BIRCH RUN TOWNSHIP BOARD OF TRUSTEES
SPECIAL JOINT MEETING BETWEEN THE PLANNING COMMISSION/ TOWNSHIP BOARD AND ZBA
JULY 21, 2003

The Planning Commission Chairman for the purpose of rewriting the Zoning Ordinance Book called a special joint meeting. Chairman Al Hunter called the Special Joint Meeting/Workshop to order at 7:00 P.M. Present for the Birch Run Township Board were Earl Schlegel, Supervisor; Debbie Trevino; Treasurer, Dave Stewart, Ed Magnus, Joanne Strahm, and Jeff Putnam, Trustees. Present for the Planning Commission were Al Hunter, Diane Timmons, and Jim Totten. Present for the ZBA were Jerry Cook and Mike Marr. There were zero (0) people in the audience.

Although a Planning Commission quorum was not present yet, Al Hunter was asked by the Supervisor to chair the meeting.

A quorum was present for both the Board of Trustees and the Zoning Board of Appeals. A Planning Commission quorum was present at 9:09 pm when James Totten arrived. Other Township officials were present.

Motion by Dave Stewart supported by Ed Magnus to approve the June 30, 2003 minutes. Motion carried 6-0

The handout attached will be the document in which to refer to for the remainder of the minutes.

Commercial Development

A consensus was reached by the Township Board that the basic character of the two existing Districts will be carried over into the new Ordinance.

For the purpose of consistency and user friendliness, the District names will be C-1: General Commercial District and C-2 Highway Commercial District.

A consensus was reached by the Township Board on the following items concerning:

3. **Minimum lot standard for Districts C1 and C2 will be 1-1/2 or more acres with 200 ft. of frontage.**
4. **Site setbacks to the property line will be 40 ft. In cases where the commercial property abuts a residential use, the setback will be 100 ft.**
5. **Any building in excess of 10,000 square feet to be treated as a special land use requiring special review proceedings and a public hearing.**
6. **High-density residential districts may be appropriate adjacent to B-2 Districts within the Community Commercial area.**

Industrial Development

1. **Basic character of the M-1 will be carried over.**
2. **M-1 District will be renamed to I-l, Light Industrial District.**
3. **Minimum lot standard of 1-1/2 acres with frontage 200ft. or more.**

4. Side & rear setbacks of 40 ft., except where it abuts to residential district where a 100 ft. setback will apply.
5. Building size standard of 10,000 sq. feet, or less by right anything over requires special permits.
6. Limited commercial classifications should be permitted in M-1 districts.

Low, Medium, and High Density Residential Development

1. The present lot area of 33,750 sq. ft recommendation has been changed to 1 acre or 43,560 sq. ft. for R-1 District without sewer.
2. Change to 1 acre for R-2 District without sewer.
3. Change to 1 acre for R-3 District without sewer.

Group discussion centered around table on Page 4 where a total of five districts were suggested (adding R-MF and R-MFC). The group voted to accept the table as amended changing the Minimum Lot Area of 33,750 sq. ft to 1 acre or 43,560 sq. ft. for Single-Family and two-family dwellings without sewer.

Agriculture/Dispersed Residential Development

Discussion was tabled until next meeting.

Planned Unite Development District

The new zoning ordinances will provide for planned unit development (PUD), which encourages more innovative development. The PUD would be a separate zoning district and PUD approval requires a legislative action (Board approval) putting the Township in a stronger position to negotiate the project. The PUD makes it easier to approve a mix of uses for a designated project. Group voted to accept.

Open Space Community Overlay District

The group voted to accept and treat PA177 as an Overlay District. The Overlay District would lie upon all other Residential Districts.

Motion by Ed Magnus supported by Jerry Cook to adjourn at 10:20 PM
Motion carried

Amy Cook
Township Clerk

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Date: July 8, 2003
To: Birch Run Township Planning Commission, Township Board, and Zoning Board of Appeals
From: Mark A. Eidelson, AICP
Re: Review Material for Second Zoning Ordinance Orientation Meeting; July 21, 2003

An important element of the new zoning ordinance will be the identification of the zoning districts into which the Township is to be divided, and the permitted uses and site development requirements for each district, (such as minimum lot width, lot size, and setbacks). The purpose of this memo is to review the general recommendations of the recently adopted Master Plan as they pertain to zoning districts, and explore zoning district concepts to implement the Plan's policies.

Please review the material presented below carefully before our July 21 orientation meeting and consider whether the zoning district implementation concepts seem reasonable. I will discuss this material in more detail at the meeting. The focus of the meeting will be to identify the basic structure for the new ordinance's zoning districts – not the boundaries of the districts, or the detailed scope of uses to be permitted in each district, or the specific wording of district provisions. Please keep in mind that any zoning districts in the current Zoning Ordinance that may be carried over into the new Zoning Ordinance will undergo comprehensive review and revision to correct ambiguous language, conflicting provisions, and poor and/or weak purpose statements. This comprehensive review will also ensure that those uses "permitted by right" in each District will be only those uses that clearly support the intent of the District and not pose threats to the stability of the District. I am mentioning this in the introduction of this memo rather than repeating it in each of the following sections of this memo. It will be very helpful to have a copy of the current Master Plan and Zoning Ordinance by your side as you review this material.

Commercial Development

Policy: The Master Plan establishes two types of commercial areas, as summarized below:

1) Two "Community Commercial" areas are established and located at the Birch Run/M-83 intersection and in the vicinity of the I-75 Interchange along Dixie Highway. According to the Plan, these commercial areas are to "*...provide for general retail shopping and merchandising activities together with light wholesale uses, businesses, and personal services...High density residential development may be permitted adjacent to community commercial areas providing there is adequate buffering between the two uses and further provided the impacts of the commercial uses are minimal.*"
2) A single "Highway Services Commercial" area is established at the intersection of Birch Run Road/Dixie Highway. According to the Plan, this commercial area is to "*...provide locations for uses which either generate significant automobile traffic or require parking, storage or building space not otherwise available in the community commercial area.*"

Implementation Issues: The *existing* zoning ordinance includes two Districts to accommodate commercial development – the B-2 Community Commercial and the B-3 Highway Services Districts. It appears that the purpose of the B-2 District is reasonably coordinated with the Master Plan's "Community Commercial" areas, and that the purpose of the B-3 District is reasonably coordinated with the Master Plan's "Highway Services" area. With this in mind, I offer the following recommendations:

1) The basic character of these two existing Districts be carried over into the new Ordinance.
2) For the purpose of consistency and user friendliness, the District names be C-1: General Commercial District and C-2 Highway Commercial District.
3) To more effectively encourage unified, coordinated, and clustered development, as recommended by the Master Plan, and improve access management including limiting excessive curb-cuts along important thoroughfares, I recommend consideration be given to a minimum lot area standard for both

the B-2 and B-3 districts of a minimum of one acre or more (currently 15,000 sq. ft. in the B-2 District and no minimum requirement for the B-3 District), and minimum lot widths be at least 200'.

4) To minimize negative impacts on adjoining residential properties, I recommend the Township consider increasing side yard setbacks in the B-2 and B-3 districts to 40' or more, where the commercial property abuts a residential district (current setback adjacent to a residential district is 20').
5) At present, the structure of the B-2 and B-3 districts provide officials with limited ability to effectively manage the type and character of future development in commercial areas. For example, once a parcel is zoned B-2, the landowner may establish, by right, something as small as a two-chair barber shop or as large as a multi-acre department store such as a Meijer, Walmart, or Home Depot. These are two very different types of commercial uses with very different impacts. To place the Township in a more proactive position to address this issue, I recommend the Township establish standards in these Districts regarding the maximum allowable sizes of buildings. For example, the B-2 District can include provisions prohibiting any building from exceeding a total of 10,000 square feet (for example) "by right", and require any building in excess of 10,000 square feet to be treated as a special land use (thereby requiring special review proceedings and a public hearing).
6) The description of the Community Commercial classification includes the statement: *"High density residential development may be permitted adjacent to community commercial areas providing there is adequate buffering between the two uses and further provided the impacts of the commercial uses are minimal."* Is this statement suggesting that high density residential uses should be a permitted use in the B-2 District, or that high density residential districts may be appropriate adjacent to B-2 Districts within the Community Commercial area? I recommend implementing the latter of these interpretations.

Questions:

1) Do you feel the above recommendations should be pursued?
2) Are there other implementation strategies that you feel deserve attention?
3) Are there any particular issues that have surfaced under the current Zoning Ordinance regarding these Districts that should be addressed in the new Zoning Ordinance?

Industrial Development

Policy: The Master Plan establishes a single industrial area between I-75 and Dixie Highway, to the north of the I-75 interchange. The Plan describes the "Industrial" classification as follows:

"The purpose of the industrial classification is to provide locations for wholesale activities, warehouses and light industrial opportunities which have limited associated external effects, such as assembly and fabrication activities. The classification also permits commercial establishments including uses permitted in the community commercial and highway service classifications with adequate utilities. It is the intent that these uses will expand the economic base of the Birch Run area and the employment opportunities available to Birch Run Township residents. They will not have adverse effects on surrounding uses or detract from the township's rural character. "

Implementation Issues: The existing ordinance includes a single industrial district – the M-1 Industrial District. It appears that the purpose of the M-1 District is reasonably coordinated with the Master Plan's "Industrial" area, including the focus of the district on "light" industrial uses. I offer the following recommendations:

1) The basic character of the M-1 District be carried over into the new Ordinance.
2) For the purpose of consistency and user friendliness, and recognizing that many industrial operations due not involve "manufacturing," I recommend the existing M-1 District be renamed I-1, Light Industrial District.
3) To more effectively encourage unified, coordinated, and clustered development, as recommended by the Master Plan, and improve access management including limiting excessive curb-cuts along important thoroughfares, I recommend consideration be given to a minimum lot area standard of one acre or more and 200' or more of frontage (currently no minimum requirements for the M-1 District).
4) For the purpose of consistency and user friendliness, I recommend the "10% rule" for side and rear yard setbacks be deleted, and a simple across-the-board 40' setback be employed except where a Industrial District abuts a residential district in which case a 100' setback shall apply.

5) Like the commercial districts, the present M-1 District provides officials with limited ability to effectively manage the type and character of future development in industrial areas. For example, once a parcel is zoned M-1, the landowner may establish, by right, a small warehouse building or a multi-acre fabrication plant. These are two very different types of industrial uses with very different impacts. Officials may want to again consider using building size standards to assist in the separation of uses permitted by right versus those permitted as special land uses.
6) The description of the Industrial classification includes the statement: *"The classification also permits commercial establishments including uses permitted in the community commercial and highway service classifications with adequate utilities."* Is this statement suggesting that, as a general rule, the commercial development permitted in the commercial classifications should also be permitted in the Industrial area, or only certain specific and limited uses? I recommend implementing the latter of these interpretations. Otherwise, the Township's designated Industrial area may be lost to commercial encroachment.

Questions:

1) Do you feel the above recommendations should be pursued?
2) Are there other implementation strategies that you feel deserve attention?
3) Are there any particular issues that have surfaced under the current Zoning Ordinance regarding industrial development and the M-1 District that should be addressed in the new Zoning Ordinance?

Low, Medium, and High Density Residential Development

Policy: The Master Plan establishes four areas devoted primarily to residential development: 1) low density single family residential; 2) medium density single family residential; 3) high density residential; and 4) mobile home park. The Master Plan does not provide any policies regarding development densities or lots sizes in these areas, but rather describes such development only as either single family, two family, multiple family, or mobile home park development.

Implementation Issues: The Plan implies the use of two or more zoning districts to accommodate the residential land uses contemplated by the four residential areas listed above. The existing ordinance includes three residential districts and these are summarized below:

District	Principal Residential Uses	Minimum Lot Area
R-1	Single family dwellings	33,750 sq. ft.; 13,000 sq. ft. with public sewer.
R-2	Single/two family dwellings	Single Family: 33,750 sq. ft.; 12,500 sq. ft. with public sewer. Two Family: 33,750 sq. ft.; 11,050 sq. ft. with public sewer.
R-3	Single/two family dwellings and multiple family dwellings (mobile home parks by special use)	Single/Two Family: Same as R-2 district. Multiple Family: 33,750 plus 2,250 sq. ft. for each additional unit; higher density available with sewer.

(43,560 sq. ft. = 1 acre; 33,750 sq. ft. = 3/4 acre; 21,780 sq. ft. = 1/2 acre; 10,890 sq. ft. = 1/4 acre)

I have several concerns with the current district structure as a means to implement the residential policies of the Master Plan, as follows:

1) The R-1 District permits 13,000 sq. ft. lots where sewer is present (or may become available). If this District is to serve as a comparatively low density residential district, 13,000 sq. ft. lots seems to be excessively small. Such districts in rural townships frequently provide for development densities ranging from one dwelling per 1/2 to 1 acre or more in size. Again, the Master Plan does not provide much guidance in this matter.
2) It is unclear as to the rationale for the R-2 Districts minimum lot area of 11,050 sq. ft. for two family dwellings. Two family dwellings typically have lot sizes equal to or greater than that required for single family dwellings in the same district (12,500 sq. ft.).

3) The R-3 District permits varying density ranges and housing types. Thus, the effective review of a R-3 rezoning request may be undermined as officials have no knowledge of the actual residential use to be established should the rezoning request be approved. It can be difficult to adequately evaluate the merits of the rezoning petition without such information. A District established solely for multiple family developments, and a District established solely for mobile home parks, would be helpful in this regard.

I recommend the Township consider the following basic structure for its Residential Districts:

District	Principal Uses	Minimum Lot Area	Special Notes
R-1	Single family dwellings	Sfd: 33,750 sq. ft.	Generally similar to the existing R-1 District.
R-2	Single family and two-family dwellings	Sfd: 33,750 sq. ft. w/o sewer; 12,500 sq. ft. w/sewer. Tfd: 33,750 sq. ft. w/o sewer; 12,500 sq. ft. w/sewer.	Generally similar to existing R-2 District, but with slightly larger lot size for two family dwellings with sewer. Consideration should be given to increasing two family lot sizes somewhat over that required for single family dwellings, such as 45,000 sq. ft. w/o sewer and 16,000 sq. ft. w/sewer, if the Township is concerned about the significantly varying densities between single and two family development in the district.
R-3	Single family and two-family dwellings	Sfd: 33,750 sq. ft. w/o sewer; 8,000 sq. ft. w/sewer. Tfd: 33,750 sq. ft. w/o sewer; 10,000 sq. ft. w/sewer.	This is a new District that provides for higher development densities than the R-2 District to address the potential need for such higher densities. This District can be established as part of the new ordinance or could be established when a demonstrated demand is identified.
R-MF	Multiple family dwellings.	Variable	This is a new District that is principally for multiple family developments.
R-MHC	Manufactured Housing Communities (mobile home parks)	Mobile Home Commission Rules and Regulations	This is a new District that is principally for manufactured housing communities (mobile home parks).

Sfd= single family dwelling, Tfd = two family dwelling

This approach is not drastically different than the current approach, except greater distinction is provided regarding minimum lot sizes and the scope of residential uses permitted in each District. This approach better enables the Township to evaluate rezoning requests as the township will have a clearer understanding of the potential uses and development densities being considered.

Questions:

1) Do you feel the above Districts structure is generally reasonable and should be pursued? If so, are there any changes you believe to be beneficial? If you do not feel the structure is beneficial, what structure do feel should be considered?
2) Are there any particular issues that have surfaced under the current Zoning Ordinance regarding the existing Residential Districts that should be addressed in the new Zoning Ordinance?

Agriculture / Dispersed Residential Development

Policy: The Master Plan places the majority of the Township in the "Open Space/Agricultural" and "Dispersed Residential" areas. The Master Plan describes the purpose of these areas as follows:

Open Space/Agricultural: *"The purpose of this classification is to protect farmland and rural character by controlling residential and other non-farm development in primarily agricultural and open space areas. It is the intent that agricultural areas will be maintained. Single family dwellings and accessory uses will be permitted by right in this district, while a limited number of non-farm uses will be permitted by special use permit. Cluster or open space development, in which residences are grouped together and a large portion of the original site is kept as open space, will be encouraged through zoning incentives. Other non-farm uses shall be excluded or restricted. Existing commercial uses approved through special use permits issued by the township are recognized and it is not the intention of this district to encourage their elimination."*

Dispersed Residential: *"The purpose of this classification is to control the development of non-farm uses within areas comprised primarily of open space and agricultural uses. Uses permitted by right in the agricultural/open space classification will also be permitted, while additional nonfarm uses will be permitted by special use permit. Cluster or open space development in which residences are grouped together and a large portion of the original site is kept as open space, will be encouraged through zoning incentives. Other non-farm uses shall be excluded or restricted. Existing commercial uses approved through special use permits issued by the township are recognized and it is not the intention of this district to encourage their elimination."*

Implementation

There are several observations that I want to make at the onset of this implementation discussion that will then lead into a broader discussion of farmland protection and residential development in agricultural areas. First, the Master Plan appears to provide no substantive policies or guidelines regarding what sort of densities are appropriate in the Open Space/Agricultural and Dispersed Residential areas. I do not know whether the absence of such important policies is purposeful. Second, my reading of the purposes of each of the Open Space/Agricultural and Dispersed Residential areas does not establish a clear difference between these two areas. They appear to be nearly identical in purpose.

As a result of these two conditions, and without the benefit of insight from township officials, it is difficult for me, as your consultant, to present appropriate implementation strategies for inclusion in the new Zoning Ordinance to address the Open Space/Agricultural and Dispersed Residential areas. However, I want to share with you some insight into issues pertinent to farmland preservation and residential development in farmland areas in the hopes of facilitating decisions on the most appropriate manner to implement the Open Space/Agricultural and Dispersed Residential areas.

Many community master plans support agriculture and/or farmland preservation. However, when it comes to zoning regulations, some communities do nothing more than permit agricultural activities and do not attempt to aggressively protect agricultural resources. This is the case with Birch Run Township's current zoning regulations which permit an unlimited number of one-acre (A-1) and three-quarter acre (A-2) lots throughout the vast majority of the Township. The amount of residential development that encroaches into agricultural areas of Birch Run Township, and its impact on area resources is solely a function of market conditions with little in place to purposefully direct growth or encourage preservation of farmland resources and rural character. Other communities strive to aggressively protect agricultural resources on a long term basis through significant limitations on the amount of farmland consumption by new residential development. Effective farmland protection zoning techniques typically require limitations on both the number of new non-farm dwellings and limitations on the acreage set aside for each non-farm lot. Frequently at issue in such a debate is the appropriate balance between private property rights and what is best for the community as a whole. This debate varies from community to community.

Some examples of zoning approaches for agricultural areas are summarized in the table below. These examples increase in "aggressiveness," with #1 being the least aggressive. Please note that some view the increasing limitations of the examples (as one goes from #1 to #2, #2 to #3, and so on) as unreasonably interfering with a landowner's development rights. Others will argue otherwise.

	General Description	Some Advantages	Some Disadvantages
1	Require minimum lot sizes of 1 or 2 acres.	Allows the landowner to use only 1 acre of farmland for each new residence, thereby encouraging efficient use of land resources for each residence.	Encourages wide scale residential encroachment in agricultural areas, increased conflicts between farm and non-farm residences, unmanaged growth, higher property assessments, and loss of rural character. Also, significant farmland could be lost due to 5, 10, or 20 acre splits (as is the case currently in Birch Run Township).
2	Require minimum 5 or 10 acre lots for both non-farm residences and commercial agriculture.	Limits the amount of residential encroachment into farm areas and better assures buffering between residences and farm operations.	Encourages unnecessary loss of farmland as it significantly heightens the amount of acreage which must be taken out of farming for each residence (5 or 10 acres per residence).
3	Require minimum 5 or 10 acres lots, but also permit a designated limited number of lots which may be as small as 1 acre (such as a 1 acre lot for each 20 or 40 acres of a parcel existing at the time of ordinance adoption).	Limits the amount of residential encroachment in farm areas and better assures buffering between non-farm residences and farm operations, while allowing a limited number of 1 acre lots.	Except for the allowance of a limited number of 1 acre lots, this approach encourages loss of farmland as it significantly heightens the amount of acreage which must be taken out of farming for each residence. Also, zoning administration may take more time to assure the landowner does not exceed their allotted number of 1-acre splits.
4	Require lots to be minimum of 1 acre in size, but limit total development density to a maximum of 1 dwelling per 10 acres. Thus, a parcel of 80 acres could be developed with eight dwelling units on lots ranging in size from 1 acre to 20 acres or more.	Limits the amount of residential encroachment into agricultural areas, and does not require excess acreage for residential lots. Also, provides flexibility to the landowner regarding preferred lot sizes.	Additional administrative time is required to assure the maximum development density on a parcel does not exceed 1 dwelling per 10 acres. Also, significant farmland could be lost due to 5, 10, or 20 acre splits (as is the case currently in Birch Run Township).
5	Require lots to be minimum of 1 acre and a maximum of 2 acres in size, and limit the number of such non-farm lots to one per 40 acres in the farmland parcel. For example, a parcel of 80 acres could be developed with two dwelling units on lots ranging in size from 1 to 2 acres.	Significantly limits the amount of residential encroachment into agricultural areas, and does not require excess acreage for residential lots.	Additional administrative time is required to assure the maximum development density on a parcel of record does not exceed 1 dwelling per 40 acres.

This issue of lot size and density limitations in agricultural areas is extremely important as future residential development may bring the greatest land use change to Birch Run Township in the coming 10 to 20 years. Because the majority of the Township is devoted to agriculture, the manner in which this residential development is accommodated will have direct implications upon the long term future of farming and the community as a whole. For example, a typical Township (36 square miles) with 1 acre zoning through most of the community is planting the seed for a "build-out" population of 40,000 persons or more (approaching one half the population of Ann Arbor). Such zoning encourages the encroachment of nonfarm residences into agricultural, wooded, and other natural resources areas. This condition is generally associated with increased conflicts between residents and farming operations; escalating assessed property values and taxes on farm parcels; increased road traffic and obstacles to farm equipment; and reduced tillable acreage. All of these conditions undermine the long term viability of farming in the local area. This condition also heightens the need for paving gravel roads and improving/expanding public services. This, in turn, frequently encourages additional development and heightened taxes. I assume the planning consultant that worked with the Township on the Master Plan discussed these issues with you and I will not delve further into this aspect of the "puzzle" at this time. Similarly, I assume the past consultant discussed the concept of transfer of development rights (TDR) and purchase of development rights (PDR) and that, since such concepts are not included in the Master Plan, officials are not interested in pursuing such farmland protection/growth management strategies at this time.

Another important issue is "clustering." Both the Open Space/Agricultural and Dispersed Residential areas speak of encouraging clustered development through zoning incentives. However, to be effective, such zoning incentives must typically increase profitability. Profitability is typically directly linked to the number of attainable lots. If the by-right option in these areas in one-acre home sites, and higher densities are not feasible without the benefit of public sewer, then it is unlikely incentives can be established that will encourage clustering. Increased profitability can not be effectively realized through zoning when the zoning regulations make tradition development patterns the highest density option as a matter of right. Clustering, and the associated setting aside of open space, will nearly always reduce the number of available lots in the absence of sewer. Thus, the Township's current zoning program for its A-1 and A-2 Districts (1-acres and 3/4-acre lots, by right) can not effectively encourage clustering through zoning incentives if these by-right densities are maintained unless a comprehensive sewer service program is to be undertaken. Such a program would be contrary to the Master Plan and not likely practical or feasible.

Questions:

1) What is the substantive difference between the Open Space/Agricultural and Dispersed Residential areas?
2) Can local officials realistically envision developing a new zoning ordinance that places greater restrictions on development densities then the current A-1 and A-2 Districts? If so, should any of the options presented in the previous table (page 6) be pursued for either the A-1 or A-2 Districts? Are there other approaches that should be considered?
3) How do you envision effectively encouraging clustering if the by-right development densities are not lowered? Do you support lower by-right development options as a means of encouraging clustering?
4) Aside from the issues raised in the discussion above, are there any particular issues that have surfaced under the current Zoning Ordinance regarding the A-1 and A-2 Districts that should be addressed in the new Zoning Ordinance?

Note: The issues raised above are complex. This matter will be addressed last during our July 21 meeting and it is my hope that the meeting will enable us to begin discussion of this topic and, if possible, identify a preferred direction at the July 21 or August 27 meeting. It is very important that officials consider this issue very carefully prior to our July 21 meeting and be prepared to share their perspective on this matter.

Planned Unit Development District

I recommend the new Zoning Ordinance provide for planned unit development (PUD) opportunities. As provided for in the Township Zoning Act, PUD regulations are intended to afford more flexible forms of development as compared to the more normal standards of a zoning ordinance's district regulations. This flexibility is intended to, in part, encourage the use of Township land in accordance with its character and adaptability; assuring the permanent preservation of open space, woodlands, and other natural resources; encouraging energy conservation, and allowing innovation and greater flexibility in the design of development. The current Birch Run Township Zoning Ordinance treats PUDs as special land uses (see Section 1607 and 1608). Section 1607 focuses on residential PUDs of an open space community character. Section 1608 focuses on PUDs of a shopping center character. I recommend the new Ordinance treat PUDs as a separate zoning district for the following principal reasons:

1) As a separate district, approval of a PUD requires a legislative action (a rezoning contingent on a specific development plan). As a legislative action (rather than an administrative action, such as approval of a special land use), the Township is in a stronger position to negotiate an acceptable project. Also, as a legislative action, the courts hold the legislative body (Township Board) to a lesser burden of proof as compared to an administrative body approving a special land use (should there be a challenge).
2) The packaging of PUD provisions as a separate district enables the Township to make wider use of the PUD provisions. For example, under the current ordinance, only two type of PUDs are available – residential open space communities and shopping centers. Examples of other PUDs that are difficult to define under the limitations of a special land use approach include the re-use of a nonconforming structure, mixed residential/commercial developments, and mixed commercial/industrial developments.

Under a PUD District approach, an applicant submits a plan to the Township that specifies the proposed uses and site development features, including a preliminary site plan. The application specifies all features about the proposal that are not feasible due to the limitations of the other Districts, including the proposed uses and/or mix of uses, and site development standards such as setbacks, lot area, and building heights. If the Planning Commission/Township Board determines that the project presents a recognizable benefit to the community based on the project's merits, and would not otherwise be feasible according to any other District, the preliminary plan is approved and the parcel is placed under a PUD designation on the Zoning Map. Thus, the rezoning is tied to a specific preliminary plan. The applicant then submits a final site plan. Upon approval of the final site plan and necessary building permits, construction may be initiated. Has the Township had any prior experiences with PUDs that shed light on the preferred method for administering such provisions? Does the PUD District approach seem reasonable, or do officials prefer to continue to treat PUDs as special land uses?

Open Space Community Overlay District

With the amendments to the Township Zoning Act brought about by PA 177 of 2001, Birch Run Township is required to include in the new ordinance what are commonly referred to as "open space zoning" provisions. The Township included such provisions in its current ordinance recently with amendments to Section 605. The law does not stipulate how such projects are to be reviewed and approved. I recommend the Township consider administering such projects as part of an Overlay District, such as an Open Space Communities Overlay district. The Overlay District would lay upon all other Residential Districts. A land owner in a Residential District would then have the choice of developing his/her property according to the base District's requirements (such as the R-2 district's requirements for minimum lot area and width) or develop the property according to the overlay provisions of the Open Space Communities Overlay District. The Overlay District exists on top of the R-2 district (and other Residential Districts) and a rezoning to such an Overlay District is not necessary. The overlay provisions would generally mirror the requirements of PA 177 in addition to addressing other site development issues. I recommend an overlay district for one simple reason – it sends a message that open space developments are encouraged and are not subject to burdensome procedures and approvals (site plan approval only, although a public hearing may be required). Landowners/developers view the process as comparatively "risk free" as opposed to rezoning and/or special land use proceedings. Are officials comfortable with processing open space communities pursuant to PA 177 as an overlay district?