

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Special Meeting

December 3,

20

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

CALL TO ORDER: Tom D’Amico, Trustee Chairman

PLEDGE OF ALLEGIANCE: Claudia Smith led the Pledge of Allegiance

ROLL CALL: Ken O’Brien, Tom D’Amico, Ron Bullard, Claudia Smith, Fiscal Officer, Theresa Taylor, Assistant Fiscal Officer

ATTENDANCE: Tim Foor, Stacy Foor, Chris Ballard, James Brenza and Theresa Cannon

Fairview Cemetery- D’Amico stated that a discussion may need to be had to possibly increase the prices at Fairview Cemetery to accommodate and off set some of the hours being worked and the cost of bringing equipment over from the Cheshire Cemetery to work at Fairview. Bullard stated that the excavator, Bruce Miley, of the Cheshire Cemetery told him that unless it can be figured out where the graves are at exactly, he does not want to have anything to do with Fairview Cemetery. Bullard stated that Irwin suggested purchasing a handheld unit that determines where underground utilities are. O’Brien feels the cemetery should suspend sales to any new sales.

Tim Foor stated that he feels it would be in the cemeteries best interest to have it surveyed. He stated the ground penetrating radar would be an effective tool to establish which plots are and are not able to be used.

Chris Ballard confirmed that the board of trustees do have the authority to either close the cemetery to all future sales or to those of new sales. Ballard stated the township would be liable for those plots that have already been sold to individuals and would need to compensate the deed holders if the board would choose to close the cemetery completely. D’Amico asked Ballard’s suggestion on how to advertise when and what the board decides to do in terms of the cemetery. Ballard stated as far as the Muslim section he would suggest to contact the Islamic Society. As far as the other sections, it may be more difficult since addresses and phone numbers have changed since the plots were sold. Foor stated that he has a spreadsheet and once he is able to add the data from the proof boxes, he should be able to know what spots are empty and what spots are purchased and who belongs in the certain plots, although this may take some time.

O’Brien asked Ballard if there is a way to make it where those that bought the plots are the only ones allowed to be buried in those specific plots and not allow them to transfer the plots to other people. Ballard is not 100% for sure but feels that if the restriction was not in the original deed it would be near impossible to add after the fact of the original sale. O’Brien asked Ballard what is the most that can be charged for a deed transfer. Ballard is unsure and but isn’t aware of there being any cap on it.

Bullard stated that he feels the two main problems are: who is actually buried in the plots and who owns the plots. D’Amico stated what they have been doing is if there is a question or an encroachment from an existing casket or vault, they have been putting a “do not sell” on the adjacent parcel. Smith stated she feels that this may be a quick fix but does not help solve the issue of those that have already purchased lots from years prior.

Foor stated that once we start selling plots again, he feels the section between the Islamic Garden and where the Good Shephard cuts off is completely empty and this would be a good place to start.

Smith asked about those that already have plots at Fairview and if there should be a price increase to help with fees that the township is occurring. O’Brien stated that they should be commensurate with what the township is paying. Smith asked for confirmation from Ballard about when the cemetery was turned over to the township, with the thoughts that the township could run the cemetery as they wanted even with those people that had bought plots in the past. Ballard answered that it comes down to when a person went into a contract basically to use that grave space and what the terms were that they entered into and gave their money for. O’Brien asked Ballard if he had read the court order as he does not know what it really means. O’Brien stated how he transferred it may make a difference. Ballard suggested to reach out to Chris Rinehart since he was the one in charge of the litigation.

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In regard to deed transfer, Foor stated that the deeds have an opportunity to change from owner to owner and there is specific language in rules and regulations.

Stacey Foor read the following:

The applicant shall have the right at anytime unless in default, to transfer, assign or settle the atonement rights to any person in ordinance with the rules and regulations of the cemetery. But such transactions must be entered upon the records of cemetery before some become binding upon cemetery.

Ballard confirmed that this means if someone transferred the deed in the past and it is recorded in the records then the township would be obligated to hold to those terms. However, if someone would come to the township now and would want to transfer a deed and it is not documented then it would be subject to the township rules and the township could prohibit it.

Smith stated that someone will need to be working on a hard copy to give to people about the prices, rules and regulations of Fairview Cemetery. D’Amico stated that he will have the cemetery sexton of Fairview Cemetery, Tim Foor work with the cemetery liaison for 2021.

Foor asked if anyone is allowed to sell their plots back to the township. Theresa Cannon stated that they are not allowed to be sold back in the Cheshire Cemetery. Foor asked if any other contractors are allowed to do any foundation work in Fairview. D’Amico stated that the township is the only contractor allowed. Foor asked if a religious belief would override a federal law. Ballard is looking into it.

**RESOLUTION
20-12-01**

**APPROVE SUSPENDING SALE OF CEMETERY GRACE SPACES &
CEMETERY LOTS IN FAIRVIEW MEMORIAL PARK LOCATED AT
5035 COLUMBUS PIKE, LEWIS CENTER, OH 43035.**

**BOARD OF TRUSTEES
BERLIN TOWNSHIP, DELAWARE COUNTY OHIO
DATE: December 3, 2020**

RESOLUTION NO. 20-12-01

**RESOLUTION SUSPENDING SALE OF CEMETERY GRACE SPACES & CEMETERY
LOTS IN FAIRVIEW MEMORIAL PARK LOCATED AT 5035 COLUMBUS PIKE,
LEWIS CENTER, OH 43035.**

The Board of Trustees of Berlin Township, Delaware County, Ohio (“Board”) met in open session, pursuant to R.C. § 121.22, on the 3rd day of December, 2020. The following members were present:

1. Tom D’Amico _____
2. Ron Bullard _____
3. Ken O’Brien _____

Ken O’Brien moved the adoption of the following resolution:

PREAMBLE

WHEREAS, R.C. § 517.10 vests with the Board title, right and possession, and control of public cemeteries located outside any municipal corporation that are not owned or under the care of a religious or benevolent society, or an incorporated company or association, or under the control of the authorities of any municipal corporation; and,

WHEREAS, Pursuant to R.C. § 517.10, the Board may prohibit future interments in a cemetery under its control, if in the reasonable exercise of its discretion, the board determines that such a prohibition is necessary for the regulation, protection, and preservation of the

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cemetery. Factors that might support such a determination include findings that future interments are not possible for physical reasons or that such interments would endanger the public health or offend public sensibilities (OAG 99-047); and,

WHEREAS, on October 7, 2020, the Board was deeded Fairview Memorial Park, a cemetery located at 5035 Columbus Pike, Lewis Center, Ohio 43035; and,

WHEREAS, since assuming control of Fairlawn Memorial Park the Board has found that extensive remedial measures must be taken to ensure that future interments can be carried out without disturbing improperly marked cemetery lots; and,

WHEREAS, the Board has determined that a temporary suspension of sale of cemetery grave spaces or cemetery lots is necessary for the regulation, protection, and preservation of the cemetery, and to avoid offense to public sensibilities.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

1. Sale of cemetery grave spaces or cemetery lots at Fairview Memorial Park are prohibited until the Board has determined that they may resume.
2. This Resolution shall take effect immediately upon adoption.

Bullard seconded the motion.

The roll was called on the question of adoption.

Voted on and adopted this 3 day of December, 2020 in Berlin Township, Delaware County, Ohio.

**BOARD OF TRUSTEES
OF BERLIN TOWNSHIP,
DELAWARE COUNTY, OHIO**

Tom D’Amico
Trustee

Ken O’Brien
Trustee

Ronald Bullard
Trustee

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

**RESOLUTION
20-12-02**

MOTION TO MODIFY THE FEES FOR THE FAIRVIEW CEMETERY, THE OPENING & CLOSING OF ADULT GRAVES MONDAY-FRIDAY \$750, THE OPENING & CLOSING OF ADULT GRAVES SATURDAY, SUNDAY AND HOLIDAYS \$1500, THE OPENING & CLOSING OF INFANT GRAVES MONDAY-FRIDAY \$400, THE OPENING & CLOSING OF INFANT GRAVES SATURDAY, SUNDAY AND HOLIDAYS \$800. THE CEMETERY DEED TRANSFER WITHIN FAMILIES \$50

Motion: D’Amico

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

Annexation- O'Brien stated that he asked Ballard to look into the annexation and see if there were any issues that the township could contest on it. O'Brien stated that he felt we could possibly win on the issue by making Sunbury be clearer as to what they are actually doing. Based on the language that Sunbury has passed, Berlin does not know what they are doing and there may be a lawsuit in the making. Based upon O'Brien's recommendation, he would follow up with a protest. Bullard stated that he had spoke with the administrator at Berkshire township who indicated that there's a percentage of acreage rule, they believed Berlin township had reasonable grounds for objecting to the annexation. Bullard stated that when he looked at the city, they said they would take over the maintenance of the roads. Bullard believes that what they meant were any new roads built inside the development, not 3 B's & K road, which is Berlin township's objection. Bullard would also like to add to the petition that Sunbury shall also maintain the ditches, storm drainage and the berming area. Ballard will file by December 6th, 2020.

RESOLUTION 20-12-03 APPROVE OBJECTION TO THE PROPOSED ANNEXATION OF 76.015 ACRES FROM BERLIN TOWNSHIP TO THE VILLAGE OF SUNBURY

**BOARD OF TRUSTEES
BERLIN TOWNSHIP, DELAWARE COUNTY OHIO
DATE: December 3, 2020**

RESOLUTION NO. 20-12-03

OBJECTION TO THE PROPOSED ANNEXATION OF 76.015 ACRES FROM BERLIN TOWNSHIP TO THE VILLAGE OF SUNBURY

The Board of Trustees of Berlin Township, Delaware County, Ohio ("Board") met in open session, pursuant to R.C. § 121.22, on the 3rd day of December, 2020. The following members were present:

- 1. Tom D'Amico _____
- 2. Ron Bullard _____
- 3. Ken O'Brien _____

Bullard moved the adoption of the following resolution:

PREAMBLE

WHEREAS, the Fiscal Officer and the Board of Trustees of Berlin Township, Delaware County, Ohio ("Board") received notice that certain petitioners ("Petitioners") propose to annex 76.015 +/- acres of Berlin Township ("Township") land to the Village of Sunbury ("Village") pursuant to R.C. § 709.023 (See Exhibit A); and,

WHEREAS, the Petitioners filed a petition for annexation of such 76.015 +/- acres ("Petition") with the Board of County Commissioners, Delaware County, Ohio ("Commissioners") on November 10, 2020, (See Exhibit A); and,

WHEREAS, the proposed petition for annexation shall divide or segment the boundary line between the Township and the Village as to create a maintenance problem S 3'B's & K Road / Township Road 35, particularly by causing a potential hazard during snow plow use; and,

WHEREAS, within twenty (20) days after the date the Petition was filed, the Sunbury Village Council ("Council"), pursuant to R.C. § 709.023(C), was required to adopt a resolution ("Resolution") that states what services the Village will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon annexation; and,

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WHEREAS, on November 20, 2020, the Council adopted such a Resolution. This revised Resolution now states with regards to “Streets & Roadways” that “maintenance will be available for additional right-of-way that may be included in this annexation request upon adoption. If a street or highway will be divided or segmented by the boundary line between a township and Sunbury as to create a road maintenance problem, Sunbury agrees as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem.” No agreement has been reached regarding maintenance of S 3’B’s & K Road / Township Road 35; and,

WHEREAS, R.C. § 709.023(D) authorizes a township, based solely upon the petition’s failure to meet the conditions specified in R.C. § 709.023(E), to adopt and file with the board of county commissioners a resolution objecting to the proposed annexation; and,

WHEREAS, R.C. § 709.023(E)(7) requires as a condition that “If a street or highway will be divided or segmented by the boundary line between the township and the municipal corporation as to create a road maintenance problem, the municipal corporation to which annexation is proposed has agreed as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem. As used in this section, ‘street’ or ‘highway’ has the same meaning as in section 4511.01 of the Revised Code.”

WHEREAS, while the Resolution now tracks the language of R.C. 709.023(E)(7), it is unclear, what, if any road maintenance the of S 3’B’s & K Road / Township Road 35 the Village intends to provide.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

1. The Board objects to the Petition based on the Petition’s failure to meet the condition specified in R.C. 709.023(E)(7). While the Resolution tracks the language of R.C. 709.023(E)(7), it does not acknowledge the road maintenance problem or state how Village would assume the maintenance of the street or highway or otherwise correct the problem.

. The Board requests the County Commissioners review the petition pursuant to R.C. 709.023(E) at their meeting on this matter on December 21, 2020.

. The Board would withdraw this objection if the Village of Sunbury agrees to assume the general maintenance of S 3’B’s & K Road / Township Road 35 between US 36/37 and Sherman Road / Township Road 134. Such maintenance shall include maintaining roadside ditches and storm drainage, blading, berming, paving, trimming of trees and other vegetation encroaching onto the right-of-way, road mowing, road signage, and snow removal.

. The Board instructs that this Resolution be filed with the Commissioners on or before December 6, 2020.

. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of this Board, and all deliberations of this Board and 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.

. This Resolution shall take effect immediately upon adoption.

O’Brien seconded the motion.

The roll was called on the question of adoption.

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Voted on and adopted this 3 day of December, 2020 in Berlin Township, Delaware County, Ohio.

**BOARD OF TRUSTEES
OF BERLIN TOWNSHIP,
DELAWARE COUNTY, OHIO**

Tom D’Amico
Trustee

Ken O’Brien
Trustee

Ronald Bullard
Trustee

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

**Piatt Road Widening-
RESOLUTION RECESS TO EXECUTIVE SESSION PURSUANT TO ORC
20-12-04 121.22 (G)(2) TO CONSIDER THE PURCHASE OF PROPERTY
FOR PUBLIC PURPOSES, THE SALE OF PROPERTY AT
COMPETITIVE BIDDING OR THE SALE OR DISPOSITION OF
UNNEEDED, OBSOLETE, OR UNFIT-FOR-USE PROPERTY-
THREE TRUSTEES, FISCAL OFFICER, ASSISTANT FISCAL
AND CHRIS BALLARD TO ATTEND- 7:31 P.M.**

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

**RESOLUTION MOTION TO RETURN TO REGULAR SESSION- 7:52 PM
20-12-05**

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

D’Amico “We met in executive session and no decisions were made and no actions were taken”.

**RESOLUTION MOTION TO AUTHORIZE O.R. COLAN TO ACCEPT THE
20-12-06 COUNTER OFFER ON PARCEL 6 ON THE PIATT ROAD WIDENING
PROJECT**

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

D’Amico stated that he will get a statistic sheet for the next trustee meeting on December 14th, 2020 with his recommendations on the other outstanding counter offers.

Smith asked Bullard if she can send a draft copy of the minutes to someone before the trustees have approved them. Bullard answered as long as they know it’s a draft and is in no way finalized until the trustees approve them.

Public Comment- There were no public comments.

RESOLUTION MOTION TO ADJOURN

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20-12-07

Motion: O'Brien

Second: Bullard

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

Meeting adjourned by Chairman D'Amico at 7:57 P.M.

Tom D'Amico, Trustee

ATTEST:

Ron Bullard, Trustee

Theresa Taylor, Assistant Fiscal Officer

Ken O'Brien, Trustee