

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

HELD AT: This meeting was held at 3271 Cheshire Road, Delaware, OH

CALL TO ORDER: Ken O'Brien, Trustee Chairman

PLEDGE ALLEGIANCE: Ken O'Brien led the Pledge of Allegiance

ROLL CALL: Ken O'Brien, Meghan Raehll, Ron Bullard and Claudia Smith, Fiscal Officer

ATTENDANCE: Chief Miller, Joe Garret, Glenn Marzluf, Kristina Dye, Doug Riedel, Joe Thomas and Tre' Giller

Old Business -

TIF - Bullard said he has a motion from the October 2001 meeting appointing Mike Dicky and Tim McNamara to a three-year term on the TIRC Greif Park board and he found no other reference to a TIRC. His recommendation is to do a new motion to initiate the Tax Incentive Review Council with the recommendation from the prosecutor's office. He will get with them and have it for the next meeting. O'Brien suggested they discuss the TIF in executive session.

Gas Aggregation - Joe Garret with Trebel LLC suggested that what is in the best interest of the residents is for them to go to the utility as the utility currently has the lowest fixed rate. When gas prices come down, probably in the spring, they could lock in a better price. Bullard said if they were to get bids now they would get a high price. If they bid when prices are down it would last through the winter months. Garret explained how the letters going to the residents are handled and that they will get a letter advising them that they need to opt out if they do not want in the new program. Raehll said she was given a letter that was very confusing so they asked that when the letter is sent to the residents that they get a copy beforehand to review and make sure it is clear to them. Garret will make sure that they are sent a copy.

Del-Co Water Presentation - Glenn Marzluf gave a presentation on Del-Co Water Updates and stated that they are a non-profit cooperative utility, have a 9-member elected Board of Directors, they are the 8th largest water system for population, the 2nd largest for service area, and currently serving customers in eight (8) counties, Delaware, Morrow, Marion, Knox, Franklin, Union, Crawford & Knox. O'Brien expressed his concerns over the water pressure in the area of Berlin High School and the new middle school. Marzluf said he would look into it and stated that they are looking for property to add another water tower. Raehll asked how they notify residents about boil water advisory. Marzluf said they go way beyond what is required and they have not had one positive bacterial instance in twenty-seven (27) years. He said it is an advisory and the health risk is very low and if they have the residents phone numbers they would get a call but people change their numbers so often they can't keep up with it. Bullard asked for an updated drawing of the water lines and Marzluf said he would get it to them.

Road Department -

Piatt Road Updates - Doug Riedel said paving and stripping on Piatt Road was wrapped up in November but seeding has not been done and they made the decision with Bullard's input to do temporary seeding until spring and then they can back and do the final seeding. He said the question that came up is the area north of the temple on the west side of Cheshire Road and trying to grade the area to get it to drain. He said you folks know that area has always been problematic as far as drainage goes. There wasn't very much of a roadside ditch on that side before they did the project. The plans did show a ditch in the area for the proposed project but after talking to the contractor and their field staff and based on additional work that was needing to be done with grading they didn't put the ditch in. One reason was because it is so flat and they weren't convinced that if they put the ditch in that the drainage would be any better than what there is now or what was there before. O'Brien asked if it was in the plans and in the contract and Riedel said it was. The problem is that the slope is so flat especially from the high point as it is today to the south that it will not drain efficiently. O'Brien said if it was in the plans then they have to do it. Riedel said their recommendation is not to do it but if the township wants the ditch put in then they would instruct the contractor. O'Brien said he wants it in because we paid for it. Bullard said his understanding was that the money for the ditch was spent on improving the ditch in front of

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

the temple. That they spent more money there than what was in the bid. O'Brien said then they shouldn't have done that. Bullard said he thinks the county engineer pushed them to do that. O'Brien said we are the ones that signed the contract. Bullard said in order to do the ditch now it was cost an additional \$31,000. O'Brien said no, it was in the contract and he wants to talk to the prosecutor's office about this. Riedel said there is enough money in the contract to build a ditch as it was designed. So, the \$31,000 that their field staff came up with is the cost to put the ditch in. Each of their contracts say some contingencies just in case there is some over runs or unforeseen things. O'Brien said that is normal. He said they have run through a majority of the money but there is still some money left for grading of the ditch and final seeding for the whole project. He said there is money to do the work their caution is that the expectation of how the ditch is going to flow once it's built. We're trying not to make it more than what it is right now. He said they can't make the ditch flow faster because point A and point B are still fixed as far as how that water flows. As long as the township is under a realistic expectation as far as water will sit in that ditch more than likely some depending on the rain event. It is not going to be pristine and flow perfectly. O'Brien said there is a difference between perfectly and a pond. Because as it is now it will be full of mosquitos and it's not okay. Riedel said they will certainly put it in. O'Brien said if it weren't done in the future he would want to hire another engineering firm, because he is not an engineer, and it needs a ditch. He had thought that we might need to appropriate money to put a ditch there, but if we contracted it and it was in the plans, it needs to be put in.

Bullard said let me see if I can say what Riedel is saying. If we put the ditch in as the drawing says there will still be standing water, the water is not going to run off as there is no outlet for it as the area is too flat to do downhill. O'Brien said he looked at the grade and that it may have to go to the north, cross over and flow to the south but it has an outlet. Riedel said the way they have the ditch designed is obviously the water that is on the west side stays on the west side. O'Brien asked why because it's going to go to the same spot. Riedel said they don't have a pipe under Piatt Road. O'Brien said we need one. Riedel said he would tend to not agree with that because as you are aware the township only has the legal right to stay within the right-of-way and in his professional option the work that needs to be done to really solve it is outside of the right-of-way. O'Brien said he doesn't understand why because if the grade, if it crosses underneath the road and it flows back to the ditch which is in the right-of-way. Riedel said at some point if there is enough water it's going to build up and go over top of the ditches and then suddenly it's going to be outside of the township's right-of-way. He said this needs to be addressed by a differently method than a road project. O'Brien said if the water is coming from only the road right-of-way that they are talking about, flowing into the ditch that is in the road right-of-way it shouldn't be a cause for a law suit. Riedel said they are happy to put the ditch in on the west side. O'Brien said we have to have the water cross over and come back to it, it has to go somewhere. Riedel apologized and said he does not understand his question, when you say crossover are you saying the water is crossing the west side of the road under Piatt Road to the east side of the road. O'Brien said yes and staying within the road right-of-way and coming back down. Riedel said the way they have the ditch designed is that there is a high point in the ditches on Piatt Road maybe three or four hundred feet north of the current temple driveway. Those ditches from that high point either flow south to the culvert on the southern property line of the temple or flow north to Cheshire Road. O'Brien said but they don't flow all the way to Cheshire Road. Riedel said the ditches do. O'Brien said the grade of the ground is higher at Cheshire Road than it is in the part in between, that's why we have the ponding but if you look at the hill it's such that the natural grade goes to the east and would come back naturally if the road wasn't there, down. It's the road causing it not to go across and flow north then south. Riedel said maybe he and O'Brien could arrange a meeting to go over this as he is not following. Bullard said his concern is that the bulk of the water in the ditch is not coming from the road it's coming from the farm field on the west and going that way to go to the road. O'Brien said but now if it's a ditch it should be made so that it doesn't. Bullard said that field has had a drainage problem forever, before the road was ever touched. It is now draining towards the road because it's a little lower, the road ditch is than what the field is so it's getting all the water out of the field and it's going to continue to get the water out of the field. O'Brien said if it's the natural grade, but if they are wanting to drain into the ditch and it isn't the natural flow we wouldn't allow it. The ditch would need to be made so it did not facilitate extra water but if it's natural flow it's natural flow. Raehll asked when did the board become aware that the ditch that was contracted was not recommended. Riedel said after everything was done. Raehll said if there is a change in a contract it should be communicated to the board. She said they know what they have now but they don't know what would happen if the ditch was put in. Riedel

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

said the grade of the ditches is we can't make something more than what was out there before as far as making the grade steeper to let the ditch flow more efficiently so their recommendation or advice to the board is that it is going to be a slow drainage situation. Raehll said if the contract was executed as it should have been it still is not going to resolve in solving the issue because more work needs to be done beyond putting in the ditch and unless that gets done the ditch is not going to make a difference. We all know where the problem is aggregating and we need to do something about where that water is aggregating. O'Brien said that makes sense but the question is which problem do we solve first at the least expense because we have a contract now before rates go up we might want to execute it now. He asked if they have to rip up Piatt Road to fix the problem Riedel said no not to put the ditch in per the plan. O'Brien said no to really get rid of the water. Riedel said to get he water to cross from the west to the east, yes. O'Brien asked if they can drill under the road and Riedel said no. O'Brien said how much are we talking because there is no reason to have a road that doesn't work right. Riedel said in his professional opinion if the plan is designed with the ditch it would provide adequate ditch for the road, their job as public servants is to get the road to drain and the ditch is there to drain the road whether it drains slowly or quickly and that depends on the field conditions and as everyone knows in this case it's a relatively flat area and it's not going to drain quickly compared to others. O'Brien said it needs to flow quick enough so it is not mosquito infected. Riedel said in his opinion the slope of the ditch, once it's cut in this spring, it's no different than the slope of the ditch than it was a year ago before the project started. O'Brien said is aggregating a lot more than it was before. Riedel said they can't change the conditions enough to get it to flow more efficiently. O'Brien how much is going to cost. Riedel said in order to cut the road and put a culvert in he would have to get an estimate back to him. He doesn't want to provide something that is too low or to high for the board.

O'Brien said water is flowing from Cheshire Road across the round-about across Piatt Road from the northeast to the southwest. Riedel said he noticed that also and that is something their office would address because that is their intersection. He would have to check it out and come back to the board. O'Brien said because where that water is going is causing ponding on Piatt Road. Riedel said that is something they will have to look at and figure out what they can do so it doesn't pond on there. O'Brien asked where Piatt Road responsibility from the road-about take place for the Berlin Township. Riedel said historically what they have done on round-abouts is the concrete splitter island is where they would delineate the townships responsibility starts and the counties would begin is the concrete island. O'Brien asked if that is where the Cheshire Road right-of-way ends. Riedel said he did not know that for a fact and would have to check the plats but the maintenance of these round-abouts obviously when it's a township and county road are unique and they try to address it so a majority of it is the counties responsibility. O'Brien said he would like to be able to put a stake, here is the counties responsibility and here is the townships responsibility so you know what you have to do and we know what we have to do. Riedel agreed. O'Brien asked if the water issue was our responsibility or the counties. Riedel said initially he is going to say it was theirs because it was their intersection and they figure out everything they can to make sure it's not the townships, as that's how they run their office. They want to make sure our problems are minimized. O'Brien said his thought may be that the water does flow from Cheshire Road into Piatt's and it should drain all the way to that little rung. And so, when you pay to get the water from Cheshire Road to the rung Piatt Road is all fixed for us.

2022 Road Improvement – Bullard said the everything listed needs to be done. One thing he talked Riedel about was the rejuvenation for Piatt Road as now we have new pavement and it's a good time to put sealer on. The problem is when you put it on it make the strips and all the painted parks very dull so he thinks the center line, edge lines and stop lines need to be replaced when they do that so he would like to agreed to do this and then let him work with the county engineer to increase it to cover the painting. O'Brien asked if it had been stripped and Bullard said yes. O'Brien asked if was thermoplastic and Riedel said it was. O'Brien said that's very expensive and he doesn't want to have to redo thermoplastic. Riedel said the thermoplastic is new and if they put the rejuvenating agent on it this summer our thought is that road may not need to be re-stripped right away so it does get littler darker. Bullard asked if the paint will wear off and Riedel said it would. Bullard suggested that they approve the quote and allow him to make changes to the stripping and painting.

**RESOLUTION
22-01-36**

**APPROVE \$392,400 PER DELAWARE COUNTY ENGINEER'S
CONSTRUCTION COST ESTIMATE BID FOR THE 2022 ROAD
IMPROVEMENT PROGRAM AND AUTHORIZING TRUSTEE**

BERLIN TOWNSHIP TRUSTEES

6:00 p.m. Trustee Meeting January 10, 22

BULLARD TO MAKE DECISIONS ON WHERE PAINTING NEEDS TO BE APPLIED IN AN AMOUNT NOT TO EXCEED \$20,000 IN ADDITION TO THE \$392,400

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

O'Brien said D.R. Horton cut out a part of Piatt Road to extend their road into it and now we have three seams instead of one seam and he doesn't like it as it's not very well done. He asked if the county was going to supervise them fixing it. Riedel said the work that was done there unfortunately they had a subcontractor that unloaded some equipment and it gouged the payment up. It is not their typical procedure to have them unload equipment on the road like that, so they had them come in and mill off the area that was gouged and repave it and there is a band of sealer where the road was cut along those three edges. O'Brien said it wasn't very good. Riedel said he would have his staff look at it. He looked at it and didn't see any difference other than what we would normally see but if there is something that he missed he certainly can. O'Brien asked him to look at it again and Riedel agreed.

Bullard asked Riedel if there was anything that could be done between the railroad tracks at Curve Road where the road is falling apart and the railroad has been doing work there. O'Brien said they replaced the lights for the railroad and they broke off sections of the road and now the middle of the road really isn't the middle of other road and fire trucks drive that road and it's not safe. Riedel obviously that is in the railroad right-of-way between the two tracks and to go permission to do road work on a public road within the road right-of-way is difficult and is an issue that should be brought up to the railroad. O'Brien said they don't answer us and Riedel said that is not surprising as they don't answer them either. The recommendation that he was advised for another township to look into was to file a complaint with the PUCO as the agency that the railroad answers to. O'Brien said we have to do something fairly quickly. Raehll asked if Riedel had a contact and he said he would check tomorrow. Bullard asked if Riedel and O'Brien were going to meet to look at Piatt Road and Riedel said he would go back and look at what kind of maps and stuff that they have as far as drainage, not only in that immediate area but also going to the north towards Cheshire and then he will get back with the board and let them know. O'Brien said we have a new road and he wants it to work.

Bullard said O'Brien had mentioned the mailboxes at Romanelli & Hughes and they both liked it. Thomas said he didn't think they could do that on a public street. O'Brien said that's a question we can ask here and asked Riedel how we can get that and be legal. Riedel said he took some pictures of it and its s situation that regional planning and their office is working through but he does not know the minute details on what's going on.

Bullard said we have enough salt. O'Brien asked if different townships do salt differently. Riedel said each township has their choice, some townships are underneath of county umbrella where we have salt in three different salt barns and they are able to go in and get what they need, we document how much you got and we'll send a bill. Other townships have done their own separate contract. O'Brien asked if any were hybrid. Riedel said he does not believe so. O'Brien asked if we were allowed to get from Berkshire and Riedel said yes. O'Brien asked if we do and Bullard said they don't have a scale to measure the amount you get so we get it from the county and put it in our storage shed and it saves us time to go get it when we need it. O'Brien asked Riedel to find out how Berkshire measures it.

RESOLUTION 22-01-37 APPOINT TRUSTEE BULLARD THE PROJECT MANAGER FOR THE 2022 ROAD IMPROVEMENT PROGRAM

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

O'Brien called to order BZC 21-005 Berlin Bluffs Zoning Hearing at 8:03 p.m.

Joe Thomas stated that they made modifications to the amended plans with the BZC and dropped off new books. He stated the changes that were made.

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

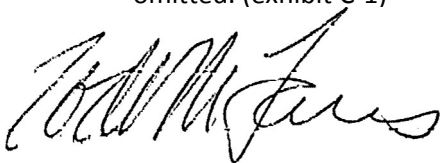
January 10,

22

RE: Berlin Bluffs Rezoning Application — Modifications to amended plans, January 3, 2022

The applicant, Metro Development, has made the following amendments to plans.

1. Updated plans per comments from Township BZC
2. Updated plans per the following Trustees comments.
 - a. County Engineer reviewing parking lot termination in neighborhood park.
 - b. Most current fire letter has been attached to submission. Revised plan associated with this application has been submitted to fire department and a potential new letter may be forthcoming.
 - c. Development text has been modified to state that pedestrian crossings over streams shall be by box culvert or other approved similar method by County engineer (page 4 of the development text).
 - d. A detail for the mailbox locations has been added that corresponds to County Engineer direction. ADA walkways and placement are indicated, with reserved parking signs added for mail delivery and pickup only. (exhibit D-2)
 - e. Language has been added to indicate that aerator fountains shall be minimum 10' height (page 4 of development text)
 - f. Headwalls, endwalls, and structures at pond have been addressed to indicate that all surfaces above grade must have stone or cultured stone finish regardless of water level. (page 4 of development text)
 - g. Added language that states any increase in pond size that decreases useable open space during engineering must be brought back to Township Trustees for review and approval. (page 8 of development text)
 - h. Lot sizes have been modified so that 10,890 sf minimum is met and this divergence has been omitted. (exhibit C-1)



Todd M. Faris

Faris Planning & Design, LLC

He said the trustees asked at the last hearing they had to have the county engineer weigh in on the terminus of the roadway that was going through Berlin Manor directly to Piatt Road. They presented the parking lot to the county engineer and what he recommended was a cul-de-sac. Which would make it easier for township vehicles to turn around, snow plows, fire trucks as well as residents. An email from Mike Love was submitted as an exhibit.

Thomas said the on-street parking in the reserved area gives you the ability for handicap access as well as resident access for mailbox use only. There will be on-street parking, indications on signage, handicap ramps that are in the public right-of-way which in turn has handicap access across the public sidewalk that is also in the right-of-way, out of the right-of-way to a concrete pad that will house the CBU's.

Bullard asked them to define grade in item F. Thomas said the water level. After a lengthy discussion Thomas said they are going to take the stone all the way to grade, below the water level. The mason will bring the stone all the way down to the dirt level so if the water goes away there will be nothing exposed except stone. The following statement was made: Headwalls, end walls, and all structures that are exposed to view shall be treated with real or synthetic stone to resemble stonewalls. All stone shall extend to or below the grade of earth so that any exposure due to low water conditions has exposed stone, not concrete.

Thomas said they spent a lot of time with the BZC and local residents detailing this new plan as a game changer as the previous plan just had ponds and it had no public amenities for Berlin Township. The amenities in this plan are not just for residents at Berlin Bluffs they

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

are for **all** township residents. They believe they bring a lot to the table that does not exist in this area of Berlin Township. There is a large park area that residents can use for activities such as soccer games, soccer practices and there is a shelter house that people can use for birthday parties and graduations. And there is a playground area and a trail system.

O'Brien said the township residents voted on the Comprehensive Land Use Plan and this plan does not meet the density. Delaware County Regional Planning also recommended lower density but the BZC approved it.

Tre' Giller said the problem they run into is that they can't get the amenities with the lower density. Raehll said one of the modifications made is that the lots that but up to the existing subdivisions, those lot sizes were increased so the bulk of the increased density exists in the center section where there are no houses up against the current. So that transitional zoning is important to her. She reviewed the number of lots that were in the original zoning which were 120 lots, then when it started going through zoning it went to 85, then it went to 72 and now it's at 70. She said they are talking about 13 extra houses from the original zoning but it's worth noting that the original plan had a road that goes straight through from Piatt to Berlin Manor making the area less safe. There is significantly more green space, 46% compared to 20% that is required. We have active green space which the other was passive, ponds and that's it. We have a thirty-foot line of tree preservation, ten-foot paths, 40 X 40-foot community shelter and a community playground which are all positives. She said there are more houses but six different amenities that really make a difference to the residents across the township.

Raehll asked about a pathway coming across and behind lot seven and said the lot narrows so she asked if they could get rid of lot seven and connect it to Piatt Preserve or around the pond to connect to the trail at Piatt Preserve. That would take the total houses down to 69 and allow for a potential connector into Piatt Rd up to the three schools which will be important and make for a usable multi-use trail allowing for kids to walk to the schools.

Raehll said she agrees with O'Brien regarding the CLUP and adhering to it which is important and does hold legal weight but at the same time our CLUP hasn't been modified since 2011. She thinks there is a need to update the CLUP to current standards and this current proposal is actually makes a better and safer plan than the originally approved

O'Brien suspended the hearing to give Thomas time to write up the changes that the trustees are asking for.

Fire Department -

Full Time Firefighters - Chief Miller said he had fourteen committed for full-time and part-time positions, for interviews which are scheduled for January 22 and 23rd. He also said they had a service run for a body recovery on Alum Creek Saturday night. It was freezing rain and icy so when they were getting the boat out of the water they incurred some damage to the motor and he will get a price to fix it. He also stated that Lexipol has pre-recorded webinars and there will be a significant amount of time invested to get the SOP's & SOG's together. He asked if he and fire inspector Arnold could sit down with Raehll to go over some procedures for a smooth transition with the zoning processes. Raehll said she would meet with Arnold.

O'Brien called a recess at 10:19 p.m.

O'Brien called back the meeting and hearing for BZC 21-005.

O'Brien stated that we received from the applicant a list of amendments:

Applicant is requesting these 8 amendments:

1. Total lots 69
2. Greenspace reduction will cause a major modification; any decrease in active and useable green space from the plan requires major modification.

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

- 3. Lot 7 to be eliminated for the purpose of constructing 8’ multi-use path to begin at the end of the park trail and extend to the most western –north corner
- 4. Headwalls, end walls, and all structures that are exposed to view shall be treated with real or synthetic stone to resemble stonewalls. All stone shall extend to or below the grade of earth so that any exposure due to low water conditions has exposed stone, not concrete.
- 5. Applicant commits to make a best effort to connect the multi-use trail north of lot 52 to cross the street and meet at the north boundary that abuts the Glenmead Subdivision.
- 6. Homeowner Association shall be turned over to the homeowners upon the transfer of title of 56 homes.
- 7. The amenities shall be completed by phase and shall be completed upon the transfer of the first house in each phase.
- 8. Corner lots do not count for or against the 25% side load garage count.

RESOLUTION 22-01-38 MOTION TO ACCEPT EXHIBITS #13 THRU #17 FOR BZC 21-005, BERLIN BLUFF AS PROVIDED BY APPLICANT

- 13.) Request from applicant to have hearing continued on January 10, 2022.
- 14.) Revised Plan Books submitted January 3, 2022.
- 15.) Email from Michael Love to Joe Thomas dated January 10, 2022 changing the parking lot out for a Cul-De-Sac.
- 16.) Mailbox (CBU) Plan.
- 17.) Memo from Joe Thomas where applicant is requesting eight (8) amendments.

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

RESOLUTION 22-01-39 MOTION TO ACCEPT BZC’S RECOMMENDATION AS MODIFIED OF CASE BZC 21-005 BERLIN BLUFFS AND THE 17 EXHIBITS, WITH THE NEWEST/LATEST EXHIBITS TAKING PRECEDENCE OVER OLDER EXHIBITS

Motion: Bullard
 Second: Raehll
 Discussion: Bullard said he believes that the amenities that have been added to this plan justifies the additional units that are included in the modifications of the original plan. O’Brien said he does appreciate the applicant’s efforts to improve the previous zoning that Eaststone Crossing had but he feels it’s just a few too many units. He thinks it should be reduced, he can’t go forward with this many units but he doesn’t feel the applicant is far off.
 Vote: Raehll yes, Bullard yes and O’Brien no

O’Brien concluded the hearing of BZC 21-005 for Berlin Bluffs.

Old Business Continued –

Fairview Cemetery – Bullard said there was nothing new.

Parks & Trails – Raehll said they have six residents interested in the committee and they have a note taker and they are at the point of establishing it but they have some questions since Bullard also showed an interest in being on the committee. She has questions that she is asking the prosecutor and will provide an update when she gets questions answered. She said since they have committee members who are interested, do we want to have those committee members added to the committee or do we want to wait, meet informally, talk about the terms with those individuals and then come back for the board to accept those committee members. Bullard said it would simplify things if he did not attend the meeting, because then it is not a trustee meeting and minutes will not need to be taken and it won’t have to be advertised. He said they need to survey the residents to see what they are willing to pay for to head towards discussing taking it to ballot. Raehll said one resident mentioned the potential of leveraging the survey not only to ask about parks & trails but to discuss growth opportunities to update the CLUP. O’Brien said one of his concerns is that he does not want them to tie parks & trails into the CLUP. He said the CLUP was a priority for him.

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

Fiscal Officer Items -

December Bank Statement and Electronic Payments - The December bank statement balanced and electronic payments were signed by the trustees.

2022 EMA Apportionments -

RESOLUTION 22-01-40 APPROVE \$4,313.49 TO DELAWARE COUNTY OFFICE OF HOMELAND SECURITY FOR 2021 EMERGENCY MANAGEMENT APPORTIONMENT

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

Cemetery – Nothing

Trustee Items –

Succession Planning – Raehll said over the next two years a number of individuals with lots of knowledge about our township have expressed the interest in retiring and she thinks it's time to consider each department and consider building redundancy into their system to make sure that we have time to train replacements. She has noticed many small items that could use extra help and feels we could use an administrative specialist or a township administrator to provide critical functions such as manuals and procedures. Bullard and O'Brien agreed. Raehll said she could do some comps on a township administrator. O'Brien said a township administrator has some authority that they do not have individually. In order to deal with the county, we almost need that authority. Raehll said it seems like an administrative specialist could fill an immediate need but would result in them having the relationships and work with the county. O'Brien said it is a less dangerous position but something they could potentially grow into.

Bullard said that it is time for the township to grow up and that we have a need to revisit some of these items and grow into reflecting who we are today.

Township Newsletter – O'Brien said he agreed to do the next one and asked them to have the department heads get their articles together.

Cell Tower Policy – Raehll asked if the letter that we sent to the lawyers regarding the cell tower by the middle school, was a public record. O'Brien said yes because it was sent out. Bullard said he read the policy that was sent out and he is concerned about if we can do it. He remembers when they passed the legislation that it specifically said township didn't have a right to say anything. He said they need to have Scott Sanders or Fowler to agree that that is a good thing to do. Raehll said a resident wrote about furthering language on freestanding small cell infrastructures within our zoning text. Based upon what Bullard mentioned she would like to move that the question of freestanding small cell infrastructure language be remanded to zoning for consideration of incorporation in the zoning text. O'Brien said the trustees have the authority to initiate zoning changes and we can ask them to make the zoning change. Raehll said she wants the zoning board to initiate it. Bullard said the reason he suggested that Scott Sanders be asked is that some of the other townships may have already done this and figured out how to do it so Scott Sanders should know what is going on.

RESOLUTION 22-01-41 MOTION THAT THE QUESTION OF FREESTANDING SMALL CELL INFRASTRUCTURE LANGUAGE BE REMANDED TO ZONING TO CONSIDER INITIATING INTO THE ZONING TEXT

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

Media/Technology – Raehll said they are working on updating the website and getting accurate information for 2022 and O'Brien and Smith do not have a photo on the official's tab of the website. She asked if she could reach out to the respective entity to update the

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

roads and fire tabs. O'Brien said yes but if additional support is needed to initiate with the liaison. Bullard said she could do that.

Raehll said she would also like to pursue quotes for upgrading the website and making the information more accessible from a user standpoint. O'Brien said yes but usually we like to get three quotes and everyone quotes differently.

JEDD -

RESOLUTION 22-01-42 MOTION TO RECESS TO EXECUTIVE SESSION PURSUANT TO ORC 121.22 (G)(8) TO CONSIDER NEGOTIATIONS WITH OTHER POLITICAL SUBDIVISIONS RESPECTING REQUESTS FOR ECONOMIC DEVELOPMENT ASSISTANCE, THREE TRUSTEES AND FISCAL OFFICER TO ATTEND- 11:27 P.M.

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

RESOLUTION 22-01-43 MOTION TO RETURN TO REGULAR SESSION - 11:52 P.M.

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

O'Brien "We met in executive session and no decisions were made and no actions were taken".

Township Hall – Raehll asked that this be deferred to the next meeting.

Letter of Engagement -

RESOLUTION 22-01-44 MOTION EMPLOYING RINEHART LEGAL SERVICES LTD AS A TOWNSHIP'S ATTORNEY ON AN ANNUAL BASIS FOR THE YEAR 2022

WHEREAS, the Berlin Township Board of Trustees ("Board") is authorized by Section 309.09(B) of the Revised Code to employ attorneys on an annual basis other than the prosecuting attorney to represent the Township and its officers, boards and commission in their official capacities and to advise them on legal matters; and

WHEREAS, Section 309.09(B) of the Revised Code provides that no such attorney may be employed except on the order of the Board, duly entered upon its Journal, in which the compensation to be paid for the attorney's legal services shall be fixed; and

WHEREAS, the Board finds it necessary to appoint attorneys to counsel and represent the Township on an annual basis for calendar year 2022 in such matters as the Board and its designee may refer to them; and

WHEREAS, the Board has appropriated the sum of \$5,000 for legal services for 2022;

NOW THEREFORE, BE IT RESOLVED by the Board of Township Trustees of Berlin Township, Delaware County, Ohio, that:

SECTION 1. Christopher Rinehart and the law firm of Rinehart Legal Services, Ltd. ("Attorney"), are hereby employed on an annual basis for the calendar year 2022 as the Township's legal counsel to represent the Township and its officers, boards, and commissions in their official capacities and to advise them in connection with such matters as may be referred to said Counsel by or on behalf of the Board or its designee.

SECTION 2. The compensation for such Attorney during 2022 shall be paid as follows: \$200.00 per hour plus out-of-pocket expense reimbursements; provided that the total compensation shall not exceed Five Thousand Dollars (\$5,000.00) without further action by the Board.

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

SECTION 3. The Attorney and the township shall execute an engagement letter related to the legal services to be provided to the township pursuant to this Resolution. Notwithstanding, the Attorney and may be discharged at any time by majority vote of the Board.

SECTION 4. The Township Fiscal Officer is directed to send a copy of this Resolution to the Attorney.

SECTION 5. It is found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board an any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements including, without limitation, Section 121.22 of the Revised Code.

SECTION 6. This Resolution shall take effect and be in force from and after the date of its adoption.

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

**RESOLUTION
22-01-45**

**MOTION TO APPROVE THE EMPLOYING OF OUTSIDE COUNCIL
RINEHARDT LEGAL SERVICES LTD AS PROVIDED BY LETTER OF
ENGAGEMENT AS APPROVED, THE LEGAL SERVICES IN
COMPENSATION FOR 2022 NOT TO EXCEED \$5,000 WITHOUT
FURTHER ACTION BY THE BOARD AND WITH THE
UNDERSTANDING THAT OTHER OUTSIDE COUNCIL MAY BE
RETAINED AS NEEDED WITH THE POINT OF CONTACT BEING
THE CHAIRMAN**

Dear Members of the Board:

Rinehart Legal Services, Ltd., is pleased to have the opportunity to represent Berlin Township as legal counsel in relation to certain issues identified in Section 1 of this Agreement. The firm will undertake to provide its services in a responsive, timely and cost-efficient manner. The firm will undertake this matter based upon the fee arrangement set forth herein. Should Berlin Township have any questions regarding these practices, please call the office immediately.

1. *Scope of Representation.* The firm will represent the township with regard to any issues delegated to it by the township for calendar year 2022. The firm and Berlin Township agree that all prior engagements involving Rinehart Legal Services, Ltd., and Christopher A. Rinehart have terminated. For purposes of this engagement, Christopher A. Rinehart will serve as primary counsel on this matter. The firm reserves the right to consult with other counsel as may be necessary for purposes of this representation. Mr. Rinehart will consult with the township prior to engaging any other counsel for this matter.

2. *Legal Fees.* Per our discussions, the representation outlined in Section 1 shall be conducted on an hourly basis. The base general hourly rate shall be \$200.00 per hour. The firm generally reviews hourly rates on an annual basis to see if they remain appropriate. This does not mean that rates will increase each year, but if the firm's work on this engagement continues from one calendar year to the next, changes in individual hourly rates are likely to increase and may affect the firm's billings.

3. *Costs.* In addition to fees for legal services as outlined above, the firm charges for certain expenses or advances which it may incur on the township's behalf. These include, but are not limited to, delivery services, messenger services, court reporter charges, deposition charges, outside computer network usage, travel, filing and other fees, and other costs incurred directly on the township's behalf. If an expense item is substantial, the firm may request that the township make direct payment to the vendor. Otherwise, these costs will be included on the township's monthly statements.

4. *Monthly Statements.* The firm will mail the township a monthly statement. Payment is due to the firm within thirty (30) days after receipt by the township of the statement. If an invoice is unpaid for sixty (60) days, the township should expect a call from the firm inquiring as to whether there is a problem. If an invoice becomes ninety (90) days past due, without a prior arrangement made with the firm, and subject to all applicable rules and requirements of the Ohio

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

Code of Professional Responsibility, the township acknowledges and consents that Mr. Rinehart and the firm may withdraw from further representation or, at their discretion, they may cease all work on the township's behalf until all receivables older than thirty (30) days are paid in full. If at any time during this relationship the township finds that it is unable to meet the payment arrangement, please contact the firm immediately. A late payment charge of 1.5% per month (18% per annum) will be added to the balance of amounts which remain unpaid thirty (30) days or more. The firm reserves the right to terminate representation if payment is not received within thirty (30) days of the statement.

In the event that the township becomes entitled to receive a payment, judgment, or monetary settlement, the township agrees to – and agrees that the firm may – preserve funds out of any such payment, judgment, or monetary settlement to satisfy any amounts then due to the firm.

5. *Electronic Communication and Data Storage.* The firm communicates from time to time with its clients using facsimile machines, mobile telephones, and e-mail. In addition, the firm may utilize an online (“cloud”) storage repository for purposes of storing client information and files and occasionally accesses the repository through wireless internet access (“wifi”). These forms of communication, storage, and access are not completely secure against unauthorized access. There is some risk of disclosure and loss of attorney-client privilege using these forms of communications, storage, and access because they do not completely ensure confidentiality of their contents. If the township objects to use of any of these forms of communication, storage, or access, please let the firm know immediately; otherwise, the firm will communicate with the township and on its behalf using such technology, may store the township's information in the cloud, and will occasionally access the township's information using wifi.

6. *Record Retention.* The firm's representation in this matter will terminate when the firm sends the township a letter to that effect or the parties otherwise agree. During the firm's representation and following termination, any non-public information the township has supplied to the firm will be kept confidential in accordance with the applicable Rules of Professional Responsibility. At the township's request, the firm will return requested papers and property to it, but the firm will retain its own files (including lawyer work product) pertaining to the matter as the firm deems appropriate. To minimize storage expenses, the firm reserves the right to dispose of any documents or other materials that the firm retains within a reasonable time after the termination of the engagement.

7. *Discussion of Fees.* Please do not feel that discussion of fees is inappropriate. The firm understands that the township wants fair value for the moneys paid. Please contact the firm regarding any questions or concerns the township may have regarding any billing statement it receives or my handling of the township's legal work.

8. *Confidentiality.* The firm's statements are detailed and frequently contain confidential information. Therefore, the township should treat the statements with care.

9. *Withdrawal.* The firm reserves the right to withdraw from representation if the township fails to honor the terms of this engagement letter, including payment of fee statements, the township fails to pay additional retainers when requested, the township fails to cooperate or follow advice regarding a material matter, or a circumstance arises which would render the firm's continued representation unlawful or unethical.

10. *No Promises as to Results.* The outcome of negotiations and litigation is subject to factors which cannot be foreseen. The firm may render its opinion as to the probable result of the township's matter(s); however, it can make no promises or guarantees as to the outcome.

11. *Conflicts of Interest.* If for some reason, a conflict of interest may arise regarding the firm's continued representation of the township pursuant to this engagement, the firm and the township agree to amicably discuss such matters and develop a resolution that will permit continued representation of the township without such conflict.

12. *Effective Date.* The effective date of this engagement shall be the date of this letter as indicated on the first page of this agreement.

If the township is in agreement with the terms of this letter, please sign the enclosed copy on the signature line below and return it to me.

I look forward to a mutually beneficial relationship. Thanks very much!

Very Truly Yours,
RINEHART LEGAL SERVICES, LTD.

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

Christopher A. Rinehart

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

Zoning Department -

December Zoning Report - There were 13 new builds for the month of December and the YTD total is 201.

CLUP Update, Overlay Policies – Raehll said she sent everyone a contract from Scott Sanders related to his work of both updating the CLUP and questions that have come up on overlay language.

**RESOLUTION
22-01-46**

**MOTION TO ADOPT THE CONTRACT FOR PLANNING SERVICES
BETWEEN BERLIN TOWNSHIP DELAWARE COUNTY REGIONAL
PLANNING COMMISSION FOR 2022 AS NOTED IN THE
ORGANIZATIONAL MEETING RESOLUTION**

1. INTRODUCTION

This is a contract entered into on or as of January 10, 2022 between the Berlin Township Board of Trustees (“Board”) and the Delaware County Regional Planning Commission (“DCRPC”) to provide various planning services.

2. OVERVIEW OF PROJECT

The intent is to use the allotted hours and charges to provide assistance for planning and zoning text services.

The Board shall select one (1) person to be the liaison between the Township and DCRPC, and this liaison will be authorized to communicate with, relay information to, and take requests from DCRPC.

3. SCOPE OF SERVICES

The DCRPC may, as directed:

- Zoning Text: Update master document to include adopted BIO and BCO overlays; Update background information for Comprehensive Plan (CLUP) update;
- Suggest changes to subareas based on recent proposed and completed development, as well as overlay impacts;
- Suggest planning considerations and other recommendations for land use changes;
- Attend meetings, where requested;
- Other items as determined by the Board or Zoning Commission

4. ADDITIONAL WORK: If DCRPC is requested to perform additional work or incur additional expenses beyond that provided for in this contract, the DCRPC shall be compensated for such work (and/or reimbursed for such expenses) at the rates and in the manner specified in paragraph 8. Any services or expenses performed or incurred beyond the “Scope of Services” shall not be included within the maximum contract amount herein before specified.

5. BOARD RESPONSIBILITIES

The Board will provide a suitable meeting place when necessary. During the course of the work process, the Board (or its delegate) will be responsible for obtaining and providing timely legal advice on all issues raised, as well as providing accurate data needed to perform the work functions that are being requested.

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

6. PLANNING PROCESS

The planning process is anticipated to take approximately eight to ten (8-10) months. DCRPC anticipates the contract start date to begin immediately after endorsement by all parties. This schedule is subject to adjustment to accommodate public involvement opportunities; information gathering; obtaining input, direction and review on discussion topics or work products; and the like.

7. PROJECT STAFF

The Director of the DCRPC will be responsible for managing the project with assistance from DCRPC staff. All work will be accomplished in conjunction with Township input, review and comment. The Director at his discretion may assign other staff or subcontract personnel. The Director of the DCRPC may add, delete or substitute staff at his exclusive prerogative.

8. FEES FOR SERVICES/METHOD OF PAYMENT:

a.) FEES: The Board shall compensate DCRPC at its actual time plus material plus expenses costs. The maximum fee for the scope of services identified in Paragraph 3 and other expenses identified in Paragraph 8(b.) shall not exceed **\$5,000.00**.

Staff direct hourly rates are multiplied by 1.44 (1% Worker’s Comp, 14.0% PERS, 1.45% Medicare, 25% Health Insurance).

POLICY HOURS: DCRPC provides member governments with a certain number of staff hours (Policy Hours) free of charge during a calendar year, provided the member is current in its dues obligations. Under the current DCRPC policy, the Township is afforded a number of Policy Hours based on population, while current in its dues obligations. **Berlin Township is calculated to have (80) hours for 2021 and 2022. Staff intends to apply Policy Hours for both years to this project.** Staff intends to alert the township when all Policy Hours are exhausted before invoicing the township for billed hours.

EVENING HOURS: The parties anticipate that work will usually occur during DCRPC’s regular business hours. However, meetings which occur outside of regular business hours shall be computed and billed on a time and one-half basis based upon the employee’s then-current billed amount. The Evening Hours rate is subject to change based upon changes in either a DCRPC employee’s Direct Rate or the Benefits Multiplier. DCRPC shall give the Board at least thirty (30) days prior written notice of any such change. The chart below specifies the current Regular and Evening rates, by position, which will be initially used for billing Project work. As of **01/02/22**, hourly rates for this contract are:

	<u>Direct Rate</u>	<u>Billed Amount</u>	<u>Evening Hours</u>
Executive Director	\$ 46.50	\$ 66.96	\$ 100.44
Administrative/Clerical	\$ 34.06	\$ 49.05	\$ 73.57
GIS Manager	\$ 39.32	\$ 56.62	\$ 84.93
Planner	\$ 25.98	\$ 37.41	\$ 56.12

b.) EXPENSES: Included in its fees for services, DCRPC shall be paid for its reimbursable expense. Reimbursable expenses include, but shall not be limited to:

- mileage (\$.58 per mile or as approved by the I.R.S.);
- reproduction costs, preparation materials, and such other costs and/or expenses incurred by DCRPC in connection with the services provided hereunder.

Mapping shall be presented in ArcView/ArcMap in the current version.

c.) INVOICES: DCRPC shall submit itemized invoices to the Township Fiscal Officer for services rendered under this contract, including reimbursable expenses, on a monthly basis. All invoices shall be paid within thirty (30) days of receipt. If any invoice item is disputed, full payment

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

for the unchallenged portion of the invoice shall be made to DCRPC in a timely fashion, accompanied by a request for written confirmation of the challenged item(s) to the DCRPC. If disputed items remain unpaid for 60 days, or should the Township fall 90 days in arrears in its contract payments, the DCRPC reserves the right to suspend work on the contract until the Township is current in all its payments.

9. PLANNING GUIDELINES

The DCRPC and the Commission agree to be guided by the American Institute of Certified Planners Code of Ethics and Professional Conduct.

10. TERMS AND TERMINATION

This contract shall be signed by a duly authorized representative of both parties and certified by the Berlin Township Fiscal Officer as to the appropriation and availability of funds. A fully-signed original of the contract shall be provided to each party.

The resulting contract shall have an indefinite term. Either party may terminate the contract for any reason upon giving a thirty (30) day written notice of such termination to the other party. In the event of termination by either party, DCRPC shall provide copies of all previously non-submitted materials that are in its possession to the Township. The Township shall pay the DCRPC for all work performed through the effective date of termination, together with reimbursement for expenses, after which both parties shall have no further liability under this contract.

11. MISCELLANEOUS

This contract shall be subject to the following:

- a.) Neither party may assign, convey, pledge or otherwise encumber its interest in the agreement without prior written consent of the other party;
- b.) This agreement shall be governed by and construed in accordance with the laws of the State of Ohio;
- c.) This agreement shall embody the entire agreement between the parties with respect to the matters referred to therein, and it will not be modified, except by an agreement in writing;
- d.) This agreement and the terms and provisions thereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties thereto;
- e.) Any notice or other communication required and permitted in connection with the agreement shall be deemed to have been given if delivered by hand or by first class mail, postage prepaid, at the principal place of business of the DCRPC or the Berlin Township Board of Trustees;
- f.) Neither party shall participate in zoning resolution and/or planning services with any other entity (including County agencies/organizations and private consulting firms), whether informally or by contract, without the explicit consent of the other party;
- g.) The captions or headnotes of the various Paragraphs in the agreement are intended for convenience and for reference purposes only and do not limit the scope or intent of the agreement; and
- h.) Any unlawful or invalid provision of the agreement will be interpreted to the extent possible in a valid manner, and will not affect the binding force of the agreement.

ACCEPTED:

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

Delaware County
Regional Planning Commission

By: _____
Scott B. Sanders, AICP, Executive Director

By: _____
Chair, DCRPC

Berlin Township Board of Trustees

By: _____
(Name) (Chair)

CERTIFICATE OF AVAILABILITY OF FUNDS

I hereby certify that the amount required to meet the foregoing contract and obligation has been lawfully appropriated for such purpose, and is in the treasury or in the process of collection to the credit of such contract, free from any outstanding obligation or encumbrance.

Berlin Township Fiscal Officer

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

RESOLUTION 22-01-47 MOTION TO AUTHORIZE TRUSTEE RAEHLL TO EXECUTE AND MANAGE THE CONTRACT FOR PLANNING SERVICES BETWEEN BERLIN TOWNSHIP AND DELAWARE COUNTY REGIONAL PLANNING COMMISSION AS TRUSTEE LIAISON FOR THE ZONING DEPARTMENT

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

Raehl said there are questions coming in regarding the utilization of the Cloud and Rippel reached out to Berkshire to see what they did for the process and it looks like they have different fees and an application. She is willing to look over the materials and bring it to the next meeting if they want to have further discussion as there is a builder who would like to begin the process. O'Brien recommended that she run it through the prosecutor also.

Public Comment - There were no public comments.

Future Meetings -
01/24/22 Trustee Meeting
02/14/22 Trustee Meeting

Late Items -

RESOLUTION 22-01-48 MOTION TO ADJOURN

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

Meeting adjourned by Chairman O'Brien at 12:14 p.m.

Ken O'Brien, Trustee

ATTEST:

Meghan Raehl, Trustee

BERLIN TOWNSHIP TRUSTEES

6:00 p.m.

Trustee Meeting

January 10,

22

Claudia Smith, Fiscal Officer

Ron Bullard, Trustee