

**Brunswick Hills Township
Board of Zoning Appeals
Organizational Meeting Minutes
January 10, 2018**

ORGANIZATIONAL MEETING

Call meeting to Order: Secretary Milanko called the Brunswick Hills Township Board of Zoning Appeals Organizational Meeting to order at 7:04 p.m.

A Roll Call of the Board was Executed

- **Board Members in Attendance:** Kimberley Hall, Cliff Kersten, Jessica Murphy, John Bitto,
- **Alternate Board Members in Attendance:** Chris Schigel, Daryl Lucien
- **Alternate Board Members Not in Attendance:** Bob Yanacsek
- **Others in Attendance:** Trustee Michael Esber, Zoning Liaison

Swearing in of Board Members

Trustee Esber swore in Chris Schigel to a full Board member five year term and Daryl Lucien to a one year term as Alternate.

Election of Officers for the BZA 2018

Secretary Milanko stated the first order of business is to call for the election of officers for the BZA 2018.

1. Nominations for Chairperson

Secretary Milanko called for nominations for the position of BZA Chairperson. **Nominations:** Ms. Hall nominated John Bitto to the position of Chair. Mr. Bitto accepts the nomination. Ms. Murphy seconds the nomination. No additional nominations. **Roll Call for Mr. Bitto as Chairperson:** Mr. Schigel-yes; Mr. Kersten-yes; Ms. Hall-yes; Ms. Murphy-yes. **Mr. Bitto elected Chairperson for the 2018 BZA year.**

2. Nominations for Vice Chairperson

Secretary Milanko called for nominations for the position of BZA Vice Chairperson. **Nominations:** Ms. Murphy nominated Mr. Schigel for Vice Chair. Mr. Schigel accepts the nomination. Ms. Hall seconds the motion. No additional nominations. **Roll Call for Mr. Schigel as Vice Chairperson:** Ms. Hall-yes; Mr. Kersten-yes; Mr. Bitto-yes; Ms. Murphy-yes. **Mr. Schigel elected Vice Chair for the BZA 2018 year.**

Review and Adoption of BZA Organizational Guidelines

Secretary Milanko asked Board members if there were any edits or changes to the BZA Organizational Guidelines document. Being none, she called for a motion to adopt as written. **Motion:** Mr. Bitto made a motion to accept the Organizational Guidelines as submitted. Ms. Murphy seconds the motion. **Roll Call:** Ms. Hall-yes; Ms. Murphy-yes; Mr. Bitto-yes; Mr. Neroni-yes; Mr. Kersten-yes. Motion carries.

Review and Adoption of BZA ByLaws Discussion:

Secretary Milanko stated the BZA does have a clause in their ByLaws to call special or emergency meetings, which was recommended at our zoning training with Trina Devanny.

Discussion on special meetings: Alternate Daryl Lucien asked if he could inform the Board on the information he learned at the APA (American Planning Association) and Zoning Conference in October. He stated an attorney from Walter Haverfield was a presenter and he said three things that

sidelined what we've been doing and how we've been doing it. Mr. Lucien relayed the following key points of the Haverfield attorney:

1. The attorney stated that by Ohio Law, we are a Quasi-Judicial organization, and that means that it would be contrary to what Trina (Devanny) said in her training here in that we can deliberate in private. Mr. Lucien said the attorney said we don't have to have a public announcement in the paper when we have a meeting if it's just us. He said and in an open meeting such as this with open items on the floor, we can actually move to adjourn and deliberate in private. Mr. Lucien said that was another thing that came out of that APA training.

2. It's kosher to meet as a unit prior to the general BZA meeting and it does not have to be published so we could say let's meet at the coffee house and have a private meeting about what we will be reviewing. We are Quasi-Judicial and that is what this attorney made very clear. Mr. Lucien stated these were his words: "by having a meeting like that you are level setting where everyone stands on what's coming before them in the open meeting".

3. Does not recommend site visits at all. He said we should never set foot on the property and the reason is because it opens the gate to on-site discussion, pre-determination of facts not presented in front of the Board, etc. Ms. Hall and Mr. Bitto agreed with that.

Mr. Kersten stated with regard to private meetings and executive sessions, the Medina County Prosecutor's Office said at our training(s) you can't do it. Mr. Kersten stated we've had attorneys say you can't do it; individuals from the State of Ohio say you can't do it and now you've got this guy from Haverfield saying you can do it. Mr. Kersten stated when our own attorneys tell us not to do it, what are you supposed to do? Ms. Hall asked what the best practice would be. Trustee Esber stated he was surprised they were saying you can ever discuss a meeting prior to the meeting because you are not allowed to make a decision. Ms. Hall agreed. Secretary Milanko stated she thought it was a violation of the Sunshine Law. Trustee Esber, Mr. Kersten and Ms. Hall agreed and Ms. Hall stated that trumps anything Walter Haverfield says. Mr. Lucien stated that applies to Legislative; not Judicial and that's why I go back to the whole premise of this attorney saying this is a Quasi-Judicial organization under Ohio Law. Ms. Hall stated yes, but in a court of law you don't get a judge and both side's attorneys... Mr. Lucien interrupted and said "Let's go to Chambers" during the hearing so that is one of the things he said, you can move to adjourn and move off privately. Mr. Lucien stated and in a court, attorneys will meet in the Judge's Chambers before anyone is sworn in to discuss the case in front of the Judge. He said it happens all the time. Ms. Hall stated for the record it shouldn't happen with our Board.

Trustee Esber stated you are a Quasi-Judicial government and we as Trustees are not allowed to interfere. Mr. Lucien stated because you are the Executive Branch. Several Board members stated this isn't the first time we've heard two different opinions on a subject from attorneys. Ms. Hall and Mr. Kersten both stated they did not want to entertain having a separate or private meeting before, after, or in-between. Trustee Esber stated and when Trina was here for training, she was very specific on the reasons why you could into an executive session and he thought we even had to have our attorney here to do that.

The Board members stated that we have had our attorney say we can visit property sites. Mr. Bitto stated what they told us is not to go in groups. Ms. Hall stated that the Prosecutor's Office is our counsel of record and she is inclined to lean with what they advise us to do, because that brings the Trustees into it and the Zoning Commission into it. Mr. Kersten stated his opinion that he would like to see the on-site visits stay. Ms. Murphy agreed and stated if you don't want to go then don't

go. Trustee Esber stated you get enough paperwork on the application don't you? Mr. Kersten stated he has found going on-site more useful than some of the drawings. Mr. Lucien reminded the Board that going on-site is information that has not been submitted – that was the point made by this attorney. He said when you make a conclusion based on viewing a site, or even bumping into the owner of the property, you now have information that no one else has...that voids the decision that you make. Ms. Murphy stated she did not agree with that and said she finds it more beneficial to visit. She said she looks at the drawings and does not talk with the property owners and the bottom line is she has to visualize it. Ms. Murphy stated and then when the applicant comes here to explain what it is he/she wants to do, what the intent is, then she can visualize and in my mind make a very concrete decision. Mr. Schigel stated when we talked with Trina we may see something while at the on-site visit that might not be in our paperwork. He said and that is our job to get that information out of them. Mr. Bitto stated, you can't tell them what they have, they have to tell you what it is. Mr. Bitto stated and that is the reason that the paperwork they submit has to be complete because you can only make a decision on what you have.

Mr. Kersten gave the example of the Boston Road request for a shed. He said the paperwork that the people submitted to us did not show the house next door, but when you went down there the shed took out the whole side of the neighbor's house and covered his windows and everything. Mr. Bitto said but if you remember that case, the neighbor came to the meeting and said they were ok with it. Ms. Hall stated there is no law that says we can't visit sites, so until one goes on the books that says we can't – I'm going to if I want to. Trustee Esber stated he thinks they need to visit the property especially if someone is asking for an area variance. Trustee Esber stated he may be looking for five (5) or ten (10) feet and next door to where he is looking for may be 10 – 15 acres of land that has nothing on it and it's not going to interfere with anything. Ms. Hall said it does change your frame of reference. Mr. Kersten stated it is the responsibility of the Board member when going to the site to tell the owner you cannot talk to them. Mr. Lucien stated that the attorney from Haverfield enforced what I internally believed from day one and that is to not set foot on the property.

Mr. Bitto stated with regard to the executive session when that came up the last time, we left it on the table as yes, we can do it, but we probably are not going to do it. Trustee Esber stated he thought you would need to have an attorney here for counsel for that. Mr. Lucien stated the attorney from Haverfield said with an executive session, you can actually continue to the next meeting; you don't have to make a decision in that session. The Board agreed that if a situation for executive session came up, they would continue the meeting and have legal counsel in attendance. End of discussion.

Continued Review of BZA ByLaws

Ms. Hall stated we were discussing Special Meetings on page 2 of the BZA ByLaws:

Special meeting: The Chairperson of the Board of Zoning Appeals or two other Board members may call a special meeting if the need arises. Notice of a special meeting shall be given to local news media with at least twenty-four (24) hours notice. All reasonable attempts will be made to contact any parties involved.

Mr. Lucien stated the scope of a special meeting is pretty broad to predict why you would be calling one. Mr. Lucien stated the point that Haverfield made is you need to be able to have a time out immediately and move away from whatever is going on so that you can go off into a private session. Ms. Hall stated that is an "executive session" that is not a special meeting. Ms. Hall stated a special meeting you do know what it is about and it's for a different date completely. Trustee Esber stated he thought it was an "emergency meeting" if you have 24 hours notice and a special meeting you have 48 hours to advertise/post. The Board did not think there was a need to add "emergency meeting". Mr. Bitter stated there is nothing that we can

decide on that will happen right away because you have 30 days and then another 30 days. Trustee Esber stated that is true because you have to approve your minutes at the next meeting and then there is the timeframe for appeal.

Motion to Accept BZA ByLaws: Mr. Bitto made a motion that the ByLaws remain as they are written. Ms. Murphy seconds the motion. **Roll Call:** Ms. Hall-yes; Mr. Kersten-yes; Mr. Schigel-yes; Ms. Murphy-yes; Mr. Bitto-yes. Motion carries.

Review and Adoption of the BZA Organizational Guidelines

The Board reviewed the document and Secretary Milanko noted is states “*Minutes are to be signed by the Chairperson and the Secretary*”. She stated the minutes have traditionally been signed by the Chair or the Vice Chair. Secretary Milanko stated the minutes say “*Respectfully Submitted, Mary Jean Milanko, Zoning Secretary*” but I do not sign the minutes. Mr. Bitto stated your name is listed so you should be signing them. Ms. Murphy stated not necessarily, when you do a legal letter you put your initials on it. Ms. Hall stated that is how it’s normally done; and if the name is listed out then there needs to be a signature with it. Mr. Schigel stated either that or you change the verbiage to: “*Minutes are prepared and submitted by the Secretary and signed by the Chairperson*”. Secretary Milanko asked if the Board would like to add “*signed by the Chair or the Vice Chair*” because if the Chairperson is absent, the Vice Chair is acting chair and signs. The Board agreed to amend the section to say: “Minutes are to be signed by the acting Chair”.

Motion: Chair Bitto made a motion to make the changes to signing the minutes and adding acting chair. Ms. Murphy seconds the motion. **Roll Call:** Mr. Kersten-yes; Ms. Murphy-yes; Mr. Schigel-yes; Ms. Hall-yes; Mr. Bitto-yes. Motion carries.

Submission Deadlines for the BZA:

The cut-off date for filing matters to be heard before the Board of Zoning Appeals will be set for the first Wednesday of the month by 12:00 p.m. to the Zoning Inspector the month prior to the next month’s meeting date. The Board agreed to keep the same submission deadline.

Confirm BZA Meeting Date, Time and Location

Secretary Milanko stated currently the BZA meets the first Wednesday of every month at 7 p.m. There were no changes made to the schedule. **Motion:** Chair Bitto made a motion maintain the meeting date as the first Wednesday of every month at 7 p.m. Mr. Schigel seconds the motion. **Roll Call:** Ms. Hall-yes; Mr. Kersten-yes; Mr. Schigel-yes; Mr. Bitto-yes; Ms. Murphy-yes. Motion carries.

Review of Operational Guidelines for Public Hearings

The Board reviewed the document and amended guideline #16. on page 2 as follows:

16. The Board of Zoning Appeals authorizes the **acting** Chair ~~or Vice Chair~~ to sign decision letters on behalf of the Board.

Motion to Amend the Operational Guidelines for Public Hearings: Mr. Bitto made a motion to change the wording on #16. to: The Board of Zoning Appeals authorizes the acting Chair to sign decision letters on behalf of the Board. Ms. Hall seconds the motion. **Roll Call:** Ms. Murphy-yes; Mr. Bitto-yes; Ms. Hall-yes; Mr. Kersten-yes; Mr. Schigel-yes. Motion carries.

Motion to Accept the Operational Guidelines for Public Hearings as Amended: Ms. Hall made a motion to accept the Operational Guidelines for Public Hearings as amended. Ms. Murphy seconds the motion. **Roll Call:** Ms. Hall-yes; Ms. Murphy-yes; Mr. Schigel-yes; Mr. Kersten-yes; Mr. Bitto-yes. Motion carries.

Secretary Milanko stated she will amend the guidelines and send an updated copy to the Board with the minutes.

Additional Business: None

ADJOURN ORGANIZATIONAL MEETING

Motion: Mr. Bitto made a motion to adjourn the Organizational Meeting. Ms. Hall seconds the motion.

Roll Call: All in favor to adjourn. Meeting officially adjourned at 7:51 p.m.

Respectfully Submitted,
Mary Jean Milanko, Zoning Secretary

John Bitto, Chair

Date