

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, JANUARY 26, 2021 7:00 PM

1 This meeting was held virtually.

2

3

CALL TO ORDER

4

5 The meeting was called to order by Chairperson Steve Flaherty at 7:00 PM.

6

7 Mr. Flaherty led meeting attendees in the pledge of allegiance.

8

9 BZC members present: Chairperson Steve Flaherty, Vice-Chairperson Jerry Valentine,
10 Darcy Kaplan, Mike Bardash, Martin Johnson.

11 BZC alternate members present: 1st alternate Christina Littleton, 2nd alternate Angela
12 Brown.

13 Also present: Zoning Inspector David Loveless, Zoning Secretary Cathy Rippel, Zoning
14 Clerk Lisa Knapp.

15

16 Mr. Flaherty reviewed the adopted policy of the BZC, and noted that public comments
17 are limited to three minutes per person. He reviewed the procedures for this hearing.

18

AGENDA ITEM: 2021 BZC GOALS & OBJECTIVES

19 Mr. Flaherty said this is a meeting to discuss the 2021 BZC goals. The process was
20 started at the last meeting with some informal brainstorming. He created a Google Doc
21 to keep track of a list of items to discuss but accidentally did not share it with the BZC.
22 He pulled it up and displayed it. The list included:

- 23
- 24 • Updates.
 - 25 • Ambiguities throughout the zoning resolution.
 - 26 • R-2, R-3, R-4 standards.
 - 27 • Trails/Parks.
 - 28 • Electronic signs.
 - 29 • Solar Farms.
 - Agribusiness.

30 Mr. Flaherty said he is not expecting to make any decisions tonight; this is a
31 wayfinding/general discussion/brainstorming session. Items can be added or subtracted
32 from the list. This list will allow the BZC to be proactive and work on the list when there
33 are no applicants.

34

35 Mr. Flaherty said the implications of the business park and how that may change the
36 scope and landscape of the township need to be discussed, and whether auxiliary items
37 should be considered as that comes along. This could include items such as where the
38 business park borders, and whether the zones that are currently set up with the CLUP
39 (Comprehensive Land Use Plan) are appropriate as they approach that zone. Those areas
40 will be filled in over the next 5-10 years and the township needs to ensure that those
41 zones match with what the township has evolved into over the past decade.

42

43 CLUP Updates: matching the current changes over the last decade to what is desired.
44 Solar farms/windmills

45

46 Mr. Flaherty said the agribusiness and solar farms would fit in this section. Mr. Loveless
47 said people have asked him what the regulations are for solar farms, and he has had a
48 couple people call in asking about the regulations. They are interested in 1000-1500 acre
49 solar panel farms. He said they need to be screened, although he is not familiar with the
50 logistics of solar farms. He was not certain whether they needed generators but he did
51 not think the use would be a problem.

52

53 Mr. Flaherty said most of the solar farms would feed grid power back and not have a
54 storage component to them. However, he was surprised that there was interest, given

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55 Ohio's weather. He said whether they will be allowed and the location where they could
56 be allowed will be critical, and text would need to be developed for such a use.

57

58 Mr. Bardash asked whether there could be a noise issue. Mr. Flaherty said the operations
59 are quiet. Ms. Kaplan asked whether the property would need to be rezoned from FR-1:
60 would it be considered a commercial business or an agribusiness? Mr. Flaherty said the
61 BZC would need to consider whether the FR-1 language would currently allow such a
62 use, and if so, would modifications need to be added to address it. Or, would it need to
63 be a separate subsection with its own wording?

64

65 Mr. Loveless thought it would fit into one of the commercial districts if properly worded.
66 Ms. Kaplan said she was not a huge fan of changing FR-1 to commercial because that
67 opens the door to use that property for other commercial uses in the future if the solar
68 farm doesn't work out. She would prefer to keep it in the FR-1 district because it would
69 not cause increased traffic and would not have residences.

70

71 Mr. Loveless said he was thinking it would be a commercial use because there are areas
72 being approved such as along 36/37 where they want commercial. Mr. Johnson said if
73 that was included as a use under FR-1, anybody who has a property zoned FR-1 could
74 install a solar farm without having to come before the BZC.

75

76 Mr. Johnson asked whether Scott Sanders, the Director of Delaware County Regional
77 Planning Commission, would have any information or regulations he could share.

78

79 Mr. Loveless said it could also be made into a utility and the township may not be able to
80 enact zoning at all.

81

82 Ms. Rippel said there had been a lot of talk years ago about windmills being put into the
83 zoning resolution. Mr. Loveless said he did not think the township wants them, and the
84 windmill at the Byers dealership near Sawmill Road seems to only work as an advertising
85 mechanism to draw one's eye to the dealership. It does not seem to function much at all.
86 Mr. Johnson said it is dependent upon the wind. Mr. Bardash said he thought it powered
87 the dealership. Mr. Flaherty agreed that it was used as eye-candy.

88

89 Agribusiness

90

91 Mr. Loveless said he checked with Mr. Sanders, who provided him with recommended
92 text and where to install it. Ms., Kaplan asked whether those properties remain FR-1.
93 Mr. Loveless said it would stay FR-1 if it was already zoned FR-1. Ms. Rippel asked
94 how agritourism is defined. Mr. Flaherty said it would be like apple-picking or Leed's
95 Farm; anything that is drawing a crowd into agricultural aspects of life.

96

97 Mr. Loveless said that agritourism requires that 40% of income must come from
98 whatever they produce on the farm. For example, Alum Creek Farms produces flowers
99 and they have a wedding business. Mr. Loveless said that agritourism and agribusiness is
100 the same thing.

101

102 Ms. Littleton asked whether, for Alum Creek Farms, selling their flowers and providing
103 the wedding venue and services are their 40% revenue. Mr. Loveless said the weddings
104 are about 60% and the producing and sale of flowers are about 40%.

105

106 Ms. Brown asked about having a detailed document showing where annexations have
107 already occurred, in order to keep an eye on them, and she asked whether that would fall
108 under the CLUP. Mr. Flaherty said the maps in the township hall are updated every so
109 often to show annexations. Ms. Rippel asked whether Sunbury was a done deal. Mr.
110 Loveless said trustee Ron Bullard insinuated that it was not last week.

111

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112 Mr. Flaherty said he did not think it was “inked” yet, but he did not know how it would
113 be stopped. The last he heard, all parties were on board. There was some public
114 pushback. Ms. Rippel said once that is a done deal, she would order a new map with the
115 new annexation area. Ms. Brown said that knowing the potential areas where annexation
116 occurs may help to ward it off in the future. Mr. Flaherty said that cannot be done
117 because it’s fast-track and the township has no legal right to fight it. Ms. Brown said she
118 wanted to ensure the township was aware of where it may happen.

119

120 Mr. Flaherty said it was anywhere the township has a contiguous border with another
121 entity, including to the east and west. Ms. Brown said she wanted to make sure
122 everybody is aware of where the threats were. Mr. Flaherty said the updated maps are
123 shown on the website. The township receives notice after the property owner has signed
124 an agreement. There is not typically discussion prior to that with the township. The
125 cities are always trying to grab the land so they can get the income tax. Everything west
126 of the railroad tracks from Peachblow Road all the way up to 36/37 is City of Delaware
127 due to the agreement between Del-Co Water and the City of Delaware that was struck in
128 the 1970’s or 1980’s; Del-Co cannot provide services in those areas, so the only way to
129 develop is for a city to provide services.

130

131 Ms. Littleton said there is one parcel in Evans Farm that seems to be an exception. Mr.
132 Flaherty said they asked to annex the property because Del-Co cannot service it based
133 upon the agreement. The last he heard, the City had denied it, which would open up a
134 chance for Del-Co to provide services, barring an amendment to the contract for that
135 zone. The City has all rights of refusal and if they refuse, Del-Co can step in and service
136 it, but they cannot step in unless the City has denied the request for services.

137

138 Seek prosecutor advice on ambiguities.

139

140 Roofing on mailboxes/development standards/buffering/stop signs.

141

142 Mr. Johnson said that should be addressed in the zoning resolution. Ms. Brown asked
143 whether language could be included regarding the height of mounding/buffering. Mr.
144 Flaherty said that was included in the R-2/R-3/R-4 general standards portions of the
145 zoning resolution.

146

147 Mr. Loveless suggested a developer requirements section. He hands the developer
148 information but it would help to update and standardize it.

149

150 Ms. Littleton suggested a percentage of opacity for general buffering. Ms. Rippel said
151 she thought perhaps that was included in the zoning resolution but she was not sure. Mr.
152 Loveless said he has noticed the buffer areas being wiped out by residents as time goes
153 on, and also the trees dying and not being replaced. The 50’ buffers are being wiped out,
154 he said, as they feel the property is theirs to take care of as they wish. He said the buffer
155 language should be updated to indicate property owners can get rid of vines and poison
156 ivy in a buffer area, but not items such as saplings, etc. It is in the standards, but it states
157 items below 2” in caliper can be removed.

158

159 Ms. Brown said there have been requests to install stop signs on straightaways to get
160 people to slow down. Mr. Flaherty said that is up to the county, although trustees can
161 request a traffic study, and the sheriff enforces it. He reviewed the procedures. Ms.
162 Brown asked about 3-way stops in neighborhoods that connect and the straightaways
163 have been created. He noted that this is similar to the designs of detention and retention
164 ponds. The BZC may ask for a certain configuration, but Delaware County makes
165 changes to those plans. However, concerned citizens can contact their trustees and
166 county commissioners to make changes, who are their elected officials.

167

168

169

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170 Pond headwalls & endwalls/fountains/plan modifications.

171

172 Ms. Kaplan said there have been discussions about the aesthetics of the facing on
173 headwalls and endwalls in detention/retention ponds, and stone has been requested
174 inconsistently for years. She asked whether that could be included in the zoning
175 resolution as a consistent expectation. Mr. Flaherty said that would be up to the
176 Delaware County Bureau of Soil and Water and what they allow. Conversations could be
177 had with them to determine their standards in order to ensure consistency between what
178 they allow and also what they recommend.

179

180 Mr. Bardash noted that many applicants include it in their text, but it should be made a
181 requirement. Mr. Flaherty added it to the list.

182

183 Mr. Bardash requested that fountains in the ponds be added as well.

184

185 Ms. Rippel asked why somebody who requests a modification of their plan goes to the
186 trustees first, who decide whether it's a major or minor modification, it comes back to the
187 BZC, and then they decide whether its major or minor, then it goes back to the trustees.
188 She felt it was redundant. Mr. Flaherty said changes could be made by the BZC that the
189 trustees do not agree with after the trustees send the request to them, then it goes back to
190 the trustees. It goes back to the rights of the public and checks and balances. He believes
191 that is per Ohio Revised Code, not just Berlin Township. Mr. Johnson asked that
192 "major/minor procedure review" be added to the list to be discussed by the BZC.

193

194 Trails.

195

196 Ms. Littleton said she has been working on a map of the existing trails in the township
197 subdivisions. Everybody is required to install a 10' path along the main road. However,
198 there are other places that the paths could connect, such as where an existing home breaks
199 the path at the main road. There are some areas where the BZC could pay attention to
200 that so the connection could still be built but perhaps a different way, such as behind the
201 existing homes. She came from an area where the pathways connected subdivisions and
202 she thinks that is a desirable amenity in Berlin Township, if possible.

203

204 Mr. Flaherty said the major issue is initial development cost and the maintenance of the
205 paths by the homeowners' association. When he was a trustee, they were looking at a
206 complete streets package with bike lanes and how that could be incorporated in certain
207 areas of the township.

208

209 Ms. Littleton said the trustees are considering putting together a trails committee to work
210 on that including securing funding. Mr. Flaherty was pleased to hear that it was being
211 picked up again. He said that inner connectivity was the number one item that the county
212 commissioners heard from their survey. There is a lot of opportunity to do that since the
213 township is close to the Ohio to Erie trail. He used to attend the OPL (Olentangy, Powell
214 & Liberty) meetings at Liberty Township. They are organized and perhaps Berlin
215 Township could assimilate into that organization. A study was conducted in 2016 by
216 Preservation Parks for Berlin Township regarding how Berlin Township could develop
217 their parks and trails, with the goal of establishing that within the next 4 years. He
218 believes this is important, and the BZC needs to ensure that when development comes in,
219 they are contributing to the overall scope. However, to get somewhere you need to know
220 where you are going.

221

222 Ms. Littleton said the trustees discussed establishing what the committee would be
223 working on. There was concern that it was being called "trails and rec" because the
224 recreation could be very broad. Mr. Flaherty said he is a big fan of modeling what works.
225 Berlin Township could assimilate into OPL or set up their own group that interconnects
226 into the other systems, then give that to the trustees so they can act on it. He did not want

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227 to get it lost in the minutiae that is typical of government and results in inaction. The
228 worst place to be is indecision.

229

230 Mr. Flaherty said it used to be very hard to interconnect trails through the Army Corp of
231 Engineers and ODNR properties, although it has become somewhat easier. He displayed
232 an ODNR draft map from 1/14 /16. Ms. Littleton said that would be useful to update the
233 CLUP. Mr. Flaherty reviewed the map and showed the paths, including connecting to the
234 schools.

235

236 Mr. Flaherty said Preservation Parks is county-wide, and they are planning the trails
237 countywide, excluding some townships and cities. It would be useful to leverage them.
238 Much of this has to happen from the trustee level but the township can make sure zoning
239 fits in to match it. It would be great to have an updated resident group/committee that is
240 willing to determine where the township wants to go and to stand up for it.

241

242 Mr. Flaherty said work was done to connect the paths down to Orange Township and up
243 from Africa Road to connect to all developments. The plan would need to be updated to
244 make sure it's all connected and that will take a systematic approach.

245

246 Parks/Recreational Areas/Green Space

247

248 Mr. Flaherty said there is not much that the BZC can do with parks. Mr. Johnson agreed.
249 Mr. Flaherty said this is more about the recreational areas in developments subject.

250 Currently, the definition of recreational areas is pretty vague and he asked whether the
251 BZC may want to include some details regarding what a playground or recreational area
252 constitutes. He suggested perhaps a standard for a certain type or amount of recreational
253 area per number of residences in a development. The amenities could be defined and
254 standardized. For example, a 6' gazebo would not be adequate, etc.

255

256 Ms. Brown said that the yards of some of the neighborhoods are smaller and there is not
257 much space in their yards for kids to play. The Meadows at Cheshire subdivision has a
258 nice concept in their development where there is a playground but also an open field with
259 picnic tables, benches, etc. Neighborhood events are held in the field and it's also a place
260 for residents and kids to enjoy activities and recreation.

261

262 Ms. Brown said something like this may be of use with the neighborhoods that are
263 coming up, especially with the residential area in the business park. That plays along
264 with the look and feel of Berlin Township and they would be a really nice touch in the
265 township. They create park-like areas within the township. Mr. Flaherty said they are
266 heading towards a park levy at some point, and that it's hard to plan open space when that
267 is left to developers to tell the township what that space looks like.

268

269 Mr. Flaherty said Orange Township did a great job at implementing a park levy and
270 proactively planning the trail system. The Berlin Township trustees seem to feel that
271 there are enough parks here such as Alum Creek. However, those parks are not easily
272 accessible as a local park would be. He noted that the township has kept taxes low and a
273 park levy would cost money. Residents have varying opinions, including those who
274 expect parks because they moved here from cities with those kinds of amenities. Those
275 amenities are going to be expected even more as the township's population doubles
276 within the next 10 years. He asked how the township could ensure that there are parks
277 without having to put the burden of the cost of building and maintaining them on
278 homeowners associations. A balance is important.

279

280 Mr. Valentine suggested different recreational standards for communities that are
281 different ages, such as pickleball versus playground equipment.

282

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283 Ms. Littleton said in the business park standards, the open space is mentioned and a
284 certain percentage of the open space must be usable. That could be included in the
285 zoning resolution as well.

286
287 Ms. Kaplan said that she has an issue with developers who state they have 30% open
288 space, but it is not usable, such as ponds or wooded areas. The space should be usable to
289 the residents.

290
291 Mr. Johnson said defining usable green space should be included on the list of discussion
292 items. What is excluded from the calculations has already been defined. This can be
293 revisited and perhaps further defined.

294
295 Mr. Flaherty said the BZC classifies it as active versus inactive/passive. He would like to
296 see developers put aside land and the township develop it, but that would take a parks
297 levy and maintenance plan. The cost of ownership is much greater than the initial cost of
298 developing and constructing the property, including the plowing of all trails due to
299 liability issue.

300
301 Mr. Flaherty said that Orange Township was very good at getting grants for the
302 construction of trails, which was used in conjunction with the parks levy funds. The
303 township can improve their text and requirements, and what constitutes a certain amenity.
304 The township pays to maintain and mow the field at the fire station. A ballpark and
305 soccer fields were planned there at one point, as well as playground equipment that
306 firefighters could also use to stay fit. A splashpad was also discussed. Although all of it
307 won't be able to be pushed off on developers, the township can try.

308
309 Mr. Bardash said he may be willing to give up some of the open space requirements and
310 allow a couple of additional houses if the green space provided was active and usable and
311 able to be used by everybody. A definition for that would be required. Ms. Brown agreed
312 and said that much of what was approved this year is not beneficial to the residents: it is
313 just green space along roads and ponds, and mounds.

314
315 Mr. Bardash said his subdivision has the first example of terrible green space; it is a big
316 lot on the end of the subdivision that is hardly maintained and mowed a couple of times a
317 year and nobody uses it. Mr. Flaherty agreed and said the township has gotten away from
318 the "all-in-one" green space that becomes just a dead field and has requested green space
319 spread throughout for use by the residents. However, those do not typically include
320 amenities for the residents to use.

321
322 Electronic signs.

323
324 Mr. Loveless said he is working on updating definitions and specifications for electronic
325 signage. Mr. Valentine suggested adding language regarding the timing of changing
326 messages on the signs. Mr. Loveless said the other townships in the area are very similar
327 to Berlin Township. He said Berlin Township will probably want to allow electronic
328 signs along 36/37 and Route 23.

329
330 Business Park Implications.

331
332 Mr. Johnson said this seems to be a CLUP issue. Mr. Flaherty agreed, and confirmed that
333 the east and west sides of the business park have completed the process including the
334 referendum, so they can be used at any time. Mr. Johnson suggested formally reviewing
335 at a meeting what has been approved in the business park. Mr. Flaherty suggested adding
336 it to this list because the BZC wants to ensure that the language and zones are known to
337 the BZC, and that the development of surrounding areas are developed logically.

338
339 Ms. Littleton said the township may still see regular applications for that as trustee
340 D'Amico has been asked about divergences from the business park cloud. Mr. Flaherty

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341 was opposed to divergences from the cloud because the cloud is set and it was designed
342 so the properties do not need to go through the zoning process. The residents had a say in
343 the process already. The standards should be adhered to. If an applicant wants to request
344 a variance via the zoning process, that is their choice.

345 Mr. Loveless said much of the general public still does not understand what the cloud
346 represents. Mr. Valentine suggested perhaps including a reference in the township
347 newsletter to the documents so residents can find them. Ms. Rippel said the articles and
348 the map are on the welcome page of the township website.

349

350 Ms. Littleton suggested explaining what the cloud means in layman's terms. Ms. Kaplan
351 said she was hesitant to discuss the issue due to potential hostility and a possible "shoot
352 the messenger" situation. Mr. Flaherty suggested a general information session with
353 public participation to help provide awareness. A disclaimer would need to be included
354 so residents know that the plan has been approved and was final. The uses adjacent to the
355 cloud should be examined further to see whether the uses defined in the CLUP for those
356 properties fit or whether the densities or uses need to be modified so the use is
357 appropriate and/or buffered.

358

359 Ms. Littleton asked whether the BZC should update the area that the cloud covers in case
360 there are people who opt out of the cloud and engage in the traditional zoning process.

361 Mr. Flaherty said the BZC could see whether the language still fits. Ms. Littleton said
362 there is a strip along 36/37 that is commercial and everything else is residential. Mr.
363 Flaherty said adjustments could be made.

364

365 Mr. Flaherty said that he would add the BZC members to the list and share so they could
366 update it for discussion at a future meeting. He said members who want to tackle one of
367 the issues can become a subject matter expert, doing research and bringing it forward at a
368 meeting as time allows. That will allow decisions to be made faster at meetings versus
369 everything being discussed at the meetings.

370

371 Mr. Johnson said perhaps the list should be provided to Mr. Sanders to see whether he
372 has language and research that the BZC could use on any of the items. That could save
373 time. Mr. Flaherty agreed.

374

375 Ms. Rippel said she could check in on the windmill.

376

AGENDA ITEM: APPROVAL OF MINUTES

377 Mr. Valentine made a motion to approve the minutes from the 1/12/21 BZC meeting with
378 the changes submitted by BZC members. Mr. Johnson seconded the motion.

379 Vote: Valentine, abstain; Johnson yes; Kaplan, yes; Bardash, yes; Flaherty, yes.

380 Motion carried, minutes were approved.

381

AGENDA ITEM: ADVERTISEMENT OF MEETING

382 Ms. Knapp verified that this meeting was advertised in the 12/30/20 Delaware Gazette as
383 a regular meeting.

384

385 Mr. Flaherty said the next BZC meeting will be on Tuesday February 9, 2021 at 7:00
386 p.m. to hear an application from America's Home Place at 6918 E. S. R. 37 to rezone the
387 property from neighborhood commercial district to planned commercial district for a new
388 build for a model home. This meeting will be held virtually via Zoom, where public
389 comment will be heard. It will also be streamed live on Facebook. The Zoom link will
390 be posted on the township website under the zoning tab on the day of the event.

391

AGENDA ITEM: OTHER BUSINESS

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392 Mr. Loveless said a resident applied for a deck permit, but he did not put the deck on the
393 back of the house. Instead, the resident is doing a room addition, which is three times the
394 size of the original home. He believes they should file for a new single-family home
395 permit.

396 Ms. Rippel said she would be delivering the zoning application books for the next
397 meeting to BZC members this Friday.

398

399 There was no further business to come before the BZC.

400 Motion to adjourn. Meeting adjourned.

401

402

403

Steve Flaherty, Chairperson

404

405

406

Jerry Valentine, Vice-Chairperson

407

408

409

Darcy Kaplan, member

410

411

412

Mike Bardash, member

413

414

415

Martin Johnson, member

416

417

418

Christina Littleton, 1st alternate member

419

420

421

Angela Brown, 2nd alternate member

422

423

Attest: _____

424

Lisa F. Knapp, Berlin Township Zoning Clerk

425