 p.m.

Regular Meeting

November 13,

17

Supreme Court of Ohio has been explicit about that. This means the Board of Trustees must evaluate whether the form of the part-petition meets Ohio Election Law requirements. Ohio Election Law requirements are mandatory and require strict compliance. You can't fudge it, you can't come close, you have to strictly comply with the requirement. Ohio's Election Law requires each part-petition must contain the number and full and correct title of the zoning amendment and a brief summary of its contents. This is Ohio Revised Code section 519.12 (H). the Ohio Supreme Court recently construed that section and found there to be four explicit requirements. The first one, if you look at the petition the top of it should state the name and number of the proposal if any and what the petitioners put there was "The Berlin Township Zoning Commission Case 17-006 Boatman, Inc. Under Ohio Law ORC 519.12 (H) that blank should contain the number and full and correct title of the zoning resolution that is being put to referendum. The Berlin Township Zoning Commission did not pass a zoning resolution that could be put to referendum, there is no case number, there is no case that can be put to referendum. The only thing that can be put to referendum is the very zoning resolution that is at issue. Here strict compliance is required and every one of these part-petitions violates that requirement as there is no title, there is no name. When you first glance at it the word "case" is very misleading. It implies that there was some type of court case or dispute here. And those of us in this room know that this body unanimously approved the rezoning of the subject property.

Ingram stated that another defect is that the part-petitions and their summaries of the rezoning are misleading and confusing. The Supreme Court of Ohio has held that the summary is a mandatory part of each part-petition. The petition must contain an accurate and unambiguous summary of the issue sought to be submitted to the electorate. The Supreme Court also said that the law requires that these summaries must be "accurate and unambiguous". The Supreme Court said if you have any ambiguity in the summary the petition is invalid. And the subject resolution shall not be submitted to a vote. He pointed out that in the part-petitions where you expected to see a brief summary of the proposed zoning amendment there is no summary at all instead it looks like the petitioners copy and pasted a portion of the minutes. This injects confusion and is misleading to anyone that read it. The text that was copy and pasted it talks about exhibits 1 through 18 but there is no indication that the exhibits were circulated or made available to the electorates at the time nor is there a summary of their contents. There is also notification of changes to rezone the property but what were the changes, there is no summary. Once you mention it you need to summarize it otherwise it is ambiguous. It would be meaningful to know the contents of the zoning resolution. It would be nice to know the size of the land that is at issue. What should be at issue is this boards legislative decision approving the rezoning of the subject property but looking at each part-petition there is not one reference to the Board of Trustees. When you put this before the electorate there is a big difference between a decision by unelected bureaucrats and a unanimous decision by the elected legislative officials of this board. Ohio Election Law is clear that this board has a duty to determine whether the petition is valid and in doing so the board must strictly apply the law and here there is no title where it is supposed to be, there is no valid summary of the contents and at best this petition is confusing and misleading. In placing strict compliance on the petition circulator was no accident by the General Assembly. There are important property rights at issue here. Here the applicant followed all the zoning procedures they were required to do. They worked for months to obtain unanimous approval from the zoning commission and by this board to at the end of the day bring jobs to this area on a site that is currently a rundown junk yard. Any attempt to undermine their right to put their property to productive use should not and cannot be undermined by a haphazard petition that misleads and confuses the issues. The petition does not comply with Ohio Election Law and cannot be certified to the BOE given the obvious facial defects.

Bullard said we were going with the prosecutor's recommendation and asked Fowler if that changed anything and Fowler said we talked about the issues and asked Bullard if it changed his mind. Bullard said he understand his points and his statements will be in the meeting minutes.

RESOLUTION 17-11-10 THE BOARD OF TRUSTEES WILL CERTIFY THE REFERENDUM PETITION TO THE BOARD OF ELECTIONS AS REQUIRED UNDER R.C. 519.12 (H) AND WILL LET THE BOARD OF ELECTIONS DETERMINE THE SUFFICIENCY AND VALIDITY OF THE PETITION PER THE RECOMMENDATION OF LEGAL COUNCIL AND THE TRUSTEES

BERLIN TOWNSHIP TRUSTEES

7:00 p.m. Regular Meeting November 13, 17

**BERLIN TOWNSHIP
BOARD OF TOWNSHIP TRUSTEES**

Resolution No. 17-11-10

**IN THE MATTER OF DETERMINING THE FACIAL VALIDITY OF A CERTAIN PETITION
REQUESTING REFERENDUM OF AN AMENDMENT TO THE BERLIN TOWNSHIP
ZONING RESOLUTION**

The Board of Trustees of Berlin Township, Delaware County, Ohio, met in Public session on the 13th day of November, 2017.

Trustee Bullard moved the adoption of the following Resolution:

WHEREAS, the Board of Trustees of Berlin Township, Delaware County, Ohio ("Board"), received a certain petition ("Petition") requesting referendum of an amendment ("Amendment") to the Berlin Township Zoning Resolution ("Zoning Resolution"); and,

WHEREAS, such Amendment would change the Zoning Resolution as follows: Rezone parcel #418-120-01-057-000 from NCD and FR-1 to Planned Industrial District (24.312 ± acres, 5427 S.R. 37 E)

WHEREAS, the Board is required to consider the Petition for the purpose of determining the facial validity of the Petition for certification to the Delaware County Board of Elections ("BOE").

NOW THEREFORE BE IT RESOLVED, as follows:

1. The Board adopted the Amendment on October 9, 2017.
2. The Board received the Petition on November 6, 2017, such date being within thirty (30) days after adoption of the Amendment, as required by R.C. § 519.12(H). As a result, the Petition was received timely.
3. The Petition consists of twenty-five (25) part-petitions.
4. After review and consideration of the Petition, including all part-petitions, the Board hereby finds and determines that the Petition meets the requirements contained in R.C. § 519.12(H) and elsewhere in the Ohio Revised Code and is hereby determined to be valid on its face.
5. The Board finds the Petition to be valid on its face for the following reasons:
The Prosecutor's legal opinion, see attachment A.
6. As a result of the Board's finding and determination, the Petition shall be certified to the BOE.
7. **The Board hereby certifies the Petition to the BOE. The Fiscal Officer is hereby directed to provide a certified copy of this Resolution and the Petition to the BOE by no later than two (2) weeks after the date indicated above as the date that the Board received the Petition and not less than ninety (90) days prior to the election at which the question is to be voted upon.**
8. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

Trustee Fleischer seconded the motion.

BERLIN TOWNSHIP TRUSTEES

7:00 p.m.

Regular Meeting

November 13,

17

Attachment A

The Board of Trustees will certify the referendum petition to the Board of Elections as required under R.C. 519.12 (H) and will let the Board of Elections determine the sufficiency and validity of the petition.

Motion: Bullard
Second: Fleischer
Discussion: Fowler said he knows that was a premade resolution so for the record he would like Bullard to say that we are going to let the board of elections determine the sufficiency and validity of the part-petitions. Submitted as Attachment A.
Vote: Bullard yes and Fleischer yes

FUTURE MEETINGS:

11/27/17 Trustee Meeting
12/11/17 Employee Evaluations and Trustee Meeting
12/27/17 End of Year Meeting
13/18 2018 Organizational Meeting

LATE ITEMS:

Bullard said Irwin got two quotes to fix the 1997 International truck that is rusting. One quote is to spend \$1,695 and have them weld the crack in the frame and clean and apply fluid film to the frame to slow down the rusting problem. Their work will be insured to be done correctly if there is a failure with their work but not that the rest of the truck around it fails or the second option is \$12,000 to \$14,000 dollars to put new frame rails in it with the turnaround time being around a month if all goes well. They can get it in starting this next week. The truck has around 100000 miles and 8000 hours on the engine and the bed is rusting from the inside out. Bullard said his preference is option two because option one is a temporary fix and option two might get us a couple more years of use.

**RESOLUTION APPROVE UPTO \$15,000 TO BLUBAUGH BODY & FRAME
17-11-11 TO PUT NEW RAILS ON THE 1997 INTERNATIONAL TRUCK**

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

Smith said she received a letter from the Department of Commerce Division of Liquor Control asking if we have any objections to the renewal of any of the permits in the township which renew in February 2018. Bullard and Fleischer said they had none.

**RESOLUTION MOTION TO ADJOURN
17-10-12**

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

Meeting adjourned by Chairman Bullard at 8:56 p.m.

Ron Bullard, Trustee

ABSENT
Steve Flaherty, Trustee

ATTEST:

Claudia Smith, Fiscal Officer

Adam Fleischer, Trustee