

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING
TUESDAY, MARCH 9, 2021 7:00 PM

This meeting was held virtually.

CALL TO ORDER

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

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

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

Also present: 1st alternate Christina Littleton, BZC 2nd alternate Angela Brown, Zoning Clerk Lisa Knapp, Zoning Secretary Cathy Rippel.

Mr. Flaherty reviewed the adopted policy of the BZC, and noted that public comments are limited to three minutes per person. He reviewed the procedures for this hearing. He noted that public comment can be taken via the zoom link on the township website.

AGENDA ITEM: 2021 BZC GOALS & OBJECTIVES DISCUSSION

Mr. Flaherty said there is no hearing or applicant tonight, but the BZC established earlier in the year that they want to be proactive and work on corrections and amendments to the zoning resolution and other documents. A list of 2021 action items and goals was created and was shared with the BZC members.

Mr. Flaherty said the BZC would be reviewing the Comprehensive Land Use Plan (CLUP) to ensure it aligns with the growth areas in the township and ensure it has the necessary districts for the things being developed in the area and that the guidelines are oriented around what the residents want and also the growth of the area.

Mr. Flaherty reviewed the list of items being discussed, as well as suggestions from Scott Sanders, executive director of the Delaware County Regional Planning Commission, and Assistant Delaware County Prosecutor Chris Ballard.

Berlin Zoning 2021 Goals

January 26, 2021 / 7:00 pm / Zoom

Questions to Answer

CLUP Updates: As a reminder, DCRPC updated a majority of the background data of the Comprehensive Plan up to 2018 when the Township put that process on hold until the overlay could be worked on. It shouldn't be terribly difficult to update that background data to 2021.

1. CLUP Updates
 - o Matching the current changes over the last decade to what is desired
 - o Text updates
 - o Major/Minor Procedure review

The Major/Minor procedure seems to reference the process within the Planned districts in the zoning code not the CLUP. Can you confirm?

- o Mounding height/requirements up to date?
- o Solar Farms
 - Placement in township
 - Go/no-go?
 - Text around what can be done
 - Would it need to be new wording? Currently acceptable under FR-1? Standalone or part of FR-1?
 - Allowed under Cloud?
 - Regional planning weigh in? County definitions or plans?

No other community has proposed language regarding this – although some could be talking about it or working on it. I would not recommend a separate district or a requirement to rezone to commercial for it. Frankly, I don't see this being anything anyone would propose at a significant scale because of the price of land and relatively poor sunlight. This seem to pop up in parking lots and on roofs, neither of which I think the current zoning language would discourage nor should they. Again, you might want some comments in your CLUP, if you want to, but I wouldn't recommend placement. Some of these comments are related better to your Resolution. I do have some language from another county that I'm happy to look into. I imagine we would use the same differentiation that wind power uses – under 5 MW can be more regulated than over 5 MW, which is typically a utility and may claim to be exempt from zoning regulations anyway.

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- Other townships have guidance around?
 - Windmills / Allowed under cloud or in any other text? / Do we want?
- We do have some standard language. Again, this is Zoning Resolution issue, not a CLUP issue.
- Agri-Business text / Have some recommended text from regional planning / Agri-tourism - 40% of revenue has to come from things derived from the land

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47 Mr. Flaherty said perhaps solar could be installed in the ramps of the highways, but it
48 may be too expensive to place in large areas in Berlin Township.
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50 Ms. Littleton asked whether aspects would need to be regulated in parking lots and roofs,
51 such as setback, height etc. Mr. Flaherty said they would be shallow depth on roofs.
52 Regarding parking lots, they would most likely be the overhead structures where there is
53 a shaded parking lot with a solar panel roof. That may be seen in the business park. He
54 said allowing sustainable power sources like this may be desirable. The windmills are
55 different and there may be some weigh-in necessary on that.
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57 Mr. Johnson suggested adding language that if they are attached to the roof, all items
58 must fall into the maximum height including those items. Ms. Brown said the language
59 could state the building height would be X', with 10' allowed as part of the mechanicals.
60 Ms. Littleton said that language in the overlay should also mirror the language in the
61 zoning resolution.
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63 Ms. Littleton asked whether solar panels could cause issues in a parking lot. Mr. Flaherty
64 said they would deflect into whatever drainage system the development did.

From: "Ballard, Christopher" <CBallard@co.delaware.oh.us>
Date: March 9, 2021 at 12:17:10 PM EST
To: Steve Flaherty <sflaherty@berlintwp.us>
Subject: RE: 2021 Berlin Township Goals

Let me know when the BZC wants to look at the ambiguity issue with 11.13 and I can start drafting something.

Some thoughts on the other topics:

Group Mailboxes

- One of the other townships was also contemplating adopting group mailbox regulations, but ended up not doing so since it turns out the U.S. Postal Service already has adopted group mailbox regulations in their National Delivery Planning Standards manual. This can be found here: <https://about.usps.com/handbooks/po632.pdf>.

Wind Farms

- With regards to the Cloud, if a use isn't permitted by NAICS code, it is prohibited. NAICS 221115 "Wind Electric Power generation" is not included in the BCO or the BIO, so it's not intended to be part of the zoning that an applicant can "pull down."

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Solar Farms

Like with the wind farms, solar farms were not included in the BIO or BCO. Solar farms NAICS code is NAICS 221114 "Solar Electric Power Generation." No townships in Delaware county have adopted any regulations of them, though Genoa township has restrictions on solar panels attached to buildings and Liberty includes that "size and location" of "alternative energy apparatus" which includes solar and wind be listed in development plans. I'm sure you're aware of the current development in prairie township and you can find some regulations floating around online (for instance, Jackson township in Clermont county has the following http://www.jacksontownshipclermont.org/uploads/1/0/6/6/10667116/article_14_alternate_energy.pdf) but I don't have any information on the specifics there. Like with wind farms I would recommend speaking to RPC to see if they've got stock language the BZC could work off of.

Let me know what the BZC has specific questions on and I'll research further --

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• 519.213 does allow the board of trustees or the board of zoning appeals to zone with respect to the "location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm..." A "small wind farm" means turbines that are not subject to the power siting board (and its setback requirements).

• Eleven townships have already adopted zoning regulating "small wind farms" of 5mw or less, with anything larger needing to go through the power siting board. These townships are:

- [Brown township](#) (section 6.04)
- [Genoa township](#) – (section 2205.01)
- [Harlem township](#) – (section 20.02)
- [Kingston township](#) – (section 6.05)
- [Liberty township](#) (section 7.17)
- [Marlboro township](#) (section 25.12)
- [Oxford township](#) (section 25.12)
- [Radnor township](#)– (section 25.12)
- [Scioto township](#) (section 21.12)
- [Thompson township](#) (section 25.12)
- [Troy township](#) (section 21.19)

Revised Code » Title 519 TOWNSHIPS » Chapter 519: TOWNSHIP ZONING

Steve

Township small wind farm zoning regulations.

In this section, "small wind farm" means wind turbines and associated facilities that are not subject to the jurisdiction of the power siting board under sections [4906.20](#) and [4906.201](#) of the Revised Code.

Nothing in division (A) of section [519.211](#) of the Revised Code, sections [519.02](#) to [519.25](#) of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm, whether publicly or privately owned, or the use of land for that purpose, which regulations may be more strict than the regulations prescribed in rules of division (B)(2) of section [4906.20](#) of the Revised Code.

Nothing in this section of a small wind farm as a public utility for purposes of sections [519.02](#) to [519.25](#) of the Revised Code shall not affect the classification of a small wind farm or any other public utility for purposes of state or local government.

Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section [519.211](#) of the Revised Code or any other public utility for purposes of state and local government.

133rd General Assembly File No. 22, HB 6, §1, eff. 10/22/2019.

As: 2008 HB562 09-22-2008 .

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The majority of them have them as a conditional use in residential districts and a permitted use in all other districts, with an exemption for agricultural uses. An exception to that norm is Genoa township, which has them as a permitted use in residential and planned residential districts, Troy township, which lists them only as a permitted use in the FR 1 district, and Harlem Township, which lists them as a permitted use in their Agricultural Residential (AR 1), Neighborhood commercial (C-2), Industrial (I), Planned Commercial and Office District (PCD), Planned Industrial District (PID) and Planned Unit Development District (PUD)

• The other townships, (like Berlin) simply impose height restrictions on wind mills. They are:

- [Berkshire township](#)
- [Concord township](#)
- [Delaware township](#)
- [Porter township](#)
- [Orange township](#)
- [Trenton township](#)

I would recommend reaching out to RPC to see if they have stock language regulating "small wind farms / projects" if the BZC would like to move forward – the language appears similar throughout the resolutions so I imagine that's where it came from.

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TUESDAY, MARCH 9, 2021 7:00 PM

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o Mounding height/requirements up to date?

- Solar Farms

- Placement in township - NO separate district
- Go/no-go Allowed
- Text around what can be done - NO direct language on it's own, but want to make sure solar, wind, etc is included in the "mechanicals" of the building height restrictions.
- Allowed under Cloud
- Regional planning weigh in? County definitions or plans?
- Other townships have guidance around?

Windmills

- Allowed under cloud or in any other code? - With regards to the Cloud, if a use isn't permitted by NAICS code, it is prohibited. NAICS 221115 "Wind Electric Power generation" is not included in the BCO or the BIO, so it's not intended to be part of the zoning that an applicant can "pull down."
- Does want? Pass to trustees with language from RPC

o Agri-Business text

- Have some recommended text from regional planning
- Agritourism - 40% of revenue has to come from things derived from the land

2. Changes in ambiguities

- Seek prosecutorial advice for updates
- Look back at Evans Farm application & other one

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5 MW can be more regulated than over 5 MW, which is typically a utility and may claim to be exempt from zoning regulations anyway.

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We do have some standard language. Again, this is Zoning Resolution issue, not a CLUP issue.

- Agri-Business text / Have some recommended text from regional planning / Agritourism - 40% of revenue has to come from things derived from the land

Note that agri-business and agri-tourism are sort of two different categories, or at least agri-tourism is a subset of agriculture. The Township would not be wise to tinker around with language within 6.02, which is pretty standard. Having said that, the Township is still a bit limited in what you can do, but if an owner wants to claim additional activity as agritourism, you can require safe ingress and egress, adherence to setbacks, parking, and waste handling.

2. Changes in ambiguities / Seek prosecutor advice for updates / Look back at Evans Farm application & other one

Is this Zoning Code related, or CLUP? Either way, I'm happy to respond to a list if such ambiguities have already been identified.

3. Fit with Pathways / Make sure text matched new county standard / Get language from the county? / Can we put together language to improve/maximize interconnectivity / Complete Street resolution? / Updated Map....Who got it?

The County Engineer's office is generally recommending developer's use what is actually a "City of Columbus) standard of a 10-foot width for multi-use paths. It's probably safe to just reference 10 feet for those. DCEO may be uncomfortable with referencing "the County standard" or something like that. As to the map – I can give you a link to the County Trail Committee map which references significant

Mr. Flaherty said if somebody wanted to bring in windmills, they could not just pull down the cloud, and they would need to come in for a separate zoning application. He agreed with that and said the BZC probably did not want a cloud windmill to be pulled down from that as that was not included in the cloud. If somebody proposed a wind tower as part of their overall development, that could come through on the cloud as an amenity on a larger application.

Mr. Johnson said it would appear to come to the BZA, not the BZC, so the BZC has nothing to say about it anyway. Mr. Flaherty said the trustees would have to adapt the zoning regulating so the BZC could suggest some of this language to the trustees.

Language from Clermont County was reviewed. It will be sent to the trustees for further review.

Ms. Littleton asked what the maximum acreage would be of the small windfarms. Mr. Flaherty said it would be 250/50 and 2,000 by 50 and that would be a 5 megawatt or below.

Ms. Kaplan asked whether it was being stated that agribusiness and agritourism were two different things. She asked if they should be separate or together. Mr. Flaherty said he is saying that they are two separate categories and that agritourism is a subset of agriculture so the township would not be wise to tinker with anything in 6.02, which is around

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agritourism. However, if an owner wants to claim additional activity as agritourism, the township can regulate safe ingress and egress, adherence to setbacks, and waste handling.

Mr. Bardash said regarding the bike trails, he has 3 PDF files that he needs to add to the file, including a plan for Delaware County that was adopted in 2017.

There was a discussion about bike trails and plans and a map was displayed and discussed.

o "Group mailbox requirements" / Roof / Off-site parking/accessibility

For what it's worth, we are encouraging developers to show Zoning Commissions where these things are going to be up front so we're not dealing with them making changes later. I recommend you ask applicants to show locations as part of the Development Plan with a rezoning. If that requires updating the Resolution, we encourage that. I understand that off-site parking might sound like a good idea, but that (and shelter structures) are another thing the Homeowners Association is going to have to maintain and that may get problematic. It also generates a curb-ramp to be designed for each access point. I'm curious to observe how they work after an area is fully built-out before developing standards that might to accomplish the desired goal.

5. Recreation areas in developments

- o Playground standards / Age dependent (pickleball, shuffleboard vs pools, playsets, etc)
- o Amenity standards / Tiered approach?

107

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The suggestion was discussed and the regulations were pulled up for review.

Mr. Flaherty noted that roofs were not mentioned in the document. Ms. Brown said the proposal of roofs was out of respect for the mail carriers and the residents; they would make their lives easier so that they would not get wet or snowed on while standing there delivering or picking up mail. It would also help prevent ice in front of them. Mr. Bardash said he agreed, but he would typically wait until the weather stops before he gets the mail. The mail service has always lived by rain, snow sleet and hail.

Ms. Kaplan said the mail would get wet while being delivered. Mr. Flaherty said the maintenance would become a nuisance for the residents. Ms. Kaplan said that they can also attract wasps and bird nests. Mr. Bardash said if it's not required, the expense usually causes a pushback by the developer. There was a discussion about the unattractive appearances of many of the cluster mailboxes.

Mr. Flaherty said that offsite parking may sound like a good idea, but that is problematic. It also generates a curb ramp to the design for each access point. If there are boxes in the area on the sidewalk, there still has to be a ramp, but if there are multiple areas and there are two entries to those area, two different curb cuts are required. If it's a certain length, there must be cuts in the middle. He noted there are ways to buffer their appearance with shrubbery, etc.

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Ms. Kaplan was concerned about the aesthetics of the unit next to very expensive homes.

Green space was discussed. Ms. Brown provided language from Liberty Township. Mr. Flaherty said Mr. Sanders stated that he supported language that required that a certain portion of the open space must be active, but not reducing the overall requirements just because some was active. Mr. Flaherty suggested perhaps that 3-7% should be active space.

Ms. Kaplan said that most of the recent developments do have pathways and that could be counted as active green space. Ms. Brown said that Liberty Township has it broken down by use.

Mr. Flaherty said the recommendations from Mr. Sanders state that the CLUP map and recommendations needs to be updated to acknowledge the current overlay, and several areas will need the most work. He said Mr. Sanders stated that the build out land use mix also needs to be updated; he ran some preliminary numbers and the township's commercial and industrial land use will increase by about 233 acres. PRD will increase from single family and multi-family will increase by about 585 acres. Mr. Flaherty said those are the actual land use numbers from the cloud after the buffer and green spaces are removed from the 2000-acre area. About 800 acres of that is active land use.

Mr. Flaherty asked if there was a preference regarding what should be addressed first. The "changes and ambiguities" is an easier subject and will be sent to the county prosecutor's office. Solar farms can be addressed via the indirect language including height requirements, and the windmills language will be passed along to the trustees. Additional research will be done on the bike paths and a policy will be created that includes the 10' wide standard. The roofs and offsite parking will continue to be addressed, and the recreation areas with the green space will continue to be discussed.

Mr. Flaherty said the business park information will be sent to Mr. Sanders. He asked Ms. Littleton to work with him regarding things he suggests and what he thinks the township needs. Ms. Littleton said it was stated before that changes do not need to be made to what is under the cloud and what is around it is what will be looked at. Ms. Littleton said there isn't much that isn't already planned in the area. Mr. Flaherty said buffering was considered in the business park cloud.

Mr. Flaherty noted that We Love Berlin Township has a Facebook page, and he is recommending that developers meet with them to get citizen input. He recommended that residents get involved in that group as well.

Ms. Rippel noted that there are no pending zoning applications. She recently heard from Todd Faris, who may be bringing an application to the BZC at that time.

AGENDA ITEM: APPROVAL OF MINUTES

Mr. Flaherty made a motion to approve the minutes from the 2/23/21 BZC meeting. Mr. Bardash seconded the motion.

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

Motion carried, minutes were approved.

Mr. Flaherty said the next meeting will be on March 23, 2021. There are no pending applications, so that meeting will be used to continue working on the goals.

There was no further business to come before the BZC.

Motion to adjourn. Meeting adjourned.

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Steve Flaherty, Chairperson

Jerry Valentine, Vice-Chairperson

Darcy Kaplan, member

Mike Bardash, member

Martin Johnson, member

Christina Littleton, 1st alternate member

Angela Brown, 2nd alternate member

Attest: _____
Lisa F. Knapp, Berlin Township Zoning Clerk