

When considering undertaking the “construction or reconstruction” of a road, the trustees shall have the county engineer estimate the cost of the project, including “labor, material, freight, fuel, hauling, use of machinery, and equipment, and all other items of cost.”³⁰¹ In lieu of proceeding by contract, the board may proceed by force account if the trustees find that to be in the best interest of the public.³⁰² Except as provided by R.C. §§ 505.08 and 505.101, where the total estimated cost of the project exceeds \$15,000 per mile, the project must be competitively bid.³⁰³ Under such circumstances, and before proceeding by force account, the trustees must invite and receive competitive bids and must consider and reject those bids pursuant to competitive bidding procedures.³⁰⁴ Only then can the township proceed by force account.³⁰⁵ Under such circumstances, all work must conform to the plans and specifications upon which the bids were based.³⁰⁶

The final applicable exception to competitive bidding concerning roadwork is where an emergency exists. Pursuant to R.C. § 505.08, the trustees, “by a unanimous vote [on] a resolution declaring a real and present emergency in connection with the administration of township services or the execution of duties assigned by law to any officer of a township,” may resolve to enter into a contract without either competitive bidding or advertising for “...services, materials, equipment, or supplies needed to meet the emergency” if the estimated cost of such a contract is less than \$50,000.00.³⁰⁷

Zoning

Township zoning is addressed in Chapter 519 of the Ohio Revised Code.

A township, “in the interest of the public health and safety,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location,
- height,
- bulk,
- number of stories, and
- size of buildings and other structures.

Lots or Parcels:

- percentages of lot areas which may be occupied,
- set back building lines,

³⁰¹ OHIO REV. CODE ANN. § 5575.01(B).

³⁰² OHIO REV. CODE ANN. § 5575.01(B).

³⁰³ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁴ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁵ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁶ OHIO REV. CODE ANN. § 5575.01(B).

³⁰⁷ OHIO REV. CODE ANN. § 505.08.

- sizes of yards, courts, and other open spaces,
- the density of population.

Uses:

- the uses of buildings and other structures including tents, cabins, and trailer coaches, and
- the uses of land for trade, industry, residence, recreation, or other purposes.³⁰⁸

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution, in accordance with a comprehensive plan, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- location
- setback lines

Uses:

- uses of buildings and other structures including tents, cabins, and trailer coaches.
- uses of land for trade, industry, residence, recreation, or other purposes.

Landscaping and Architectural Standards:

- reasonable landscaping standards and architectural standards excluding exterior building materials.³⁰⁹

A township, “in the interest of the public convenience, comfort, prosperity, or general welfare,” by resolution and in accordance with a comprehensive plan, *for non-residential property only*, may regulate the following:

Buildings and Other Structures (Including Tents, Cabins, and Trailer Coaches):

- height
- bulk
- number of stories
- size

Lots or Parcels:

- percentages of lot areas that may be occupied
- sizes of yards, courts, and other open spaces
- density of population³¹⁰

Note that the Ohio Revised Code differentiates among the various interests of the public in allowing for the regulation of residential and non-residential property through zoning. The interests listed above must correlate with the type of property sought to be regulated by zoning.

³⁰⁸ OHIO REV. CODE ANN. § 519.02(A).

³⁰⁹ OHIO REV. CODE ANN. § 519.02(A).

³¹⁰ OHIO REV. CODE ANN. § 519.02(A).

For purpose of regulating the above listed criteria, the trustees “may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines.”³¹¹

However, zoning districts must “be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.”³¹² This means that regulations adopted by the trustees and applicable to a specific zoning category (i.e., FR-1) must be applied equally to all land in the township that is classified or designated under that particular zoning category. Yet, nothing prohibits the board of trustees from creating additional zoning categories if the board of trustees determines there is a need.

In order to proceed with and act under the zoning powers granted to townships pursuant to R.C. §§ 519.02-519.25, the board must pass a resolution expressing an intent to adopt zoning.³¹³ This resolution may be brought and adopted either upon the board of trustee’s own volition or by petition.³¹⁴ The petition must be signed by a number of qualified voters residing in the unincorporated area of the township or areas of the township to be included in the zoning plan. This number must be equal to eight percent (8%) of the total votes cast for any candidate for governor in the relevant unincorporated territory of the township during the last gubernatorial election.³¹⁵ The board of trustees must adopt any such petitions.³¹⁶

1. Zoning Resolutions

Zoning resolutions are the embodiment of township zoning. They are created pursuant to authority granted under R.C. § 519.02 and act as a comprehensive guide to zoning regulations within the township. Typically, zoning resolutions are divided into various articles, each of which address regulations concerning, but not limited to, individual zoning districts (FR-1), zoned items (signs), standards (general development standards), the functions of the zoning boards and officials, and enforcement of the zoning resolution.

Generally, the zoning commission acts to create and draft zoning resolutions. However, the board of trustees has the ultimate authority to approve and adopt the resolution.³¹⁷ If adopted by the board, “the question of whether or not the proposed plan of zoning shall be put into effect . . . [shall] be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election . . . called for this purpose.”³¹⁸ If the majority of voters favor zoning, the resolution shall be put into effect.³¹⁹

³¹¹ OHIO REV. CODE ANN. § 519.02(A).

³¹² OHIO REV. CODE ANN. § 519.02(A).

³¹³ OHIO REV. CODE ANN. § 519.03.

³¹⁴ OHIO REV. CODE ANN. § 519.03.

³¹⁵ OHIO REV. CODE ANN. § 519.03.

³¹⁶ OHIO REV. CODE ANN. § 519.03(B).

³¹⁷ See e.g., OHIO REV. CODE ANN. §§ 519.02, 519.04-519.05.

³¹⁸ OHIO REV. CODE ANN. § 519.11.

³¹⁹ OHIO REV. CODE ANN. § 519.11.

The township zoning commission, the board of trustees (by passage of a resolution), or a property owner or lessee (by application) may initiate amendments to the zoning resolution.³²⁰ The procedure for approving amendments is addressed in R.C. § 519.12. As the process for amending a zoning resolution involves many steps, it is addressed later in this manual in the Board of Zoning Commission section.

2. Board of Zoning Commission (BZC), Board of Zoning Appeals (BZA), and Township Zoning Inspector.

To aid in the development and enforcement of township zoning, the board of trustees must hire employees and appoint boards to assist them in this task. These boards and employees generally consist of a township zoning inspector,³²¹ a board of zoning commission (BZC),³²² and a board of zoning appeals (BZA).³²³

When a township board of trustees seeks to proceed with zoning pursuant to Chapter 519 of the Ohio Revised Code, it must create and establish a township zoning commission,³²⁴ often referred to as the board of zoning commission or “BZC.” A BZC must consist of five (5) members, all residents of the unincorporated territory of the township, who serve terms “of such length and so arranged that the term of one member will expire each year.”³²⁵ Each BZC member serves until his or her successor is appointed and qualified.³²⁶

Pursuant to R.C. § 519.04, the board may also “appoint two alternate members to the township zoning commission, for terms to be determined by the board of township trustees.” Alternates must meet the same qualifications as regular members. Alternates take the place of an absent regular member at any meeting of the township zoning commission and may vote on any matter on which the absent member is authorized to vote. Alternates serve until the member's successor is appointed and qualified.

BZC members may be expelled from the board for nonperformance of duty, misconduct in office, or for other cause by the board of trustees.³²⁷ Under such circumstances, written charges must be filed with the board of trustees and served on the BZC member in accordance with R.C. § 519.04.³²⁸ The BZC member must be given a public hearing on the charges, which is to be held a minimum of ten (10) days after the BZC member is served with the written charges.³²⁹ To fill a

³²⁰ OHIO REV. CODE ANN. § 519.12(A)(1).

³²¹ See OHIO REV. CODE ANN. §§ 519.16-519.161.

³²² See OHIO REV. CODE ANN. §§ 519.04-519.122.

³²³ See OHIO REV. CODE ANN. §§ 519.13-519.15.

³²⁴ OHIO REV. CODE ANN. § 519.04.

³²⁵ OHIO REV. CODE ANN. § 519.04.

³²⁶ OHIO REV. CODE ANN. § 519.04.

³²⁷ OHIO REV. CODE ANN. § 519.04.

³²⁸ OHIO REV. CODE ANN. § 519.04.

³²⁹ OHIO REV. CODE ANN. § 519.04.

vacancy on the BZC, the trustees must appoint a new BZC member to fill the unexpired term of the BZC member being replaced.³³⁰

The powers and duties of the BZC generally consist of, among other things, the development of the initial zoning resolution and maps, recommendations of changes or amendments to the zoning resolution and maps, and recommendations concerning changes in existing zoning designations.³³¹ Because these duties and powers are extensive and detailed, they will be more fully addressed in a later section of this manual.³³² (See the section entitled “Board of Zoning Commission”). Also, the role of the township board of trustees in the zoning process is better addressed in conjunction with the BZC and will be addressed in this later section as well. (See the section entitled “Board of Zoning Commission”).

Aside from the BZC, the board of township trustees of “any township which adopts zoning regulations . . . shall appoint a township board of zoning appeals,”³³³ or “BZA.” Like the BZC, the BZA consists of five (5) members, all of whom must live in the unincorporated territory of the township.³³⁴ Each of the members serve terms “of such length and so arranged that the term of one member will expire each year” and serve until their successor is appointed and qualified.³³⁵ BZA members are generally removable for similar reasons and in a manner similar to that of members of the BZC.³³⁶

Pursuant to R.C. § 519.13, the board “may appoint two alternate members to the township board of zoning appeals, for terms to be determined by the board of township trustees.” Alternates shall take the place of an absent regular member at any meeting of the BZA and may vote on any matter on which the absent member is authorized to vote. Alternates shall meet the same appointment criteria as a regular member. Alternates shall serve until the member's successor is appointed and qualified.

Generally, the powers and duties of the BZA consist of hearing applications for variances and conditional uses and deciding appeals. Appeals heard by the BZA include those “where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official [(i.e., zoning inspector)] in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto.”³³⁷ Hearings are on applications for variances,³³⁸ conditional uses,³³⁹ and, in certain instances, to revoke an authorized variance or conditional use “granted for the extraction of minerals”.³⁴⁰ Again, as these powers and duties are

³³⁰ OHIO REV. CODE ANN. § 519.04.

³³¹ See OHIO REV. CODE ANN. §§ 519.04-519.122.

³³² See Board of Zoning Commission, *infra* pp. 74-87.

³³³ OHIO REV. CODE ANN. § 519.13.

³³⁴ OHIO REV. CODE ANN. § 519.13.

³³⁵ OHIO REV. CODE ANN. § 519.13.

³³⁶ OHIO REV. CODE ANN. § 519.13. See also OHIO REV. CODE ANN. § 519.04.

³³⁷ OHIO REV. CODE ANN. § 519.14(A).

³³⁸ OHIO REV. CODE ANN. § 519.14(B).

³³⁹ OHIO REV. CODE ANN. § 519.14(C).

³⁴⁰ OHIO REV. CODE ANN. § 519.14(D).

extensive, they are addressed in a later section of this manual.³⁴¹ (See the section entitled “Board of Zoning Appeals”).

In addition to the BZC and BZA, the board of township trustees may hire, as an unclassified, at-will employee, a township zoning inspector.³⁴² It is the duty of the zoning inspector to issue zoning permits and to enforce the zoning resolution.³⁴³ Despite these powers of enforcement, the zoning inspector is not a law enforcement officer and “may not enter and inspect private property without consent unless there is an emergency, the property is open to the public, or the activity conducted on the property has a history of government oversight so that no expectation of privacy exists.”³⁴⁴ Because the powers and duties of the township zoning inspector are extensive, they are more fully addressed in a later section of this manual.³⁴⁵ (See the section entitled “Zoning Inspector”). The authority that township trustees can exercise over township employees, such as the township zoning inspector, is also addressed in a latter section of this manual.³⁴⁶

Township Employees

A township board of trustees may hire employees to perform tasks and assist in the efficient operation of the township. Such employees may include road supervisors, secretaries, laborers, and township zoning inspectors.³⁴⁷ Typically, these are unclassified, at-will employees that, generally, may be hired or fired at the discretion of the board of trustees.³⁴⁸ Also, police officers may be township employees and are employed and removed pursuant to R.C. § 509.01 and §§ 505.49-505.495.³⁴⁹ Fire chiefs and chiefs of police are employed by the board of trustees pursuant

³⁴¹ See Board of Zoning Appeals, *infra* pp. 88-95.

³⁴² OHIO REV. CODE ANN. § 519.16; *Merritt v. Canton Twp. Bd. of Trs.*, 125 Ohio App.3d 533, 536-37 708 N.E.2d 1082, 1084 (5th Dist. 1998). See also *Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (8th Dist. 1990) (finding that “...an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.”).

³⁴³ OHIO REV. CODE ANN. §§ 519.16-519.17.

³⁴⁴ STUART MECK ET AL., OHIO PLANNING & ZONING LAW--BALDWIN'S OHIO HANDBOOK, § 8:47 (2019 ed., June update) [hereinafter PLANNING & ZONING LAW]; 1998 Ohio Op. Att’y Gen. No. 98-018.

³⁴⁵ See Zoning Inspector, *infra* pp. 68-73.

³⁴⁶ See Township Employees, *infra* p. 50.

³⁴⁷ OHIO REV. CODE ANN. §§ 511.10, 519.16.

³⁴⁸ See OHIO REV. CODE ANN. § 124.11(A)-(B); *Merritt v. Canton Township Bd. of Trs.*, 125 Ohio App.3d 533, 536-37, 708 N.E.2d 1082, 1084 (5th Dist. 1998). See also *Deoma v. Shaker Hts.*, 68 Ohio App.3d 72, 81, 587 N.E.2d 425, 430-431 (8th Dist. 1990) (discussing an appointing authority’s dismissal of an unclassified employee); *Eudela v. Ohio Dept. of Mental Health & Mental Retardation*, 30 Ohio App.3d 113, 116, 506 N.E.2d 947, 950 (10th Dist. 1986) (discussing dismissal of an unclassified employee); *Lee v. Cuyahoga Cty. Court of Common Pleas*, 76 Ohio App.3d 620, 622, 602 N.E.2d 761, 762-763 (8th Dist. 1990) (finding that “an unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority.”).

³⁴⁹ OHIO REV. CODE ANN. §§ 124.11(B), 509.01, 505.49-505.495