

BERLIN TOWNSHIP TRUSTEES

6:00 p.m. Trustee Meeting November 23, 20

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

CALL TO ORDER: Tom D’Amico, Trustee Chairman

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

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

ATTENDANCE: Meghan Raehl, Joe Pichert, Tim Foor, Dave Goettel, Christina Littleton, Jarrod Burks, Rob Platte, James Brenza, Jim Reed, Joe Miller, Jim and Patty Chapman, Angela Brown, Martha Davis, Amy Eiken, Matt Stypula, Mark Coakley, Rick Gemienhardt, David Reed, Jim Reed, Scott Cubberly, Holly Mattei, Terry McCann, David Armbruster, Vanessa Fletcher, Bob Lamb, Alyssa Lowry and Molly Gwinn

**Approval of Minutes-
RESOLUTION APPROVE THE 11/04/20 SPECIAL MEETING MINUTES
20-11-38 AND DISPENSE WITH THE READING**

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

**RESOLUTION APPROVE THE 11/09/20 REGULAR MEETING MINUTES
20-11-39 AND DISPENSE WITH THE READING**

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

**RESOLUTION APPROVE THE 11/15/20 SPECIAL MEETING MINUTES
20-11-40 AND DISPENSE WITH THE READING**

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

Old Business-

Fairview Cemetery Imaging Quotes- Burks explained that the difference in the quotes that he had given to the trustees, were based on the processes he would use and how in depth the retrieved information would be. Burks said he feels the information he will be able to retrieve should be compatible with the Pontem software. O’Brien would like to get another quote for comparison purposes. D’Amico stated that they needed more time to come to a decision as to how to proceed.

Disaster Plan, Password Policy & Upgrade Computers- Nothing new.

Collective Bargaining- O’Brien said there is no new information other than that the trustees were given the contract to look over.

Fiscal Officer Items- Smith stated that she needs what the trustees plan on spending money on for next year. Smith stated that she had spoke with another fiscal officer who uses a payroll company that also has an HR component within it. This would allow questions to be answered through them as opposed to paying an attorney. They would also be able to keep up with laws that may change within the employee handbook that the township would not know otherwise. Smith stated the HR component can be added on later since the handbook will be up-to-date due to the current collective bargaining. O’Brien likes the idea.

Cemetery-

Legal Fees- O’Brien stated that Chris Rinehart contacted him in regard to the trustees needing or wanting more services from him. O’Brien asked if they wanted to employ Rinehart to discover what it will take to pursue the portion of Fairview Cemetery that is not in Berlin Township. D’Amico said yes. O’Brien will ask Rinehart to attend the next trustee meeting which is December 14, 2020. D’Amico stated that a discussion will need to be had

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about certain sections in Fairview that do not coincide with the Cheshire Cemetery rules. O'Brien asked if the rules are being followed as established. D'Amico answered yes but at some point, there may need to be modifications. D'Amico stated that there was a substantial payment made for the Islamic garden section so that they could have it dedicated to the Islamic Society and their religious law. O'Brien stated that the court had set that aside if it was not done under the courts ruling. Bullard stated that Ballard said he would have to look into whether or not those requirements exist and any other information regarding this issue. Ballard asked that the Cheshire Cemetery rules and regulations be sent to him as well as any other documentation regarding Fairview Cemetery.

O'Brien left the meeting at 6:31 p.m.

****6:30 P.M. BZC 19-004 AS THE BERLIN BUSINESS PARK INDUSTRIAL OVERLAY******

**RESOLUTION
20-11-41**

**MOTION TO CONTINUE THE BZC #19-004 HEARING THAT
WAS SUSPENDED FROM NOVEMBER 18, 2020**

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

Bullard addressed James Brenza's concern with being able to suspend NAICS codes, for when someone comes in saying that they are going to do one thing and then do something else entirely. Upon Chris Ballard's recommendation, since the specific NAICS codes are stated this will be less problematic as opposed to putting in Brenza's suggested 19.04 prohibited uses language.

Platte stated that the current redlined version is draft #11 and is dated November 23, 2020 with a map change excluding the Hondros property and another parcel that is surrounded by the Hondros property. Platte stated he had spoken with that resident, which asked that his property be removed since his property's lot-size alone would not meet the requirement of the cloud zoning. Platte stated there were only a few changes made to include the usage of PRO since the sub-area no longer exists due to the removal of those parcels. Another being that street trees will need to be moved out of the right-of-way. Drive-thru's will have no access or any awnings on the front of the building. Drive-thru's will only be able to be put on the side of the building so that all fronts of buildings will face Rt36/Rt37. Finally, Appendix A was also updated to reflect the removal of parcels.

Platte stated that he spoke with Ballard who confirmed that he and the Regional Planning Board has reviewed the current proposal.

D'Amico opened up the conversation to the public.

Christina Littleton addressed language regarding vanishing sight lines for the commercial areas. Littleton stated that she would like to see this language added to the R10 area along Curve Road. She also asked about the language in the Industrial Uses section, defining the required design elements, saying it doesn't specify spacing or provide examples like it does in the residential or office uses. Ballard stated in 19.061 when a development plan is being submitted, there will be a list providing all the permitted uses and the accessories as permitted by the NAICS codes. In regard to Littleton's question about the vanishing sight line, Platte stated that there is still the 250-foot buffer that applies there and does not feel there needs to be a change to the language.

Meghan Raehll read the following:

I would like to begin my remarks this evening with a special thanks to Rob and his team and especially to Trustee Bullard for his truly great work in meeting with the residents for hours and hours on this BIO proposal specifically and working line by line through hundreds of codes and many recommendations. I know me and a number of residents are grateful that anyone who wanted to have a seat at the table was welcome and that much of the neighborhood feedback has been thoughtfully integrated.

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While I know there are objections on all sides of this plan, I specifically hope that those who are our neighbors and who are committed to this township in both the near and long and term, will not miss the forest of all great gains and advantages for residents within this plan at the expense of a few additional improvements that may not contribute to the long term viability of the township.

This plan certainly is not perfect, but after speaking with many people around the township it does achieve all of the stated goals for which it was sought such as staving off annexation, increasing commercial tax to support schools and community, and the like.

It also now, thanks to so much of the residents’ great work and feedback, truly does achieve one additional goal that many, including myself, thought was missing in the initial drafts; namely, it now balances profits with people and preserves the value and quality of life for the people of this great community

Mr. Chair, I feel the resident’s voices have been heard, the safety issues addressed, our neighbors' homes preserved, and that this plan offers a promising and best possible path forward for the township.

Both I and a couple of others have also posted our rationale further on We Love Berlin's Facebook and I support this overlay would like to request this be passed tonight with the redline integrations and any resident offered feedback tonight included.

In closing, I would like to say that I hope no party pursues the undoing of any of the collective hard work that was done by the residents and for the residents of this township or seeks to subvert the interests of the people who live in this community whether that be by decreasing buffers, increasing densities, or by needlessly initiating an unwarranted referendum at this point in time.

Thank you, Mr. Chair

Christina Littleton retracted her comment about the design elements in the Industrial area due to a misunderstanding of its reference.

James Brenza stated that he feels anyone that deals with business understands the definition of sales general administrative and would like to hear more about how that language is tight enough. Brenza stated it will take 271 signatures to get things cleared up.

RESOLUTION 20-11-42 MOTION TO TAKE THE RED-LINED DOCUMENT DATED NOVEMBER 23, 2020 AND MAKE IT THE CURRENT WORKING DOCUMENT, WHICH WILL BE EXHIBIT #26

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

RESOLUTION 20-11-43 MOTION TO ACCEPT THE CLEAN VERSION OF THE NOVEMBER 23, 2020 ARTICLE 19 BERLIN INDUSTRIAL OVERLAY, AS THE LAST DOCUMENT WHICH WILL BE EXHIBIT #27

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

RESOLUTION 20-11-44 MOTION TO CREATE BZC #19-004 BERLIN INDUSTRIAL OVERLAY INCLUDING ALL EXHIBITS #1-27, WITH THE LATTER EXHIBITS TAKING PRECEDENT

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

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

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**RESOLUTION NO. 20-11-44: OF THE BOARD OF TOWNSHIP TRUSTEES
ADOPTING WITH MODIFICATIONS RECOMMENDATION 19-004 OF THE BERLIN
TOWNSHIP ZONING COMMISSION REGARDING AMENDMENTS TO THE
BERLIN TOWNSHIP ZONING RESOLUTION TO CREATE THE BERLIN
INDUSTRIAL OVERLAY**

The Board of Trustees of Berlin Township, Delaware County, Ohio (“Board”) met in regular session on the 23rd day of November 2020 with the following members present:

Tom D’Amico

Ron Bullard

Bullard Moved the adoption of the following Resolution:

PREAMBLE

WHEREAS, the Berlin Township Zoning Commission has conducted public hearings, and on October 29, 2019, made recommendation to the Board of Trustees regarding the amendment of the Berlin Township Zoning Resolution to create Article 19, the Berlin Industrial Overlay; and,

WHEREAS, the Berlin Township Trustees have held public hearings on the Berlin Township Zoning Commission’s recommendation and submitted the Board of Trustee’s proposed modifications to the Delaware County Regional Planning Commission for additional administrative review; and,

WHEREAS, the Berlin Township Trustees have, pursuant to R.C. 519.12(H), modified the recommendation of the Berlin Township Zoning Commission to address concerns, including density, permitted uses, and design standards.

NOW THEREFORE, be it resolved that the Board of Trustees adopts the recommendation of the Berlin Township Zoning Commission and approves the amendments to the Berlin Township Zoning Resolution as recommended in the motion of the Zoning Commission with those modifications.

BE IT FURTHER RESOLVED, that those sections of the Zoning Resolution affected by this resolution are amended to create as Article 19, the Berlin Industrial Overlay, to read as indicated in Attachment “1” attached hereto and incorporated by reference herein.

Adopted on:

D’Amico seconded the motion.

Voted on and signed this 23 day of November 2020 in Berlin Township, Delaware County, Ohio.

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

Tom D’Amico
Trustee

Date

Ken O’Brien
Trustee

Date

Ron Bullard
Trustee

Date

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ATTEST:

Claudia Smith
Berlin Township Fiscal Officer

Date

D’Amico left the meeting at 7:13 p.m. O’Brien returned to the meeting at 7:14 p.m.

*****7:00 P.M. BZC 19-005 AS THE BERLIN BUSINESS PARK COMMERCIAL OVERLAY*****

**RESOLUTION
20-11-45**

**MOTION TO CONTINUE THE BZC #19-005 HEARING THAT
WAS SUSPENDED FROM OCTOBER 29, 2020**

Motion: O’Brien
Second: Bullard
Vote: O’Brien yes and Bullard yes

Bullard explained to O’Brien the earlier conversation about Brenza’s concerns regarding the NAICS codes. Bullard stated that Ballard’s recommendation was that no changes be made as to the enforcement of the NAICS codes. O’Brien was ok with this as Ballard’s email was clear.

Bullard explained to O’Brien that upon Joe Miller’s request, that the Hondros property be removed from the BIO and the BCO. Bullard stated that he and D’Amico did agree to take the Hondros property out of the BIO. O’Brien stated that he was unaware of the request. Ballard explained Joe Miller, attorney for the Hondros family, made the request to him on November 16, 2020. It was publicly requested at the November 18, 2020 Berlin Industrial Overlay meeting. Ballard stated that he did advise Bullard and O’Brien to discuss it. O’Brien stated that he did not see the request in writing.

Joe Miller stated that correspondence was sent to the township about both the BIO and the BCO regarding the removal of the Hondros family property, as they feel it is unlawful to make them be in the overlay if they do not want to be in it. O’Brien asked Miller if he felt it was legal to remove the property. Miller stated “that if it is removed, he will leave this township well enough alone”. O’Brien said the question was not answered. Miller, “I will continue to advocate for my client’s interests, which I think are best served Trustee O’Brien, if we are left out of this. You asked if the request was made in writing, it was made to Mr. Ballard who then asked that they confirm which parcels are in the BIO and which ones are in the BCO owned by his client, which was provided to Ballard in writing”. O’Brien asked again “so you think it’s legal if you’re not included”? Miller “Trustee O’Brien I don’t believe it’s legal but I also believe if my client’s property is left out of it, we don’t have a dog in the fight which is probably in the best interest of the township and its residents”. O’Brien, “I don’t think it should be removed”.

O’Brien asked Bullard what his thoughts were. Bullard stated that he felt the property should be removed, since the cloud zoning is optional for property owners to exercise if they would want to. Bullard feels that since the Hondros family does not want to be included then it is not worth fighting a battle over keeping them in the overlays. O’Brien stated that if the property would stay a farm then it would make sense but if they would ever think of developing it there would be a bunker, which would not make sense. Since it is a cloud and it is not changing the zoning, it is just changing the option for it to be zoned; O’Brien feels the property should stay in the overlay. Bullard stated that if in the future, they would want to make a change from the farm to something else then they would have to go through the zoning process and the cloud would no longer be an option for them.

Platte began with saying that Chris Ballard and the Regional Planning Board have both reviewed the current proposal upon the trustee’s request. Platte stated that the most recent redlined version was put out on Friday November 20, 2020 on the county’s website. Upon the final review, the changes were highlighted. Platte stated that he prepared two identical documents; the first has a map change excluding the Hondros property and another parcel that is surrounded by the Hondros property. Platte stated he had spoken with that resident, although they wish to remain in the overlay, it would not make sense for them to be removed since their property’s lot-size alone would not meet the requirement of

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the cloud zoning. The other document does not have the map change to it. Platte confirmed that the request to remove the Hondros property was not made in a public meeting, but he was made aware of it through Trustee Bullard, Chris Ballard and the counsel for the Hondros family, Joe Miller.

Platte began with the few changes that were made, which mainly consisted of grammatical errors and clarification on some of the wording. Platte pointed out that originally the charts for the BIO and BCO were identical but since have been modified for both overlays which show the difference in the two. The definition for Net Developable Acre was added since there was language that had been added referencing it within the proposal. Language was added that the multi-use paths and trees shall be on the outside of the right-of-way. Drive-thru's will have no access or any awnings on the front of the building. Drive-thru's will only be able to be put on the side of the building so that all fronts of buildings will face Rt36/Rt37. Under Open Spaces, language was added that it can be done by deed restrictions or platted as open space parcel to prevent future subdivision and development. O'Brien wants the word 'or' changed to 'and'. Finally, under Appendix A, there was a definition added for Vehicle Use Area since it is refenced earlier in proposal and an updated parcel list and map due to the removal of the Hondros property.

Ballard stated after his conversation with Miller there was one other parcel, 41812001012001, located in the northeast corner of the DPROC that the Hondros family would also like to be removed from the cloud zoning, that Platte was not aware of. O'Brien asked if there was a house on the property. Platte stated that it appears to only have a barn on it. Platte stated that there was no issue removing the parcel and would make that change.

RESOLUTION 20-11-46 MOTION TO RECESS TO EXECUTIVE SESSION PURSUANT TO ORC 121.22 (G)(3) FOR THE PURPOSE OF CONFERENCES WITH AN ATTORNEY CONCERNING PENDING OR EMINENT COURT COURT ACTION- TWO TRUSTEES, FISCAL OFFICER, ASSISTANT FISCAL OFFICER, CHRIS BALLARD AND JOE MILLER TO ATTEND- 8:01 P.M.

Motion: O'Brien
Second: Bullard
Vote: O'Brien yes and Bullard yes

RESOLUTION 20-11-47 MOTION TO RETURN TO REGULAR SESSION- 8:42 P.M.

Motion: O'Brien
Second: Bullard
Vote: Bullard yes and O'Brien yes

Bullard "We met in executive session and no decisions were made and no actions were taken".

RESOLUTION 20-11-48 MOTION TO RECESS AND CONTINUE BZC #19-005 TO DECEMBER 14, 2020 AT 6:30 P.M. VIA ZOOM

Motion: O'Brien
Second: Bullard
Vote: Bullard yes and O'Brien yes

D'Amico returned to the meeting at 8:43 p.m. Recess was taken at 8:44 p.m. Returned to meeting at 8:50 p.m.

*****8:00 P.M. BYERS REALTY LLC ***MAJOR OR MINOR MODIFICATION*****

Molly Gwinn, attorney for the applicant, Celebration Real Estate LLC and also represents Byers Realty began explaining the proposed expansion of the KIA dealership on Rt. 23. With the expansion, they would like to expand the existing services with a service ride-up area, a new car delivery center with additional service stalls and an enhanced car wash. The applicant is also proposing an extension of the existing showroom and the reconfiguration of some existing parking spaces. The property located directly north of the

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KIA dealership, is the Celebration Real Estate LLC piece and is currently zoned FR1. They are proposing a rezoning of that property, in hopes to combine both properties under a major modification. If the rezoning of the Celebration Real Estate LLC piece is accepted, it will be proposed as an expansion of the parking lot to hold an additional 271 parking spaces.

O'Brien asked for clarification on which piece was being brought to the trustees tonight. Gwinn stated that the Byers Realty section, which is the territory to the south that holds the dealership on it. O'Brien asked if what they are wanting is compliant with the zoning resolution. Gwinn answered yes other than one divergence that is being requested, which is the terms of the tree placements. They plan on using the same number of trees but would like to group some together as opposed to one tree every thirty feet. This will help with the visibility of what is being sold on the site. O'Brien feels as if they may want additional trees in compensation of the divergence.

Bullard stated that the township is having trouble with KIA putting their cars in the right-of-way and asked Gwinn if there is a way to make sure that this stops happening. Gwinn answered that they would be amenable to putting a limitation in the text, the requires the cars to not be place in the right-of-way. D'Amico asked what the percentage of building and asphalt would be on each section. Gwinn stated that it would be 57% on the south section alone and 51% for the entire project, including both the north and south sections.

Bullard stated that he wants to make sure that 18-wheelers have an easy access in and out of the dealership to bring in cars that does not include stopping traffic on Rt. 23. Matt Stypula with EMH&T stated that with the north expansion the 18-wheelers would be able to enter and exit with no problem. O'Brien stated it is not a definite that the north expansion would pass and is concerned without it the 18-wheelers would not have enough clearance with the expansion on the south piece. D'Amico stated that with the proposed expansion it would be even more difficult for the truck to navigate the parking lot. Stypula stated that currently there is not a path for an 18-wheeler around the existing building.

Smith asked when the north piece would be coming to the trustees. Gwinn answered that both applications were filed simultaneously; both are at different stage in the process. Gwinn stated that both applications will be before the zoning commission on January 7, 2021 and then both will come to the trustees at the same time.

O'Brien stated that he feels it would make more sense to wait since it is a planned-use and the use of them are tied together and make it a major modification. This way the trustees can hear both proposals together. D'Amico and Bullard agree.

RESOLUTION 20-11-49 MOTION TO DETERMINE THE EXPANSION ON THE SOUTH IS A MAJOR MODIFICATION, FOR REASONS BEING THAT IT IS TIED TO THE APPLICATION ON THE NORTH AND FOR TRAFFIC CONCERNS

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

Fire Department- Pichert stated that some of the items are starting to come in that was ordered with the Covid money.

Road Department-
2020 Road Improvement Program- Bullard stated Irwin is putting a list of roads together by November 30, 2020. Bullard feels that the township should apply for an OPWC grant for next year. O'Brien agreed.

O'Brien stated that the commissioner's resolution #20-10-07 was received minus the milage, which is the acceptance of the roads. O'Brien stated that it his understanding that if the possession of the roads is not accepted, then the township would not get the gas mileage.

RESOLUTION 20-11-50 MOTION TO ACCEPT TOWNSHIP ROADS #1762, #1763, #1764, #1765, #1766, #1767, #1768 AND #1751 AT .23 MILES, IN HOWARD FARMS, #1769, #1770, #1771, #1772, #1773

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#1774 AND #1775 IN THEIR ENTIRETY OR ADDITIONAL MILEAGE THAT THE COMMISSIONERS HAVE ACCEPTED

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

Trustee Items-

Pony Landscaping- D'Amico stated that he had received a quote for mowing and fertilizing for 2021. D'Amico is going to ask for a requote that will include two applications of fertilizer as opposed to the three applications that were originally quoted and an application of weed killer.

**Zoning Department-
Zoning Office Hours-
RESOLUTION
20-11-51**

MOTION TO RECESS TO EXECUTIVE SESSION PURSUANT TO ORC 121.22 (G)(1)(2) FOR THE DISCUSSION OF PURCHASING PROPERTY ON PIATT ROAD AND TO CONSIDER APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE- THREE TRUSTEES, FISCAL OFFICER AND ASSISTANT FISCAL OFFICER TO ATTEND- 9:39 P.M.

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

**RESOLUTION
20-11-52**

MOTION TO RETURN TO REGULAR SESSION- 10:06 P.M.

Motion: Bullard
Second: O'Brien
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
20-11-53**

MOTION TO AUTHORIZE TRUSTEE D'AMICO TO WRITE A LETTER TO THE ZONING INSPECTOR REITERATING THE HOURS THAT WERE NOTED IN THE ORGANIZATIONAL MINUTES AND THAT THE ZONING INSPECTOR CAN NOT EXCEED 1500 HOURS FOR THE CALENDAR YEAR OF 2020, THE LETTER WILL BE SIGNED BY ALL THREE TRUSTEES

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

Old Business Cont'd-

Piatt Road Widening Updates- D'Amico will follow up on getting information on existing trees that are on Piatt Road.

Public Comment- There were no public comments.

Future Meetings-

**12/14/20 Trustee Meeting
12/28/20 End of Year & 2021 Organizational Meeting**

Late Items- Smith stated that a lady with the Quilts of Valor Foundation was looking for a place to award quilts. O'Brien stated that neither the township hall or the fire house has been available to anyone during Covid so at this time the answer would be no.

Smith stated she received a bill from the attorney's that were working on the OPEC insurance lawsuit.

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**RESOLUTION
20-11-54**

**MOTION TO APPROPRIATE \$225 FOR LEGAL FEES FOR THE
OPEC LAWSUIT TO MAZANEC, RASKIN & RYDER CO., L.P.A.**

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

Bullard stated that Irwin had told him that he had someone come up to him at the Fairview Cemetery and offer to buy it. Bullard will see if he is able to find out any more information about it.

**Adjourn-
RESOLUTION
20-11-55**

MOTION TO ADJOURN

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

Meeting adjourned by Chairman D'Amico at 10:17 P.M.

Tom D'Amico, Trustee

ATTEST:

Ron Bullard, Trustee

Theresa Taylor, Assistant Fiscal Officer

Ken O'Brien, Trustee