

**BERLIN TOWNSHIP TRUSTEES**

**7:00 p.m.**

**Trustee Meeting**

**November 12,**

**19**

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

**CALL TO ORDER:** Ken O'Brien, Trustee Chairman

**PLEDGE OF ALLEGIANCE:** Ken O'Brien led the Pledge of Allegiance

**ROLL CALL:** Ken O'Brien, Tom D'Amico, Ron Bullard and Claudia Smith, Fiscal Officer

**ATTENDANCE:** James & Marti Brenza, Eric & Debbie Rickabaugh, Drew Grudowski, Jamie Hooks, Daniel Cantor, Rick Gemienhardt, Dave & Martha Davis, Dustin Kent, Dr. Meghan & Trent Roehll, Perry & Colleen Wallace, Angela Brown, Chuck and Sandy Roddy, Nick and Connie Perrotta, Vanessa Fletcher, Melissa Wright, Sandra Nienkirchen, Christina Littleton, Josh McDaniels, Scott Wieclaw, Ryan Moran and Paul Parsons

**PUBLIC COMMENT:** O'Brien asked if there were any public comments and stated that everyone has an opportunity to speak for three minutes, one time. He knows that the important thing on everyone's mind is the rezoning and reminded everyone that it is important to hear from everyone but unless you say it at the hearings it's not part of the record and is not considered by the board. He explained the hearing process. He asked if there were any public comments.

Dr. Meghan Roehll stated that she felt the proposal that was initiated by the county was haphazardly approved by zoning. The approved zoning and its specific language runs contrary to residents expectations of the adopted 2011 Comprehensive Land Use Plan and runs contrary to residents expectations based on the current zoning ordinances. The approved and its specific language delivered after approval was granted, runs contrary to the surveyor's remarks completed this past year. She stated that all such extreme and radical changes to the resident's expectations for this township should be decided on by vote, by the actual residents making the final determination for themselves. She asked that they do not approve the zoning proposal unless you are going to significantly alter it to align to what most of them two weeks ago thought was being considered, more residential, less density, less industrial. She stated many of them were willing to compromise. What was approved by zoning deserves not only residents questions be answered but residents make the final determination because of the drastic differences compared to the land use principles and values, plans and codes. She asked that they protect them now and lets work on annexation together.

Rick Gemienhardt said he would like to address three basic talking points: 1. Owner Rights: Fairness for all? He stated that he has talked to three large landowners that are under this industrial park and is cognizant that this is a 401k for many of these families. He sated we are not trying to take away their rights but it is very clear in the Ohio Revised Code that they are not entitled to maximizing their return on investment. All we want to do is regulate, we do not want to prohibit, a lot of us want the same rezoning privileges that they are going to get. He feels that the way the process is going we are giving them extra opportunities to rezone their property and take away referendum rights. He does not feel we should be giving these farmers and land owners special rights that is why he does not believe in the cloud concept, which is why he doesn't believe in the high-density apartments and condominiums.

2. Financial mixed messaging: How are residents benefiting? He said every meeting he has been too the county has indicated that this board wants to maximize revenues. They are bringing maps before us that maximize their revenues, not our revenues. It is very clear they have enterprise zones and abatements on the maps but that does not benefit us. We get a small piece of property tax. JEDD's have been mentioned, when these lands are developed they could have income tax levied again them. That has to be voted on, it is not a resolution. His three minutes were up so he could not address number 3. Alternative three: Comprehensive Land Use Plan. The Compromise?

Angela Brown stated that she and her husband choose to move to Berlin Township as their area to breath. These plans change all of that. She said many people move into the area for the Olentangy school system but there is no way the school system can keep up or our

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roads. Our property taxes are not going to stay where they are if the area changes to be like Polaris and Old State Road. She said change is inevitable so how do we change it in the right way in order to keep the beautification we have here. Some of the ways is making sure we do not put in strip malls. We do not want there to be parking lots full of lights, we want to see the stars at night. She asked the trustees to look at what we are doing to people's property values, really look at making this a special area for the businesses that are going to come in here and ensure that it does not turn into a Polaris Parkway.

Paul Parsons asked the trustees to consider the Berlin Township 2019 CLUP Community Survey while considering the decision of the zoning overlay. He said there were 410 people that had responded to it and many of the people were highly in favor of keeping the township rural and keeping a lot of the industrial, logistics and distribution centers out of Berlin Township. He said 48% of the people strongly disagreed or disagreed with the commercial and industrial tax base. Residents were okay with restaurants, retail and medical or professional offices. 92% of the respondents were in favor of keeping the current plan to retain a more rural feel within the township. This zoning overlay with all the high-density housing and the industrial is not going to be good thing for the township.

James Brenza read the following:

So it seems the ambitious goals to boost tax revenue in Berlin Township have gotten completely out of control. Yes, we all know development is coming, can't be avoided, but should be kept in alignment with the character of Berlin Township and its residents. As mentioned by other people this evening and in prior forums, the zeal for industrial businesses and high-density housing is shared by just a few property owners and some of the Trustees. Well, also your peers and friends at Delaware County and City.

As a reminder, you were elected to represent all of the residents of Berlin Township. You're in a very difficult position to balance that with friendships with other landowners and your personal wallets. That's not a desirable position for you to be stuck in. I'm sure it's further compounded by your longstanding friendships and collaborations with the City and County. However, I'd like to remind you that as elected representative of Berlin Township, you must put your township responsibilities before your friends and wallets.

As you've heard, there is virtually ZERO support from the residents for industry or high-density housing. Those goals are not aligned with the approved Comprehensive Land Use Plan, or the township survey which was analyzed earlier this year. To be honest, it's going to go down in flames. We're very aware of the Petition for Referendum process, know our target number of signatures, and have the walking lists prepared to gather the necessary 271 signatures. If you continue down the path that the county and limited elected officials support, it will go to referendum. You can review the most recent survey of the township to project the outcome of that election. Hint: 70% do not support industrial and high-density housing.

So let's prepare for an alternative that is likely to meet resident goals, meets the tax base objectives, accepts the encroaching development, protects the school overcrowding and will even line your wallets as desired. (note: that's a win-win-win-win-win lust for the record) The county planners have consistently demonstrated their inability to hear (or comprehend) "no industrial and no high-density housing". We have a comparable development plan we can discuss that will guide us toward a compatible outcome. It is not what the county has fed to the Zoning Commission nor what they are putting before you tonight.

To some of us, your choice seems simple: (1) pause your friendships and wallets so you can focus on your elected responsibilities, (2) do not approve what has been put before you, (3) participate in discussions with concerned residents to review proactive alternatives that will prevent this from going to referendum and being smeared throughout the press, In a nutshell, it's called doing your job as an elected official. If you're unable to do that, this will be resolved in a referendum and your replacements at the next election will ensure the elected officials stay aligned with the residents.

Marty Davis said she agrees with everyone that says we need to take more time, plan this, discuss it with residents and she thinks they can come up with alternatives that will satisfy everybody and will Berlin Township in the feel that it has now. She said we are going to need some sort of tax base. There

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are other options that we are not looking at and hopes that the trustees do not pass it until they have time to come up with other ideas.

O'Brien said he liked the tone of the meeting tonight. He said they have not received the case from the zoning board yet so he has not read it all. He said anything that was said here tonight, is not in the record of the zoning case so you may want to have that put in. Any questions that you have you can get from the zoning office. He said they have to make a decision based on what was said at the hearing or evidence that was submitted then.

**RESOLUTION  
19-11-03**

**APPROVE FOR A SPECIFIC OCCURANCE, ALLOW ATTORNEY  
CLIENT PRIVELEDGE BE WAIVED FROM THIS SPECIFIC EMAIL**

Motion: O'Brien  
Second: Bullard  
Vote: Bullard yes, O'Brien yes and D'Amico yes

O'Brien said at the last meeting a question was posed to Chris Ballard "what happens on a 1 yes vote and 1 no vote?" He said he believed that the motion failed but he sent us an email with a correction, which O'Brien read:

Good morning:

I do have a correction to my remarks last week about the consequences of a 1 yes vote and 1 no vote on the zoning amendment, if a third trustee is recused. I had said that it would amount to a rejection of the zoning amendment – after some research and discussion with colleagues I am incorrect, since I was looking at it in the context of there needing to be a "unanimous" vote like with some other issues the board may address.

It turns out if there is a 1 yes vote and 1 no vote with the third trustee recused that would be an **approval** of the Zoning amendment. This is because **R.C. 519.12(H) requires there to be a "majority" vote to deny or modify** the BZC's recommendations on the amendment, so one against, one for, and one abstention due to recusal would not constitute a "majority."

My apologies for any confusion, and please let me know if you have further questions on this aspect of the process.

Respectfully,  
**Christopher E. Ballard**  
Assistant Prosecuting Attorney  
Delaware County Prosecuting Attorney's Office

Brenza asked if he interpreted it correctly he is saying a 1 for and 1 against and it passes. O'Brien said it goes to what the BZC recommended. Brenza said he will reread that section as it does not state that. He said he read that section of the Ohio Revised Code and it says a 1 for one and it goes down. O'Brien said he is just reading what Ballard wrote.

Bullard said he has been quoted as saying maximize revenue and he would like to clarify where that came from. The discussion was being presented as to partnering with the city to be able to collect city income tax. Townships cannot collect income tax; we have to join a partner. The city of Delaware has a 1.5% income tax and there are a couple other places that have higher income taxes that are up to 2%. He said his comment dealt with collecting income tax from the people that would be working at the businesses or people moving into the residential defined areas that would be subject to a JEDD. His comment did not deal with maximize the use of the land or any of that sort of stuff. His comment dealt with which partner to choose. He also said that the township does not take in enough money to support the services that we are doing right now. We have been able to do it for years with some old death tax money but we have been over spending what is coming in. Looking at the area along 36/37 we need to figure out a way to collect more taxes or bring more money into the township or we go back to you and ask you if you want more services or do you want to pay more. If you look at other townships, they all have parks and road levies and we are not paying those as we have been existing without it. If the cloud is enacted or if it is not that does not change the zoning book and does not change the zoning for that property. All the NAICS codes are in the zoning book and anybody can make an application and try to get it through and it can either go to referendum or they can figure out some

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other way to do it. There are other things that are not subject to referendum and this township making a decision. Such as a school, schools are not subject to zoning. Section 8 housing is another one. There is no referendum to say you can't do section 8 housing. Gemienhardt asked to be clear on this and asked if this ordinance passes and the cloud passes, the very first time a commercial or industrial use comes in, that is not referendum able, it is an administrative action. So in 10 years from now when a rendering plant goes up on 36/37 that action is not referendum able. Obrien said if it is in the Cloud, but that is not going to be in his Cloud. Gemienhardt said when any use is pulled down and there is a change in use it is an administrative action and you cannot referendum it no matter how many signatures you have. O'Brien said if it meets the zoning that is correct. That is why we have to get it right. O'Brien asked for a 5-minute recess.

**Approval of Minutes -**

**RESOLUTION 19-11-04 APPROVE THE 10/28/19 REGULAR MEETING MINUTES AND DISPENSE WITH THE READING**

Motion: Bullard  
Second: O'Brien  
Vote: Bullard yes, O'Brien yes and D'Amico yes

Bullard asked that we approve the minutes from the November 4<sup>th</sup> Special Meeting to the next meeting as he has not read them yet.

**Old Business -**

**Fairview Cemetery** – O'Brien said the 5<sup>th</sup> district court has not made their ruling yet. He said we were supposed to get an alternate bid package from Ballard for the cemetery mowing and have not received that yet. D'Amico will check on it.

**Employee Handbook Updates** – O'Brien said there is nothing new and asked that this be taken off the agenda until we find out more from the attorney.

**The Cloud** – O'Brien said he did not have anything else on this. D'Amico said he read something online that he needs to check into.

**Permissive Tax** – O'Brien said he is frustrated on this but it sounds like we have \$5.00 that we can do now under old law and \$5.00 that we can do under new law that would be effective July 1, 2021. He said we have to pay for Piatt Road so he thinks we should start with the old law because the new law the county cannot into. Bullard said it makes sense to obtain the money through the license fee, rather than having to go to the residents for a roads tax. O'Brien said he does not think Ballard understands his concerns and asked if he could ask the attorney that is doing the handbook. Bullard said he would rather it come from the prosecutor because it is free and he should know what it is. Bullard will see if he can ask Chris Betts at the prosecutors training on Saturday. Bullard said Heidi at the OTA would also be a good one to ask.

**Resolution for Vacation Carryover** – O'Brien said the concern that he has is that we are going to be in collective bargaining so he would hate to change what we are doing before we get into collective bargaining. O'Brien asked Smith if it was her recommendation to do this as it is written. Smith said she is giving someone vacation time in December and has no time to take it before the 1<sup>st</sup> of the year as based on what the current handbook says that an employee is only allowed to carryover 80 hours of vacation leave to the following year.

**RESOLUTION 19-11-05 APPROVE INCREASING MAXIMUM VACATION CARRY-OVER FROM THE YEAR 2019 TO 120 HOURS AS PRINTED**

WHEREAS, the Berlin Township Employee Handbook currently permits that "[a]n employee may carryover a maximum of 10 days (80 hours) of vacation leave to the following year. Vacation leave in excess of 10 days (80 hours) not used at the close of the year in which it is credited, shall be forfeited without compensation or payment therefore. "; and

WHEREAS, per the Employee Handbook, "[v]acation leave accrued during the course of a year will be credited to the employee upon the employee's employment anniversary date for use during that year."; and

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WHEREAS, full-time employees whose anniversary date occurs after September 30<sup>th</sup> of the calendar year may not have a sufficient opportunity due to operational considerations to utilize the vacation leave credited to them from the time period between their anniversary date and the close of the year in which the leave was credited; and

WHEREAS, the Board of Trustees wishes to allow those employees with anniversary date after September 30<sup>th</sup> to have an opportunity to carry-over a greater amount of unused vacation leave into the next calendar year due to this circumstance;

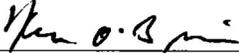
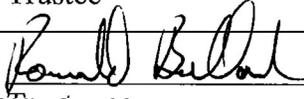
RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Berlin

Township, Delaware County, Ohio (the "Board") that, for the year 2019, full-time Township Employees with an anniversary date after September 30<sup>th</sup> may, upon application to and approval of the Board of Trustees, carry-over a maximum of one-hundred twenty (120) hours of accrued, unused vacation leave to the following year. All such applications must be made to the Board in writing no later than December 31, 2019. In all other respects, Township policy shall continue to apply.

BE IT FURTHER RESOLVED that the conflicting provisions of any individual or collective employee contract with the Township will prevail over this Resolution. This Resolution shall take effect and be in force from the date of its adoption.

Approved and Adopted: November 12, 2019

 _____ Trustee	"yes"	Trustee	"yes"
 _____ Trustee	"yes"		
 _____ Trustee			

Motion: O'Brien  
Second: Bullard  
Vote: D'Amico yes, Bullard yes and O'Brien yes

**No Parking Signs at Cheshire Elementary School** - D'Amico said he went up there and there are no parking signs up. O'Brien asked if they were on Piatt and D'Amico said no. O'Brien said he wanted no parking signs on Piatt Road in Glen Mead Subdivision. D'Amico asked if we would do that and O'Brien said we have to get permission from the county. D'Amico will check with Riedel.

**Fiscal Officer Items-**

**October bank statement and electronic payments-** Trustees signed the October 2019 bank statements and electronic payment list.

**Supply Orders Due** – Smith said supply orders were due by December 7, 2019 and there would be no spending until mid-January.

**Records Commission Meeting** – Smith said there was enough room in the storage room so no need to dispose of anything.

**Statement of Pay Acceptance For 2020** – Smith asked if they were going to keep the pay as it has been. O'Brien and Bullard said that is their preference.

Smith said she received a bill from Fishel Downey Albrecht & Riepenhoff for work done on the employee handbook and union. O'Brien said any discussion regarding the union should come from the fire department and the handbook discussions should come from the general fund unless the discussion comes from the fire department.

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**RESOLUTION 19-11-06 APPROVE \$5,000 TO FISHEL DOWNEY ALBRECHT & RIEPENHOFF FOR LEGAL EXPENSES FOR EMPLOYEE HANDBOOK PAID FROM THE GENERAL FUND**

Motion: O'Brien  
Second: Bullard  
Vote: D'Amico yes, Bullard yes and O'Brien yes

**RESOLUTION 19-11-07 APPROVE \$5,000 TO FISHEL DOWNEY ALBRECHT & RIEPENHOFF FOR FIRE RELATED ISSUES INCLUDING BUT NOT LIMITED TO COLLECTIVE BARGAINING AND PAID FROM THE FIRE FUND**

Motion: O'Brien  
Second: Bullard  
Vote: Bullard yes, O'Brien yes and D'Amico yes

**Cemetery** – Nothing.

**Fire Department** – Nothing

**Road Department- Requisitions-**

**RESOLUTION 19-11-08 APPROVE \$1,713.60 TO PARROTT IMPLEMENT FOR TIRES FOR THE 2010 FORD F450**

Motion: D'Amico  
Second: O'Brien  
Vote: Bullard yes, O'Brien yes and D'Amico yes

**2020 Road Improvement Program** – Bullard said Irwin came up with a list of roads to be included in estimate. O'Brien said he wants all roads on the list as we can take roads off but we can't add them later.

**RESOLUTION 19-11-09 APPROVE 2020 ROAD IMPROVEMENT PROGRAM CONTINGENT UPON D'AMICO BEING SATISFIED WITH ALL THE INFORMATION RECEIVED FROM THE ROADS SUPERINTENDENT**

Motion: O'Brien  
Second: Bullard  
Vote: O'Brien yes, D'Amico yes and Bullard yes

**Posting of Roads** – Bullard said Delaware Township in the city of Delaware is posting Curve Road so we would be supporting them.

**RESOLUTION 19-11-10 APPROVE POSTING OF CURVE ROAD FOR 2020**

Motion: O'Brien  
Second: Bullard  
Vote: O'Brien yes, D'Amico yes and Bullard yes

Bullard said he would like to share information he got from the county engineers meeting this morning. He said the roundabout at Lackey Old State and Cheshire Road will be installed next year and the causeway across the lake will be shut down June, July and August to repave it, to put a new bridge deck on and new guard rails. At Hyatts, Shanahan, and Rt. 23 they will be adding curb lanes and working on putting the sewer lines in and a pumping station. A major project will be at Worthington and Africa Road next year also. Powell Road will also be getting updates. Bullard gave an update of the ball bank study. Bullard said the salt bins are full and salt prices are more expensive than asphalt.

D'Amico said they received an email from Irwin stating that one of the employees that helped us with snow plowing last year cannot help this year. O'Brien said they have not received a resignation from him and asked D'Amico to check into this. Smith said she kept

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Mike Hubbard on the books because she thought that he was going to help plow snow so he would be another 4<sup>th</sup> person. D’Amico will find out.

**Trustee Items -**

**ADA Standards** – Bullard said he received an email on this and O’Brien said unless our attorneys tell us that we need to do something he thinks our website is in compliance.

**Zoning Department** – Bullard said we will have more than 100 new homes for the year. O’Brien said he still has concern that the builders are not meeting his feeling on the intention of side load garages. D’Amico said they have been made aware of it and does not know how we are going to get a better hold on it. Smith said the zoning inspector goes out, talks to people that are doing violations, and they are on his report day after day. We are just spinning our wheels if we send him out and cannot do anything to the repeat offenders. O’Brien said we had the prosecutor’s office come and talk to them. Smith said she never heard what they were told. O’Brien said they were told what they could not do, but his goal was to hear what they could do. Smith said the mounding in Howards Farms is supposed to be six feet and it is not, so if we cannot do anything about this why do we have a zoning department. Smith said they were told that building permits could not be held up. Bullard said we can send more letters.

**Future Meetings -**

- 11/25/19 Trustee Meeting
- 12/9/19 Trustee Meeting
- 12/23/19 End of the Year and 2020 Organization Meeting

Dustin Kent with the Delaware County Health District passed out some handouts regarding Christmas lights recycling drop offs, drug over dose statistics and smoking cessations.

**Late Items –**

**RESOLUTION 19-11-11 RECESS TO EXECUTIVE SESSION FOR CONSIDERATION OF COMPENSATION OF A PUBLIC EMPLOYEE–THREE TRUSTEES AND FISCAL OFFICER ATTEND-9:04 P.M.**

Motion: Bullard  
Second: O’Brien  
Vote: D’Amico yes, Bullard yes and O’Brien yes

**RESOLUTION 19-11-12 MOTION TO RETURN TO REGULAR SESSION AT 8:50 P.M.**

Motion: O’Brien  
Second: Bullard  
Vote: D’Amico yes, Bullard yes and O’Brien yes

O’Brien said no decisions were made and no actions were taken.

**RESOLUTION 19-11-13 APPROVE REMOVING THE ZONING INSPECTOR FROM PROBATION STATUS AND INCREASE HIS PAY BY 4.7 % THROUGH DECEMBER 31, 2020, WITH NO INCREASE IN PAY IN JANUARY 2020.**

Motion: Bullard  
Second: D’Amico  
Vote: Bullard yes, O’Brien yes and D’Amico yes

**RESOLUTION 19-11-14 MOTION TO ADJOURN**

Motion: O’Brien  
Second: Bullard  
Vote: Bullard yes, O’Brien yes and D’Amico yes

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Meeting adjourned by Chairman O'Brien at 9:55 P.M.

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Ken O'Brien, Trustee

ATTEST:

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Tom D'Amico, Trustee

\_\_\_\_\_  
Claudia Smith, Fiscal Officer

\_\_\_\_\_  
Ron Bullard, Trustee