

**BERLIN TOWNSHIP TRUSTEES**

**4:30 p.m.                      End of Year Meeting                      December 23,                      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, Theresa Taylor, Assistant Fiscal Officer and Claudia Smith, Fiscal Officer

**ATTENDANCE:** Rick Gemienhardt, Megan Rahill, Joe Pichert, Angela Brown, Kevin Lehman, Jason and Amy DeChristopher and James Brenza

**PUBLIC COMMENT:** O'Brien asked if there were any public comments.

James Brenza read the following:

December 23, 2019

It seems the Berlin Township Zoning Commission has greatly delayed the zoning cloud proposals (aka, BZC 1904 and BZC 19-005) delivery to the Township Trustees. Ohio Revised Code 519.12.E.2 which states:

The township zoning commission, within thirty days after the hearing, shall recommend the approval or denial of the proposed amendment, or the approval of some modification of it, and submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county or regional planning commission on it to the board of township trustees.

This section has been clearly violated. The zoning appeal was closed on October 29, 2019. Per OHC (noted above), those overlays were due to the Trustees on November 28, 2019. At this point, the residents are not aware of the Trustees receiving the overlays. Even if they have been received recently, we are left in a legal quagmire.

At any time in the future, any developers or landowner can claim the zoning overlays are not valid or binding since they were not fully processed per ORC 519.12. This is a risk that will not diminish with the passage of time. Early developers may adhere, but any developer at any time in the future can bypass the overlays. To the best of my understanding, there isn't clear case law that addresses gross delays by the Zoning Commission or Trustees. Even though it's a process technicality, some history indicates adverse action may prevail despite our efforts to reach an acceptable outcome.

I recognize (despite the highly controversial, deeply flawed and grossly inappropriate recommendations contained in the overlays) that development will happen and the overlays may provide guidance to help ensure the dignity and natural beauty of Berlin Township. As a resident, I'm committed to good faith negotiations to shape the overlays to a reasonable outcome. Why would I invest that effort for a document that could be ignored by any developer? Even if we reach acceptable language in the overlays, the Trustees and resident's effort may be invalidated at any time in the future if a developer chooses to ignore them. That wasted effort may also include an investment in architectural standards. I feel the most appropriate outcome is extremely simple. As soon as you formally receive the overlays, I'd strongly encourage you to immediately return them the Zoning Commission requesting a re-approval and submission within 30 days.

The Zoning Commission, through a lack of capable leadership and inability to conduct good faith negotiations, has demonstrated they are not capable of submitting an overlay that meets the residents' expectations. We'd encourage them to simply publish the hearing date, not entertain the prior circus, and simply re-approve the existing proposals. You'll encounter a brief procedural delay that mitigates a significant amount of risk in the future.

I look forward to working with the Trustees when you've received an overlay that does not violate the processes described and approved in ORC 519.12.

**BERLIN TOWNSHIP TRUSTEES**

**4:30 p.m. End of Year Meeting December 23, 19**

Kevin Lehman read the following:

I am here to ask for help, specifically YOUR HELP. My wife and I searched for a couple years and finally located land to build our retirement home. What we were hoping would be our FOREVER HOME. We spent that much time because we were trying to build a home to share with our kids and grandkids and have open and quite space. Now YOU want to approve\ zoning for an incredible 14 units per acre (R14) behind Linda Lane just south of our home. Right behind our back yard.

The traffic getting out onto 36/37 now is extremely difficult and adding that many units per acre is just going to make it that much more difficult and create much more noise and congestion. Also, this type of zoning will considerably reduce the future value of our home that we are building. We would have never started building our retirement home in this area had we known you were going to approve this type of zoning, We would be fine with single family homes, if the current land owner ever decides to sell, which is my understanding SHE DOES NOT want to sell, and request that the lots be at least a 1/2 acre or larger. In addition, does the zoning have to go that far back off of 36/37? Finally, I found out about this Zoning new approval by happenstance. I will almost guarantee you no one else on Linda Lane knows about this potential zoning approval. It's like it's being done secretly and the public is not supposed to know about it. Therefore I RESPECTFULLY ask for you to please consider the proposals I suggested of single-family homes with 1/2 acre lots or larger and not having the zoning go back off of 36/37 as far.

Amy DeChristopher stated her and her neighbors, which consist of 10 homes in total include 16 students, 43 acres, 10.6 million dollars in property value, came to Berlin Township because it offered a little bit quieter pace of life. She asked that the trustees listen to the voices of those in the township who are asking for help that development be done responsibly. She stated she understands development is going to happen and asks that everyone goes into it with eyes open and asks the trustees to include the residents when decisions are being made.

Rick Gemienhardt asked that the trustees consider a few things before the hearing dates are set for the zoning cases. First being, to look at the current 2011 Comprehensive Land Use Plan as a starting point. Secondly, that the trustees reread the surveys that were sent out in January and filled out by Berlin Township residents. Gemienhardt stated there are great ideas in them and help to explain what the residents would like to see and not see happen within the township. Gemienhardt also stated he feels as if the county has hijacked the process. They do not live in the township but want to make money here.

Angela Brown stated that she knows change and development is coming but how can we do it responsibly and keep it from becoming overcrowded. Current residents want to maintain the landscape and lifestyle that they moved to Berlin Township for. Bullard stated that he would like to keep the Zoning Cases as close to a 7:00 P.M. start time as possible.

**RESOLUTION 19-12-07 MOTION TO WAIVE ATTORNEY/CLIENT PRIVILEGE FOR A SPECIFIC INSTANCE IN REGARDS TO AN EMAIL DATED DECEMBER 23, 2019 AT 4:28 P.M. FROM CHRISTOPHER BALLARD**

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

**O'Brien read the email from Attorney Ballard:**

My understanding is that the BZC recommended approval with modifications of the two proposed zoning amendments on 10/29/19, however, due to the lengthy nature of the meeting the minutes were not completed and approved until 12/10/19, and were not been delivered to the Board of Trustees until today.

Art. 31.01 "Amendments" provides that the BZC shall, within thirty days after hearing, recommend the approval or denial of the proposed amendment along with modifications and

**BERLIN TOWNSHIP TRUSTEES**

**4:30 p.m. End of Year Meeting December 23, 19**

submit this recommendation to the Board of Trustees. Upon receipt of the recommendation, the Board of Trustees shall set a time for a public hearing on the proposed amendment, which date shall not be more than thirty (30) days from the date of receipt of such recommendation from the BZC. As this is past the thirty-day mark from 10/29/19, this presents a potential issue. It is my understanding from Chairman O’Brien that prosecutors have offered different opinions on this issue over the years, so I shall research my office’s past opinions to advise the Board. At this point, to maintain compliance with the requirement that the Board hold a hearing not more than thirty days from receipt of the recommendation, I recommend setting a hearing date not more than thirty days from today, and I will offer our opinion this week.

Respectfully,

**Christopher E. Ballard**  
Assistant Prosecuting Attorney  
Delaware County Prosecuting Attorney’s Office

O’Brien stated that based on Christopher Ballard’s opinion he feels that dates and times should be set for the zoning hearings. If a problem does occur and we hear differently from the prosecutor’s office then we will act accordingly.

**Approval of Minutes-**

**RESOLUTION 19-12-08 APPROVE THE 12/09/19 REGULAR MEETING MINUTES AND DISPENSE WITH THE READING**

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

Discussion: O’Brien wanted to clarify the portion concerning sending letters to abutting property owners to say that he agrees they are sent to those on the east side which is the Commercial Overlay.

**Old Business –**

**Fairview Cemetery** – O’Brien received a call from counsel stating that the receiver admitted he was wrong; the land does have access to the parcel that the judge did not turn over to the township and that in fact the statute does not dis-allow the turning over of parcels without road access. O’Brien stated it should be being prepared to turn over to the township.

**Employee Handbook Updates or Approval-** O’Brien stated our lawyer is incorporating the new Firefighters job descriptions and reviewing it. O’Brien asked if Bullard and D’Amico feel a fire chief should be able to fight a fire. Both said yes and O’Brien agreed. Pichert explained that if you have a fire chief that is classified as more administrative, then they would fall under OPERS retirement system, where as if the fire chief does fight fires then they would fall under OP&F retirement system.

**Permissive Tax –**

**RESOLUTION 19-12-09 APPROVE TO SET THE PERMISSIVE TAX FIRST HEARING FOR THE FIRST MEETING IN APRIL 2020 AT 7:30 P.M.**

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

**Cemetery Mowing Contract-** D’Amico will get his recommendations and fill in the blanks of missing dates by the next meeting.

**Capt. Brown Step Increase-** After speaking with multiple lawyers O’Brien stated he feels the step increase may be granted even though we are in potential collective bargaining because there is past precedence in the step increase but it is discretional. O’Brien asked

**BERLIN TOWNSHIP TRUSTEES**

**4:30 p.m.                      End of Year Meeting                      December 23,                      19**

Smith to call OP&F for information and then we will have Riepenhoff work on a resolution. Bullard suggested having the resolution cover OP&F, backpay, the new pay and the start date for the new pay.

**Fiscal Officer Items-**

**Purchase Orders to be Closed/Carryover-** Smith stated she received a list from the fire department with carryover purchase orders.

**OTA Winter Conference-** The deadline for registration is January 15, 2020. Smith said she needs to know who’s going. Bullard said he intended to go.

**OTARMA Renewal-** Bullard recommended that we increase the liability limits by \$1,000,000.

**RESOLUTION                      APPROVE TO INCREASE THE LIABILITY LIMIT FROM  
19-12-10                      \$10,000,000 TO \$11,000,000 AND PAY THE ADDITIONAL  
\$1,028 FOR TOTAL OF \$38,757 TO OTARMA FOR RENEWAL OF  
ANNUAL 2020-2021 INSURANCE CONTRACT**

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

**Inventory Reminder-** Smith said she has received inventory from the fire department, the cemetery, zoning and roads and all that remains is the trustees. Bullard stated he will do the township building.

**Careworks Renewal-** Smith stated she has not received it yet.

**Cemetery-** Nothing new.

**Fire Department –**

**Transfer \$295,000 to Capital Improvement Fund-** Pichert stated the fire department is requesting that \$295,000 be transferred out of the Fire Fund to the Capital Improvement Fund. This is for higher priced items, such as fire trucks that they are anticipated needing to be fixed.

**Road Department-  
Acceptance of Roads-**

**RESOLUTION                      APPROVE ADDITIONAL MILEAGE FOR JOHNNY CAKE LANE=  
19-12-11                      .23 MILE, JOHNNY CAKE COURT= .03 MILE, OLD HARBOR  
DRIVE=.05 MILE, REGATTA COURT=.01 MILE, MAINSAIL  
DRIVE=.20 MILE, TOPSAIL DRIVE=.05 MILE, REGATTA COURT=  
.11 MILE, CARDINAL COURT=.03 MILE, TOTALING .71 MILE**

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

D’Amico stated there have not been any applications turned in for snow plow drivers at this time.

**Trustee Items-**

**Natural Gas RFP-** Bullard stated he talked to Scott Belcastro and his recommendation was to go with a fixed rate of \$0.40 per Ccf.

**RESOLUTION                      MOTION TO AUTHORIZE BULLARD TO EXECUTE AN AGREEMENT  
19-12-12                      WITH A NATURAL GAS SUPPLIER FOR THE RENEWAL OF THE  
BERLIN TOWNSHIP GAS AGGREGATION PROGRAM AT A FIXED  
RATE NOT TO EXCEED \$0.40 PER 100 Ccf OR AT A VARIABLE  
RATE NOT TO EXCEED NYMEX MONTH END SETTLEMENT PLUS A  
FIXED ADDER OF \$0.118 PER 100 Ccf**

**BERLIN TOWNSHIP TRUSTEES**

**4:30 p.m. End of Year Meeting December 23, 19**

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

**RESOLUTION 19-12-13 APPROVE TRANSFER OF FUNDS FROM THE FIRE FUND ACCOUNT 2111-930-930-0000 TO THE CAPITAL IMPROVEMENT FUND ACCOUNT 4901-760-750-0000 IN THE AMOUNT OF \$295,000**

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

**Zoning Department-  
Set Hearing Date for Three Zoning Cases-**

**RESOLUTION 19-12-14 MOTION TO SET BZC CASE #19-004 BERLIN BUSINESS PARK COMMERICAL OVERLAY FOR JANUARY 16, 2020 AT 6:00 P.M., BZC CASE #19-008 REQUIREMENT FOR FOUNDATION CERTIFICATE FOR JANUARY 16, 2020 AT 8:00 P.M. AND CASE #19-007 EVANS LAND DEVELOPMENT COMPANY FOR JANUARY 16, 2020 AT 8:15 P.M.**

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

O'Brien left the meeting at 6:16 p.m.

**RESOLUTION 19-12-15 MOTION TO SET BZC CASE #19-005 BERLIN BUSINESS PARK INDUSTRIAL OVERLAY FOR JANUARY 15, 2020 AT 6:00 P.M. AND CONCLUDING NO LATER THAN 9:00 P.M.**

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

O'Brien returned to the meeting at 6:17 p.m.

**Future Meetings -**

- 01/13/20 Trustee Meeting
- 01/15/20 Special Meeting
- 01/16/20 Special Meeting
- 01/27/20 Trustee Meeting

**RESOLUTION 19-12-16 RECESS TO EXECUTIVE SESSION FOR THE PURPOSE OF THE PROMOTION, DEMOTION, COMPENSATION AND POSSIBLE DISCIPLINE OF A PUBLIC EMPLOYEE-THREE TRUSTEES, ASSISTANT FISCAL OFFICER AND FISCAL OFFICER- 6:21 PM**

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

**RESOLUTION 19-12-17 MOTION TO RETURN TO REGULAR SESSION- 6:34 PM**

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

O'Brien "We met in executive session and no decisions were made and no actions were taken".

**BERLIN TOWNSHIP TRUSTEES**

**4:30 p.m.**

**End of Year Meeting**

**December 23,**

**19**

**Late Items** – Bullard stated that we will need to upgrade the computers soon from Windows 7 because there will no longer be support for it.

**RESOLUTION            MOTION TO ADJOURN  
19-12-18**

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

Meeting adjourned by Chairman O’Brien at 6:38 P.M.

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Ken O’Brien, Trustee

ATTEST:

\_\_\_\_\_  
Tom D’Amico, Trustee

\_\_\_\_\_  
Theresa Taylor, Assistant Fiscal Officer

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