

EAST BERLIN BOROUGH COUNCIL  
128 Water Street  
East Berlin. PA 17316

August 10, 2009

A special meeting to discuss a draft Ordinance and Agreement that would guarantee a \$5.1 million debt of the East Berlin Area Authority (Authority) to the Pennsylvania Infrastructure Investment Authority (PennVest) was opened with the Pledge of Allegiance at 7:00 p.m.

All Council Members were present, as was the Borough Solicitor. The Mayor was absent. The attendance sheet for the general public was misplaced.

Mr. Frank Leber, of the firm Rhoads & Sinon, LLP, as a representative of the Authority, was in attendance to discuss the presented draft Ordinance and Agreement. The required newspaper advertisement to adopt the draft material would be done by Mr. Leber. The 30-day notice requirement was waived, such that the Borough Council could adopt the draft Ordinance and Agreement at its next meeting, August 19, 2009. (Short notice was required to meet PennVest's time schedule). President Richards distributed a list of proposed changes to both the draft Ordinance and Agreement, and read through his proposed changes to the Ordinance (attached). All questions on the draft material were addressed to Mr. Leber.

In answer, Mr. Leber indicated that the language of the proposed Ordinance and Agreement were dictated by PennVest, and that PennVest would simply not approve any changes. He indicated that the obligation of the Borough under the Ordinance was not a surety arrangement, but set up deliberately by PennVest to act as a direct obligation of the Borough under the ~~state~~ *Local Government Unit Debt Collection Act*. The required Sinking Fund Depository is essentially a paper transaction. The notion of a Sinking Fund is essential, but is not executed.

While the Borough is required to budget for payment of its debt obligation, that budget action can be placed in the notes to the Income Statement, and need not be specific budget accounts. The Agreement also specifies that the Authority will furnish its financial data, including revenues and expenses, to the Borough. The Authority's engineer is to provide rate and revenue data, the operational condition of the Authority, and a debt report under the conditions of the Agreement.

Mr. Leber indicated the heart of the guarantee is consistent with the *Local Government Unit Debt Collection Act*, and appears substantially in the same form. On the other hand, the credit offsetting provisions are some 30 years old, and there have been some attempts to rationalize the language.

Some discussion continued on the merits of the Ordinance and Agreement and other related matters. For example, it was asked whether the sewer plant emergency generator was yet operative. As the related matters were not the purpose of the meeting, discussion on those matters was limited.

*A motion was made by Mrs. Bollinger to advertise the Ordinance and Agreement, seconded by Mr. Clayton. All voted in favor of the Motion.*

It was proposed that a post card be sent to Borough residents to give notice of the upcoming Council meeting and vote on the draft Ordinance and the guarantee of debt payment. After some discussion, it was determined a short letter explaining the Council's decision would be best. President Richards was to draft the letter and submit it to the Council members and Solicitor for comment before being sent.

*A motion was made by Mrs. Bollinger to send the letter, seconded by Mr. Clayton. All voted in favor of the Motion.*

*President Richards motioned to adjourn the special meeting of the East Berlin Council at 9:50 p.m.; seconded by Mrs. Bollinger. Motion was approved with all voting in favor.*

Respectively submitted,

David Richards, President  
East Berlin Borough Council

### **Comments on Draft Ordinance 2009-3**

Several nitpicks have been excluded, for example the second paragraph should have "the" inserted before "East Berlin".

Page 1. No comments. (exclude sinking fund and depository from title)

Page 2. Under Section 4, the Borough has *not* received any cost estimates from the Authority.

Page 3. a. Section 5: has to be reworded, run-on and confusing.  
b. Section 6: strike first "to this meeting..." on line 2.  
c. Section 7: delete first paragraph in its entirety, unnecessary and creates budget problems for the Borough.

Page 4. Continue deletion of first paragraph of Section 7. Delete "also" in starting paragraph.

Page 5. Section 10 should be deleted. As the Borough is responsible only in case of default of the Authority, it needn't set up a Sinking Fund.

Page 6. a. Section 14 indicates the Borough shall pay to DCED a filing fee. How much is it?  
b. Section 15 indicates the Borough is to contract with the sinking fund depository. We do not propose to have a sinking fund for an unlikely default.

Page 7. No comments.

Page 8. Signatory page; no comments except to note either Pres. or Vice can sign.

Exhibit A. Footnote 1 has two monthly amortization totals, 240 and 360. It is presumed the 360 is incorrect.

### **Comments on Guaranty Agreement**

General: Not well presented. "Authority" is really PennVest, and shouldn't be confused with EBAJA, the "Funding Recipient". No. 4 has 88 words in the first sentence; No. 11 is a 153 word sentence. Both could be clearer if shorter -- they are not gentle in their length.

Page 1. No comments.

Page 2. a. Guarantor Percentage in second line is not noted.  
b. In Section 2 (a) and (b) should be deleted, and (c) moved after the word "shall" in the first sentence. The Borough does not intend to add a potential liability and offsetting credit to its budget.  
c. "budgeting," is removed from the first line of the second paragraph.

Page 3. a. continued from # 4 on page 2, the "guarantor percentage" is missing.  
b. In Section 5, the "Consulting Engineers" should be changed to "Auditor". The consulting engineer substantially missed the estimate of costs of construction, and is unlikely to have expertise in budgeting.  
c. In Section 6, add "to Authority" to title.  
d. Section 7 is accepted. However, a section should be added indicating that if the Funding Recipient defaults, the Guarantor will assume all operations of the Recipient, who will be dissolved.

Page 4. Section 8. a. Guarantor percentage missing.  
b. Should the Funding Recipient default, the Borough is responsible for all costs. This further re-enforces the addition of a dissolution requirement.  
c. Section 9, a-c, no comments.

Page 5. a. Section 9, d., delete the sentence in parenthesis in the second and third lines. The Borough should not waive any notice provisions.  
b. Section 10 is accepted.  
c. Section 11 should be made into more than one sentence. Also, the "Engineer" should be replaced with "auditor" in determining financial position.  
d. Section 12 is accepted.

Page 6. Sections 13, 14, and 15 are accepted. Miscellaneous Sections 1 and 2 are accepted.

Page 7. a. Section 4 should have Guarantor name, address inserted; "Funding Recipient" should be added before EBAJA, and address added.  
b. Sections 5 and 6 are accepted.

Page 8. Sections 7 and 8 are accepted.

Page 9. Signature page. Guarantor and EBAJA names are to be added. Mr. Eisenhart is not a voting officer of the Authority and should be replaced with such as a signatory.

Comments those of David Richards, 8/9/09