

East Berlin Borough Council
December 12, 2007

Special Meeting

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

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

Members Absent: Rodrick Saxon

Also Present: David Richards, Robert Clayton, Perry Shearer, Debbie Shearer, Doris Sabine, Karen Clearly, John Cleary, Ken Young, Chuck Philips, John Lerew, Earl Bollinger, John Schlaline, Rosann Hoffman, Jan Hoffman, Herbert Perkins, David Woodward, and Freda Lennon.

This special meeting was called for the sole purpose of transferring assets and real property from the Borough to the East Berlin Area Joint Authority.

President Eisenhart stated there will be a comment period of about 5 minutes before we start.

Attorney Battersby held up a flyer that was passed around town and asked if the author was in the audience. Nobody came forward as the author. There were seven questions on the flyer. He addressed the questions:

- 1) Were there any illegal practices employed in the establishment of the Authority?
- 2) What type of salary will be paid to those on the Authority?"
- 3) What are the terms in length of service of those who make up the Authority?"
- 4) What type of money/assets will be transferred from East Berlin Borough to the Authority?
- 5) What is the salary of the attorney who will represent the authority?
- 6) Was there ever a public notice of application for members of the Authority? If not, then how were these positions filled? Did those on council simply appoint themselves to the Authority?
- 7) What type of a relationship will the East Berlin Authority have with Hamilton Township?

Here are the answers to the questions:

East Berlin Area Joint Authority was created pursuant to the procedure set forth in the Municipality Authorities Act.

East Berlin Area Joint Authority has not budgeted for any compensation for board members.

Pursuant to the Municipality Authorities Act, the initial appointments to the East Berlin Area Joint Authority were staggered. Subsequent appointments will be for terms of 5 years. Here is a list of the current board members: Charles Eisenhart -1 year term; Gregory Green -2 year term; John Lerew - 3 year term; Gerald L. Mummert - 4 year term; John C. O'Brien-5 year term-Hamilton Township; the terms begin January 2008.

The money/assets that will be transferred from East Berlin Borough to the Authority are the water and sewer system, including any land related thereto; funds which have been maintained in separate water and sewer accounts. The equipment used by both the Borough and the Authority will be owned jointly. The attorney will be paid \$100 an hour on an as need basis and there is no retainer fee.

Borough Council appointed 4 of the members of the East Berlin Area Joint Authority Board. Three of these individuals are members of the Borough Council Water and Sewer Committee. The fourth

member from the Borough is a private citizen. The 5th member of the Board is appointed by Hamilton Township. Hamilton Township has the right to appoint one member (out of 5) of the governing body of the East Berlin Area Joint Authority.

Comment Period:

Doris Sabine asked Attorney Battersby if he was the architect of this agreement initially and is he the lawyer for this. Attorney Battersby responded he was not the architect. C.W. Test Developers approached the Borough with this idea. He is the lawyer for the Borough, but there is another lawyer here representing the law firm of McNees, Wallace, and Nurick of Harrisburg and Solicitor Hume is the special counsel that drafted the documents and oversaw the creation of the municipal authority.

Mrs. Sabine asked Matt if he was going to be the lawyer for the water authority and if this was a conflict of interest. He responded that the authority has asked him to be their lawyer, and this is not a conflict of interest because the other law firm did all the legal work.

Herb Perkins asked if we were jumping the gun.

David Woodward asked why is there a rush to get this done. President Eisenhart stated we are not rushing this, it was started awhile ago, and it's coming to a close and there are lots of things going on; the design of the plant, the authority needs to go get a loan, if they don't have any assets they can't get a loan so the transfer is necessary. There is a need to move along, we're not rushing it. It's been dragging out for a good many years.

Karen Cleary asked about Matt's fees and to clarify how he is paid. Solicitor Battersby answered that C.W. Test agreed to re-imburse all legal fees, engineering cost associated with the creation of the authority both here and in Hamilton Township, under the agreement he entered into with Borough Council, approved at a Borough Council meeting and is part of the minutes. He further stated, you get the developers to pay these costs so that it doesn't fall back on the tax payers; and without the sewer and water systems they can't build homes.

President Eisenhart turned the meeting over to Solicitor Erik Hume. He went over a packet of materials concerning the agreement, discussed the agreements and the information of the Joint Authority. Erik Hume discussed the first document which was **Resolution # 12-2007-10**; which there is a summary of the resolution as follows. A full copy is made a part hereof.

A resolution of the Council of the Borough of East Berlin authorizing and approving an agreement and the form thereof between the Borough and the East Berlin Area Joint Authority whereby the Borough will convey the public water and public sewer facilities owned by the Borough to the Authority, provide for the leasing for certain Borough facilities from the Borough to the Authority, providing for the joint acquisition and maintenance of equipment used by both the Borough and the Authority, granting the Authority the right to use certain rights of way of the Borough and ancillary matters related thereto; directing the execution, acknowledgement and delivery of the agreement on behalf of the Borough; and authorizing and directing other necessary proper action.

Mr. Hume continued summarizing the sections of the resolution.

The second document Solicitor Hume discussed was the one titled Assignment, Dedication & Service Agreement. He stated this is the master agreement between the Authority and the Borough. The Background section gives a brief history of the agreements. He continued to go over each section.

The next three documents were Bill of Sales, transferring property for the machinery, equipment, fixtures, and items of personal property. Certain assets of the Borough that will transfer will be 60%; (30% from water, 30% from sewer. This is the same as it is now with the Borough, 40% General; 30% Water, 30% Sewer)

He then continued to the next document; Ground Lease Agreement, property that the water/ sewer treatment plant will be lease for 50 years at an annual rate of \$100.00 (One Hundred). The Authority will have to obtain Fire & Casualty Insurance, and Public Liability Insurance.

The next document is the Lease Agreement. This is for the lease of the office building. The term of the lease is 50 years and the rent is also \$100.00 (One Hundred). The authority will also be able to store items in the garage.

The Leased Employee Agreement is the next document that Mr. Hume discussed. Instead of the Authority hiring their own staff and the Borough hiring their own staff they will share employees. The Borough will still maintain the payroll, and the authority would re-imburse the Borough. The Authority will need a licensed plant operator in Pennsylvania; the Borough can't fire the operator.

The last document is the Joint Equipment Agreement. There are certain items of personal property, listed as Exhibit A, which is used for Borough purposes and/or Authority purposes. This equipment will be owned jointly by both the Borough and Authority. The Authority would have 60% interest and the Borough would have 40% interest. Like it was done in the past the Borough would be maintaining the equipment and the Authority would reimburse the Borough 60% of the cost. An example was given: If a truck needed \$1,000 in repairs, the Authority would pay \$600 and the \$400 would be the expense of the Borough. This is putting into place the same practice that was done in the past.

Mrs. Sabine started asking questions and a disruption ensued. Mr. John Cleary then threatened President Eisenhart that the Borough of East Berlin would be suing him personally, for the little regime he set up on his way out the door. Mrs. Sabine continued asking questions. Mrs. Cleary wanted to know why the council is rushing this. Many of the audience members continued talking out of turn. President Eisenhart asked the audience to please sit down and be quiet or leave the room. Mrs. Sabine continued disrupting the meeting and Officer Grim was asked to escort her out, but she quieted down and did not leave.

President Eisenhart entertained a motion to adopt **Resolution 12-2007-10**.

Gregery Green made the motion to adopt Resolution 12-2007-10, Forrest Brehm seconded the motion. Motion Carried. A roll call vote was as follows: J.Bollinger-No; F.Brehm-Yes; G.Green-Yes; J. Hoffman-Yes; G.Mummert-Yes; and C.Eisenhart-Yes. 5-Yes' and 1-No.

The next step is for the authority to adopt the agreements.

The meeting was adjourned at 8:15 PM.

Respectfully Submitted,

Hannelore B. Furst
Borough Council Secretary