

East Berlin Borough Council

October 3, 2007

President Charles Eisenhart called the meeting to order at 7:30 PM at the Liberty Fire Company. The meeting opened with the Pledge of the Allegiance.

Members Present: President Charles Eisenhart, Janet Bollinger, Forrest Brehm, Gerald L. Mummert, and Jacque Hoffman

Members Absent: Rodrick Saxon, Gregory Green, Borough Manager T. Michael Thoman, and Mayor Keith Hoffman.

Also Present: Solicitor Matthew Battersby; Hanna Furst, Secretary; Bruce Hulshizer of Buchart-Horn; Officer Mike Grim, Earl Bollinger, David Richards, John Lerew, Freda Lennon, Robert Clayton, Doris Sabine, Jan Hoffman, Dave Woodward, Lou Ann Van Lieu, Ken & Patricia Young, John & Karen Cleary, Sue Hess, Itoe Hoak, Carole Sue Topper, Harold and Leslie Deardorff, Herbert Perkins, John Schlaline, Michael Cook, Gene Swartz, Bev Judus, Bill Powell, Deb Champlain, Jason & Jeanne Wood, Mr. & Mrs. Jeff Millhimes, Paul & Sarah Scozzaro, Jay Weaver, Sr., Michele Devita, and Erin James, Evening Sun Reporter.

The minutes of the previous meeting were approved with the following corrections:

Under Unfinished Business; Gerald Mummert suggested the 1st sentence should be amended to state; President Eisenhart stated the Borough had the engineer review the sketch plan presented by Mrs. Young and the cost is \$14,000 and is not finished yet. *On a motion by Gerald Mummert, and seconded by Forrest Brehm and passed, this correction to September's minutes were approved.*

Under Solicitor's Report; in the first paragraph, second sentence from the bottom; the sentence: The second well (2900 gallons per day) that would be the back up well. The sentence should be amended to read: The second well (**29000** gallons per day) that would be the back up well. *On a motion by Charles Eisenhart, and seconded by Gerald Mummert and passed, this correction to September's minutes were approved.*

On a motion by Forrest Brehm, seconded by Jacque Hoffman and passed, payment of the bills for the month of September was approved.

Constituents from the community that wish to address council are as follows with a five (5) minute allotment.

Ken Young, 203 Beaver Street, questioned council on what happened to the "Ken Young" file. He received a letter from the Borough Office stating the "Ken Young" file became unavailable. He states there have been several references to the Ken Young file and he has given copies of what he spoke about to be placed in the Ken Young file and would like to know where it is now. Mr. Young spoke about previous years and the Beaver Street housing development. Mr. Young stated he discovered the property pond was dedicated to the Borough of East Berlin with no record of sale to Burkentine and Sons to allow the filling in of the pond and construction, and an easement was never acquired. On another subject; Mr. Young then stated that Police Chief Michael Grim was a witness to the failure of the county District Attorney Shawn Wagner to investigate election irregularities in East Berlin, and he wants Officer Grim to deliver to James Reeder, Deputy of State Attorney General a packet of information containing the election irregularities, he also gave a packet to Janet Bollinger. Then Mr. Young spoke about the sale of the Tyco plant; and in order for the plant to be sold it has to be free from any contamination and it is important that the council and the community to stay on top of this, and make sure the wells that are closed up be tested.

Patricia Young, 203 Beaver Street, is here to invite everyone to a "Meet the Candidates Night" to be held on October 30, 2007, at the East Berlin Community Center from 7 – 9 PM. It will be moderated by the League of Women Voters of Carlisle District. The candidates will receive questions in the mail to prepare for this and the moderator will chose 3 questions of the 6 or 7 questions they get. Then the audience will be able to write on an index card any questions they may have for the candidates, and there will be refreshments afterwards.

Doris Sabine, 504 West King Street, stated its time for a change, when Borough residents are not allowed to ask questions at the Borough Council meetings. She stated its time to ask for an accounting of the \$47,643 of legal expenses the solicitor billed the Borough in 2006. She also stated that the council doesn't enforce the town ordinances they commissioned to be written in 2002. She would like the residents to be an informed voter on Tuesday,

November 6th, 2007 at the Community Center; the polls are open from 7AM to 8PM. She also inquired whether council had an answer to her June 15th letter about the hot Bar-B-Q broiler. President Eisenhart answered that the smoke, bad air, clean air is regulated by the federal government Clean Air Act. Ms. Sabine is more concerned with the device being hot, and whether it is safe to be out along the street. President Eisenhart suggested she call the police or the mayor and get the information on file. She also questioned the 2 signs on the business and why the police officer isn't asked to enforce these ordinances. President Eisenhart stated it was part of his contract to enforce the town's ordinances. Officer Grim stated he was given a letter by the Borough Council to cease doing it. (Referring to enforcing the town Ordinances.) President Eisenhart requested to see that letter. Ms. Sabine also commended Mr. Mummert for his efforts to amend Resolution 4-2005-2.

David Richards, 202 Beaver Street, read from a letter he submitted to council about his concerns on water and sewer rates. He also questioned the reason behind doing curbing and sidewalks in quadrants rather than doing the worst first, and he wanted to know why more information was not available about the agreement with BD Equities. Mr. Richards told about his meetings that he had with the water/sewer committee. Mr. Richards wanted to know if council intends to correct the water and sewer rates according to his findings. He also stated that the material submitted to council be kept in a correspondence file, and that contrary to the solicitor's statement at a previous meeting that the mere acceptance and storage of submitted materials does not constitute approval or action. He thinks it is good practice to retain submitted materials for a specified time, usually seven years.

President Eisenhart requested that Bruce Hulshizer answer some of Mr. Richards' questions. Bruce Hulshizer stated he was referring to his questions on the sewer and Act 537. In short, the agreement with BD Equities provides that the Borough is only responsible for \$1.6 million, capped. Tapping fees are governed by state laws. BD Equities is paying all the costs above \$1.6 million. Upgrade and repair is needed for the 50 year old borough plant and the estimated cost is \$1.6 million; that cost is for a band-aided plant. So basically the borough is getting a new plant for the cost of a band-aided plant. Buchart-Horn's estimate to build the borough's own plant would be \$3.4 million, then instead of sewer rates increasing an estimated 40% they would go up an estimated 130%. The \$3.4 million would have been to service the town as it is now, without the new development. Mr. Hulshizer stated this is what the Act 537 is all about. Mr. Richards stated he didn't think Mr. Hulshizer did a very good job on this plan. Mr. Hulshizer responded that he was complimented by DEP and the attorney's on how good his plan was, and he continued to clarify that you do not put every little detail into the plan. Mr. Richards stated he didn't think the Act 537 plan was wrong, but by itself it is unsupported. Mr. Hulshizer stated this is just the planning document not the design plan.

Gerald Mummert commented that he and the Borough Manager have been meeting with Mr. Richards concerning the water/sewer rates and Mr. Richards should have contacted him with his final recommendations on the rates.

President Eisenhart told about losing the \$15,000 grant from the state, and that figure had a lot to do with the sewer rates. We are now contracting Kline Services to haul our sludge away and the fees for that service as of this date are \$31,000.

Karen Cleary, 122 West King Street, expressed her concerns on the Zoning Hearing Board's approval of the Rutter's expansion again. She stated letters have been sent to Mr. Rutter, all the government agencies and news media that she could get her hands on; citing her disapproval of the Rutter's expansion. Mrs. Cleary read from a handout where she cites what she perceives as violations concerning the Zoning Hearing on the Rutter's expansion. As she continued to speak her husband, John Cleary, continually interrupted her and was asked to refrain from his outbursts or he would be asked to leave. Mrs. Cleary ran over her 5 minutes and would not give up the floor; her husband again had an outburst. President Eisenhart instructed Officer Grim to escort Mr. Cleary out of the meeting; he continued his outbursts as he was being escorted out.

Mayor's Report: Mayor was absent.

Solicitor's Report: Attorney Battersby commented that he received a letter from Harold Eastman from the law firm of Puhl, Eastman, and Thrasher in response to the Borough's September 19, 2007 letter to the Young's. Attorney Eastman requests on the behalf of Kenneth and Patricia Young to extend the Borough's offer until the attorney has time to review the factual background of the matter, so that he can provide legal advice to his clients.

Attorney Battersby stated the Joint Sewer Authority with Hamilton Township is scheduled to go into effect October 15, 2007, then sometime thereafter we will have to schedule an organizational meeting; it will be advertised and will not be the same night as a borough council meeting.

Attorney Battersby informed the council that the 2005 Loan for Act 537 has come due. Borough Council will have to request another loan of \$200,000 from CommunityBanks. Attorney Battersby entertained a motion to advertise that on November 7, 2007 at 7:30 PM the Borough of East Berlin will enact an Ordinance for a General

Obligation Note, the purpose is to refinance the general Obligation Note of 2005, which the cost was associated with the expansion of the sewer treatment plant. The motion was made by Gerald L. Mummert and seconded and passed by Janet Bollinger for the advisement of the 2007 General Obligation Loan of 2007. **Motion Carried.**

Attorney Battersby felt obligated to correct the misunderstanding of the \$46,000 for legal fees that he was supposed to have received. The substantial legal work was done, but not by him, McNeese, Wallace, & Nurick were the legal firm for the BD Equities/CW Test and the joint authority with Hamilton Township. Attorney Battersby did have some expenses that he billed, but every penny was paid for by CW Test and not the tax payers of East Berlin. All engineering and legal fees including designing and engineering of the plan are being paid by CW Test. The bills are submitted to the Borough and then the Borough bills CW Test. Mrs. Sabine congratulated Attorney Battersby for the first answer to a question she has been asking for the last 2 ½ years. Attorney Battersby addressed Mrs. Cleary concerning her being upset or disgruntled by the Rutter's decision, that decision was rendered by the Zoning Hearing Board, not the Borough Council. Borough Council is not allowed to make those decisions by PA law; she would have to appeal that decision in the Court of Common Pleas of Adams County. Attorney Battersby answered one of Mr. Richard's about why little information is provided concerning the agreement with BD Equities. Attorney Battersby stated that they are still in the negotiation stages, he has a very thick file of attorney/client privilege information and we are no way through yet, but you will get to see the final results, and everything that is connected to this joint authority. All of it will be public record.

Engineer's Report:

Buchart-Horn Bruce Hulshizer of Buchart-Horn, Inc. informed council they are continuing on with the sewer design and are waiting for the authority to get set up before the permit will be sent to DEP.

COMMITTEE REPORTS:

Finance Committee:

Due to Mr. Greens absence President Eisenhart entertained a motion to pay the interest payment for the Act 537 loan. *The motion was made by Jacque Hoffman to draw on the loan for the Act 537 for an interest payment of \$315.97; it was second by Gerald L. Mummert and approved.*

Forrest Brehm informed council he attended a meeting concerning the Local Service Tax (OPT/EMST tax) there are a lot of changes to be made. At the meeting they found some loop hole that will need to be changed, and there should be another meeting in the next week or so. President Eisenhart mentioned this tax use to be Occupation Privilege Tax; the Borough will have to pass an Ordinance to collect this tax and we are waiting for a final draft of the ordinance from York Adams Tax Bureau.

President Eisenhart stated the Borough would like for auditing firm of Stambaugh-Ness to add three new accounts to our computer system: Capital Reserve Fund, Highway Aid Fund, and Debt Service Fund. The project would cost approximately \$500. President Eisenhart entertained a motion for this improvement. *The motion was made by Gerald L. Mummert to let Stambaugh-Ness install these improvements on the computer; it was second by Janet Bollinger and approved.*

Streets Committee: Nothing

Sewer & Water Committee: Mr. Mummert commented on an article he read in the Gettysburg Times about the Gettysburg Borough was going to have to spend \$17,000,000 to upgrade their sewer system because of chemicals draining into the Chesapeake Bay. Hanover Borough has an estimated \$20,000,000 cost for their sewer system. The reason Mr. Mummert brought this information to light was because with our new plant that will be built here in the Borough, the Borough won't have to worry about these chemicals going into the Susquehanna River basin. The benefits of building a new plant are pretty good with what we are doing here, especially with CW Test spending 75% of the money on the new sewer system. Gerald L. Mummert also wants to propose an amendment to the Borough Resolution 4-2005-2 once he gets the wording corrected.

IT Committee: Nothing

Public Safety: In lieu of the Mayor's absence Janet Bollinger read the police report stating 47 incidents for the month of September.

Janet Bollinger had received a phone call from Jane Snyder about the tenants at the Earl Brown residence and the litter all about their property. Janet Bollinger spoke with Officer Grim and he told her that is a zoning issue and was turned over to the Borough Manager because he no longer takes care of those kinds of things. Janet Bollinger also

received a call from Herbert Perkins who lives on Water Street, he was calling about an offensive odor on Monday Oct. 1st, supposed to be coming from Pennwood Products.

Planning & Zoning: President Eisenhart stated there will be a planning meeting on Wednesday, Oct. 24, 2007 @ 7PM at the Borough Hall. The Planning Commission is meeting to work on an amendment to the zoning ordinance.

Personnel: Nothing

Parks & Recreation: Mr. Mummert mentioned the young boys that came to last month's meeting did come to the Park & Rec. meeting and presented their comments and ideas for fund raising to pay for the skate board park. Ground breaking is anticipated for this coming spring. Freda Lennon questioned the liabilities of the skate board park. Attorney Battersby stated the Borough would have some liabilities, and should inform our insurance carrier.

Unfinished Business: None

New Business: President Eisenhart stated the council people that took the independent study course for FEMA and passed this month were Mr. Green, Mrs. Bollinger, Mr. Mummert, Mr. Brehm, and Mr. Eisenhart and they received their certificates. Also, Mike Thoman, Nathan Boyer, & Mike Wallen finished 7 hours of training on drinking water and waste water on September 18, 2007.

Correspondence: The Adams County Economic Development Corporation sent an invitation for their annual meeting Nov. 8, 2007; all council received a copy, if you are interested in going fill out the form and return to Hanna Furst.

A motion by Forrest Brehm was made to adjourn the meeting, Jacque Hoffman seconded it. Motion Carried.

President Eisenhart adjourned the meeting at 8:50 PM. The next regular meeting will be held Wednesday, November 7, 2007, at 7:30 PM, at the Fire Company.

Respectfully submitted,
Hannelore Furst, Secretary