

**BERLIN TOWNSHIP TRUSTEES**

**6:00 p.m. Special Meeting November 4, 20**

**HELD AT:** This meeting was held virtually on Zoom, Delaware, OH

**CALL TO ORDER:** Tom D’Amico, Trustee Chairman

**PLEDGE OF ALLEGIANCE:** Theresa Taylor led the Pledge of Allegiance

**ROLL CALL:** Ken O’Brien (Recused), Tom D’Amico, Ron Bullard and Theresa Taylor, Assistant Fiscal Officer

**ATTENDANCE:** Christina Littleton, Meghan Raehll, Holly Mattei, Jim Reed, Rob Platte, Scott Cubberly, Angela Brown, Trent Roehll, Drew Grudowski, Chris Ballard, Jim Yorke, Patty Chapman, David Reed, Jim Miller, James Brenza, Scott Wieclaw and Phil Colflesh

**BZC 19-004 AS THE BERLIN BUSINESS PARK INDUSTRIAL OVERLAY**

Rob Platte began with updates on the red-lined working document. Platte addressed the concern with building heights related to school locations. Language was added in the permitted uses section, to include any building adjacent to a school parcel shall be limited to 35-feet, when building is located within 500-feet of the school parcel line. There was also language added that specifically names subareas as PRO/PROC/COM and IND so that it is clearly understood which subareas are being discussed.

Platte explained that a list of parcels was added per the trustees’ request, that are adjacent to where the 250-foot buffer will be located.

Platte stated that in order to address getting the 60-foot height limit down along the 36/37 corridor, language was added that states: any building or structure that is located within 400-feet of the US 36/37 right-of-way line shall be limited to 45-feet in height.

Under the rooftop mechanical unit section, there was language added that states: upon the recommendation of the Zoning Commission, the Board of Township Trustees may approve a height and location of the mechanical units that differs from the requirements if it is determined that these requirements cannot be met due to engineering and/or fire department purposes. In no such case, shall the sum of the building height and mechanical unit height exceed 53-feet.

As far as the permission of a flat roof being used, the Board of Trustees may approve flat roofs when it is determined that said roofs will blend with the overall architectural styles.

Platte stated that in regards to any new parcel, created after the adoption of the BIO overlay, from a parcel subject to mounding requirements, it shall be required to construct a mound that complies with the existing requirements. There was language added to address if this situation would occur.

Under the definition section, school building and school parcel were added.

D’Amico asked Platte to address the large landowners that feel they are being treated unfairly by the setback issues within the overlay. Platte stated it is an optional zoning that is not required, nor forcing anyone to do anything with their property. The 250-buffer came from the board of trustees and the zoning commission out of the desire to protect the existing residences. He feels the buffer would be used as part of the required green space. It would not apply to those residences that come after the adoption of the overlay. Platte does not feel it hinders anyone’s development or use of his or her property as anyone is entitled to seek a rezoning on any parcel through any mechanism through the township.

**Public Comment-** D’Amico opened the floor to public comment.

Joe Miller spoke on behalf of the Hondros Family, Thistlegate Farms, and its related entities, including Thistlegate 2 LLC and Thistlegate 12 LLC concerning the Berlin Township Trustees Special Meeting on BZC 19-004, the Berlin Business Park Industrial Overlay. As we shared during last week’s Special Meeting on BZC 19-005 and the Berlin Business Park Commercial Overlay, both BZC 19-004 and BZC 19-005 are completely arbitrary, unreasonable, and improper as a matter of law.

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For the sake of brevity, we incorporate by reference our comments submitted on October 29, 2020 as if fully restated herein and applicable to both measures. We note that in addition to the defects we previously provided, the Industrial Overlay should also be rejected because it arbitrarily excludes hand-picked lots across the street from our clients' property, randomly omitting those cherry-picked properties from the Overlay's onerous development restrictions.

Additionally, with respect to our clients' properties located in the proposed Industrial Overlay, we also note that it is completely arbitrary and unreasonable to require a 250' buffer from properties located *across-the-street* from our clients' property, from properties located outside of the township, and from a separate abutting parcel consisting of undeveloped timber. See 19.05 (A)(4)(a); Appendix A (listing properties utilized for residential purpose that are not included in the overlay district). There is simply no legitimate reason to impose such an arbitrary restriction on our clients' properties and results in an unnecessary confiscation of a vast amount of our clients' private property.

Finally, with respect to the procedure concerning BZC 19-004, the board of trustees has also failed to follow the mandatory notice requirements set forth in R.C. 519.12. To our knowledge, the public notice requirements were not followed for this evening's meeting. We only learned of this meeting eight days ago because a reference was made in the October 15 meeting minutes (which were just posted last week). No mention was made of this meeting on the Township's website until after 10 am on 10/29. This is contrary to the clear notice requirements set forth in the Ohio Revised Code. To our knowledge, the last Public Notice regarding these hearings was published on July 16, 2020. Consequently, for this reason alone, it would be improper for the Trustees to approve this rezoning measure.

Jim Reed stated that in regards to the 250-foot buffer along with the R4 and R6 that surrounds his family's property, he has spoken with several commercial developers that say the land will sit and develop very slowly if the overlay is adopted with these two items in it. There will be millions of tax dollars lost.

Christina Littleton asked that the houses that were asked to be in the cloud and that are not included in the buffer list, either 1) she asks that those houses still receive the 250-foot buffer while the houses are used for residential purposes or 2) the owners are made aware that they are not going to receive that buffer.

Littleton addressed Platte stating that the compromises he spoke of, replacing some of the industrial areas with 45-foot high office space and slightly reduced but still high-density apartments does not equate to the resident's ultimate sacrifice of giving up their rights to referendum. She would like to see the setback from 36/37 be a little further and to see the 60-foot heights be completely eliminated from the wedge on the north side of 36/37. Littleton stated that to her it would make sense to keep all the 60-foot structures clustered together in a central space on the southside of 36/37. She would also like to see reduced heights and densities along with a step-down of single-family homes incorporated.

Patty Chapman read the following:

Thank you for your time tonight. My name is Patty Chapman and my siblings and I own 175 acres in the proposed B.I.O. This land has been in our family for approx. 100 years.

Some of our acreage backs up to a few houses on Old Lackey

Based on the current map, you are proposing reducing the R-6, that was originally proposed by the zoning committee to R-4 on 2 of our parcels (which total 66 acres). **We would like to see this changed back to the R-6.** This would not only increase the property taxes for the Township and County but would make it more viable for potential developers. We are hearing from our Broker that some developers feel that R-4 is too small for them to make a profit when you consider all their start-up costs like utilities, roads, etc. and wouldn't be interested in a property such as this

By making the change from R-4 back to R-6 it could potentially generate an additional 132 housing units on our 66 acres. Assuming these houses would have an average value of \$350,000, it could increase property taxes by approximately **\$1 million dollars per year or \$10**

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**million for 10 years.** These calculations were based on the average property taxes for Berlin township obtained from the Delaware Co. Auditors' website.

Obviously, this would be very positive for the Township and the County. Is there a negative side to this, we don't think so?

Let's look at the properties that are touching our 2 parcels that we're referring to.

First of all, remember that you are proposing a 250 ft buffer zone (almost a football field).

I question, would the residents that back up to our property really notice the difference from R-4 to R-6???

To our knowledge the 250 ft. buffer is unprecedented in the Township or County. In fact, a buffer zone of this size only really makes sense, when going from a residential area to a commercial/Industrial area. Never between 2 residential areas

Let's look further at how many properties actually touch our 66 acres. There are 12 lots total. Of those 12 lots, one is owned by Meridian builders, 2 are open lots and 2 of the properties have transferred ownership with in the last 2 years. When you consider that you are requiring the 250-buffer zone, and our recommendation only impacts 7 long time land owners, passing on an additional \$1million of new property taxes a year, seems like a **short-cited decision**.

**We strongly encourage you to reconsider changing our 2 parcels back to R-6 and please reconsider if you really need a 250 buffers zone to separate Residential from Residential**

We truly appreciate all the time and effort you have put into putting together a plan that will **hopefully benefit the majority of current and future Berlin Twp. residents**

Rick Gemienhardt stated that he has two types of comments for tonight. The first being process comments, he stated he feels the trustees have been doing a good job with the process efforts and in giving ample time for citizen input and doesn't believe they have rushed this zoning text into adoption. As far as product comments, he cannot accept this product as it lays tonight as he is totally against its future adoption. Gemienhardt stated he feels this product has created incompatible land-uses amongst the most rural part of our township and is totally unexpected. He feels this is an economic plan to help justify and pay for future county infrastructure needs. The pre-zoning and changes of land-use without future citizen voting rights runs counter to what most citizens would expect from our elected officials. Finally, he hopes for this to be a future trustee election issue.

James Brenza spoke of BIO (section 19.04) & BCO (section 15.04) and that he feels it needs to be addressed.

**19.04 Prohibited Uses**

Any use not specifically authorized by the express terms of this Article of the Zoning Resolution are prohibited with the exception of core business office operations (sales, marketing and finance). This applies to all operations that operate on the parcel (not just the singular tax-purpose NAICS code the business chooses). No exception will be made for business operations regardless of the duration of undetected use or other businesses with prohibited uses. Such uses, if included in another District(s) in the Berlin Township Zoning Resolution, shall only be approved as a part of a rezoning procedure as permitted by the Zoning Resolution. The granting of a conditional use permit on one parcel shall not be construed to automatically permit that conditional use on any other parcel.

Also, in section 1905.5D Brenza feels it needs to be the 45-foot height instead of the 60-foot as it would put a burden on the township including the fire department.

Bill Reed echoed his siblings (Patty Chapman and Jim Reed) comments and asked that the trustees consider an 80-130-foot buffer instead of the 250-foot that is being proposed. He would like to see the R4 return to an R6 on parcels C and E. If not, the township would forgo 132 units and would cost the county \$1,000,000 of additional property tax.

Angela Brown spoke to the comradery of everyone involved and working together in a give and take fashion. Brown explained most residents understand that there is change coming and the 250-foot buffer helps those existing residents feel like they are retaining some of the ruralness that Berlin Township is known for. She states it is important that our schools do not get flooded

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with all the new developments, which is why the request from R6 be moved down to an R4 was specifically made. Brown also states that the safety of residents is also important and having the R4 versus the R6 would help with the safety and the traffic concerns.

Bullard stated that the one thing that concerns him with the \$1,000,000 difference between the R6 and the R4 as he does not understand how they were calculated. If they were calculated using the current rate of taxes then those numbers do not seem correct as opposed to if they were calculated using the inside millage then he does understand them.

D'Amico stated that he would like for the township's part, to see the tightening up in the wording of the proposal to include the NAICS codes that Brenza spoke about. D'Amico commented in regards to Gemienhardt's land-use comment, that the land-use plan that was in effect for many years was very restrictive as far as depth from 36/37 north and south. It is a lot more land than he had ever envisioned working with putting a Business Park on. D'Amico also stated that although we are in the home-stretch there is no need to rush it along.

**RESOLUTION                      MOTION TO ACCEPT THE RED-LINED CHANGES TO THE  
20-11-01                              DOCUMENT DATED NOVEMBER 4, 2020 AND THAT THIS IS  
NOW THE CLEAN WORKING DOCUMENT**

Motion:            Bullard  
Second:          D'Amico  
Vote:              D'Amico yes and Bullard yes  
Discussion:      Bullard asked that Littleton forward the addresses that were missed in the document so that they may be added.

**RESOLUTION                      MOTION TO CONTINUE BZC #19-004 HEARING TO NOVEMBER  
20-11-02                              18, 2020 AT 6:00 P.M. VIRTUALLY BY ZOOM**

Motion:            Bullard  
Second:          D'Amico  
Vote:              D'Amico yes and Bullard yes

Meeting continued by Chairman D'Amico at 6:59 P.M.

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Tom D'Amico, Trustee

ATTEST:

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Ron Bullard, Trustee

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Theresa Taylor, Assistant Fiscal Officer

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RECUSED  
Ken O'Brien, Trustee