

2008 YEARLY REPORT OF THE BOROUGH COUNCIL OF EAST BERLIN

This letter is the initial yearly report of the East Berlin Borough Council to the citizenry of East Berlin.

2008 started with the incoming Council having no Solicitor and Engineer, both resigning effective January 1, 2008, and with the Borough Manager retiring February 1, 2008. In the first few months of the year we advertised, interviewed, and hired replacement personnel. Below are listed *some* of the formal and informal actions we took over the course of the year.

A. Formal and Informal Actions of Borough Council

- We eliminated prior Council "Working Sessions", in which the public could not participate and for which no Minutes were taken. All sessions now have Minutes and are open.

- We added an Ordinance for the Office of Borough Manager, both to meet previous State requirements, and to permit our hiring of a replacement Borough Manager.

- We changed the Trash Collection Ordinance to allow the use of plastic bags and cardboard containers. Previously the use of plastic bags and containers were not legally permitted.

- We added an On-Street Handicapped Parking Ordinance. Existing handicapped parking spaces were previously marked without any established Borough Code provisions.

- We changed the Zoning Hearing Board from three permanent and two alternate members to five permanent members to remove potential quorum problems and tie votes. In addition, the ability of an appointed hearing officer to make a final decision without Board approval was removed.

- We adopted an Open Records Ordinance to comply with the Pennsylvania Right-to-Know Law. This Ordinance established procedures, notice, and time requirements for information requests to the Borough.

- We adopted a new Floodplain Ordinance to meet State and Federal Emergency Management Agency requirements. Absent this action, Floodplain insurance would not be available for residents living on the Borough floodplain.

- Finally, we adopted policies addressing the Borough's charitable contributions, the taking of official Minutes, and the provision of Borough services to other organizations. We expect to reach agreement on the provision of services in early 2009.

B. Trash Rates: The Borough has had to increase trash rates this year to \$40 per quarter to meet fuel cost surcharges by our contractor. While not in the actual contract, the previous Council had accepted and paid the trash collector's fuel surcharge. While the fuel surcharge has abated somewhat with the fall in fuel price, it is likely collection costs will again increase when the trash contract expires in the third quarter of 2009. While it is unknown at the present time what the new contract trash charges will be, an increase to as much as \$50 a quarter is possible.

C. The Borough's Financial Position

- Water and Sewer service responsibilities were transferred from the Borough to the Authority effective January 1, 2008. About \$1.5 million in property and \$800 thousand in financial assets were also transferred. Borough debt was reduced by about \$150 thousand. There are some unsettled asset transfer issues.
- The Borough had an operating loss of about \$16,000 in 2008. This was due to the payment of part of the Authority's insurance expenses under the Borough's past insurance contract, costs incurred by the Borough under the Agreement with the Authority discussed below, expenditures to meet State door safety standards, and replacement of the police car and several garage doors.
- The Borough has current reserves of about \$565,000, and has taken steps to reduce expenses and operate profitably in 2009. The Borough's annual audit is available for inspection at the Borough Hall and has been submitted to the State.

D. The Borough Council's Relationship With The East Berlin Area Joint Authority:

- The relationship between the Borough and Authority is controlled by the *Assignment, Dedication and Service Agreement* (Agreement), adopted by the previous Council and the five member Authority, which contained three Council members. There was no independent review of the Agreement.
- The incoming Council found multiple faults with the Agreement, and the Borough Council President distributed a proposed Revised Agreement to Council and all members of the Authority in early June.
- In late July, the Borough sent a letter to the Authority seeking an Executive Session of the Council and Authority to discuss and finalize proposed changes to the Agreement. The Authority indicated that any changes to the Agreement should be proposed and sent to the Authority by Resolution. ***That Borough Resolution, No. 8-2008-4, August 25, 2008, was totally ignored by the Authority.***
- In July the Borough also notified the Authority that the emergency generator for the sewer plant had not worked for several years, the water pump houses were badly in need of repair (eroded brick mortar and broken downspouts), and there was considerable junk around and within the pump house on Fish and Game Road. The trash was removed in March, no other repairs have been made.
- Three items are selected below to show identified faults in the Agreement and the Authority's simple refusal to follow portions of the Agreement it didn't like. ***Suggested changes to these and other items were presented to the Authority in July and in the ignored Borough Resolution.***

a. The "Leased Employee Agreement" required the Borough to hire a Licensed Sewer Plant Manager of the Authority's choosing, and "share" employees. All "shared" employee costs were to be divided at an unsupported ratio of 60% for water and sewer, 40% for Borough. ***The Authority unilaterally hired its own plant manager in February 2008.***

b. The "Joint Equipment Agreement" assigned equipment at the same unsupported 60%/40% ratio. In effect, the Authority became owner of 60% of the street sweeper, while the

Borough retained ownership of 40% of the sewer tanker. *The joint equipment purchase provision was simply ignored by the Authority when it later purchased a pick-up truck. The Borough was obligated to pay all operating costs of all equipment, including fuel.*

c. Finally, under the “Joint Office Lease”, the Authority was required to pay \$100 *per year* for the use of Borough office and garage space, furniture, equipment, and supplies. There were no provisions for utility costs, equipment purchase or repair, insurance, or supplies to be billed to the Authority.

- To force the Authority into addressing the very real grievances of the Borough, the Borough, by letter of November 5, 2008, gave notice it would terminate the Leased Employee Agreement under the provisions of Paragraph 11, effective January 1, 2009.
- The Authority responded by hiring all Borough employees except the Borough Manager, moved from the shared offices, and proposed to divide shared equipment. The Authority now employs 3 full-time and 3 part-time employees.
- The Authority's move and division of equipment are outside the provisions of the Agreement. *Their leased office space from Tucker Industrial Coatings costs \$650 a month, \$7,700 more on a yearly basis than it was paying the Borough..*
- The Borough did not oppose the Authority's actions, since it significantly reduced the costs incurred by the Borough. *It should be noted, however, that costs to the citizenry of East Berlin have greatly increased through the Authority's actions.*

E. The Failed Developer-Borough Sewer Plant Agreement: In December 2006 Borough Council entered into a service agreement with a developer under which the Borough would construct a sewer plant large enough to service its proposed 205 home community in Hamilton Township. The plant was nearly double the size of the plant necessary to serve East Berlin. In return, the Borough was obligated to pay only about \$1.5 million for its new sewer plant.

- In August 2007 the Borough and Hamilton Township formed the East Berlin Area Joint Authority. There is no financial commitment by Hamilton Township.
- The Authority received bids of over \$4 million to construct the sewer plant in early 2008. Construction costs had been severely underestimated by the developer and previous Council.
- Despite an increase in the Borough's contribution to \$2.5 million, the developer could not meet its increased costs and withdrew from the service agreement.

F. The New Sewer Plant's Effect On Current Water and Sewer Rates: Water and sewer rates have been set by the Authority since January 2008. In 2007, when run by the Borough, the average cost for water was \$3.10 per 1,000 gallons, for sewer \$5.78 per 1,000 gallons.

- The Authority now estimates its total sewerage projects to cost over \$9 million.
- If the Authority were to get a state grant for half of its estimated cost of the sewer projects, or \$4.5 million, the cost of borrowing money would be about \$90 dollars per account, per quarter.

- Sewerage operating costs for an average household using 12,000 gallons of water a quarter would be an additional \$72 (at \$6 per 1,000 gallons).
- Average household sewerage costs would then be about \$160 a quarter (\$90 borrowing + \$72 operating), about a 120% increase from June 2007. If the Authority does not receive at least a 50% grant or other subsidy from the State, the sewer rates will be higher.
- While the Authority indicated in its Progress Report on January 12, 2009 that anyone developing the Buttercup property would be using Authority facilities and providing substantial water resources, that is not accurate. There are no existing agreements with any developer to provide water to the Authority or use the Authority's sewage facilities.
- It is likely to be many years before any substantial additional use of the oversized sewer plant will occur, and it is problematic as to whether there will be any new water sources. In the interim the costs of the new facility must be totally borne by Borough residents.

Supporting documents for the Yearly Report are in a binder at the Borough Hall.

An open Community Forum will be held at the East Berlin Area Community Center on Tuesday, April 28, from 7:00 PM to 9:30 PM for citizen comments and questions.

David B. Richards
President, East Berlin Borough
Council