

REPORT OF THE BOROUGH COUNCIL OF EAST BERLIN FOR THE NINETEEN MONTHS ENDED JULY 31, 2010

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

In 2009 and 2010 the Borough adopted several changes to its ordinances, instituted a number of code enforcement actions, and addressed several financial issues. Taxes were also increased by one mill. Supporting material for the report can be reviewed at the Borough Hall

A. Formal and Informal Legislative Actions of Borough Council

- By Ordinance 2009-2, the Borough joined the Adams County Council of Governments; and later, under Resolution 9-2009-7, appointed a voting delegate and two alternates.
- By Ordinance 2009-3, required by the State of Pennsylvania, the Borough guaranteed a \$5,130,000 repayment of a Pennvest loan received by the East Berlin Joint Authority for sewer plant construction.
- By Ordinance 2009-4, the Borough increased its property tax rate from four (4) mills to five (5) mills. A further change (reduction) to the tax rate is expected in 2010. See Section D, Other Items,
- By Ordinance 2010-1, Chapter 31 of the Borough Zoning Code, *Excavation in Streets*, was replaced. Provisions were added to collect existing fees not previously collected. Besides giving notification of collection procedures, the Council, by later Policy Statement, excluded utilities from payment of fees under certain conditions.
- By Resolution 5-2009-5, the Council appointed a member and alternate to the Adams County Tax Collection Committee (ACTCC), required under State Act 32. The ACTCC has voted and selected the York Adams Tax Bureau (YATB) as its income tax collector. The Borough will participate in the ACTCC and YATB on an ongoing basis, and is a voting member of both.
- By Resolution 3-2010-2, the Council indicated it would follow the procedures for disposition of records set forth in the Municipal Records Manual, Act 428.
- The Council accepted initial By-Laws for the Planning Commission, and initiated and adopted a complete replacement of the By-Laws for the Park & Recreation Commission. Adopted by the Council in 2004, the Park & Recreation Commission By-laws were badly written and did not meet Borough Code.

B. Code Enforcement:

There has been considerable controversy over the Borough's enforcement of its Codes and Ordinances. East Berlin's Zoning Officer is a Senior Planner for Adams County, and is assigned to East Berlin by agreement between the County and East Berlin. The code violation citations made by the Borough were fewer than proposed by the Council Zoning Committee because of his review. Of the six citations made between January of 2009 and July of 2010 three were contested by appeal to the Zoning Hearing Board (ZHB). Those three cases are discussed below.

- *Hog Wild Sign*: On June 26, 2009, Richard and Tina Gulan (Hog Wild) were cited for excess signage by the Borough's Zoning Officer. Hog Wild appealed the citation to the Zoning Hearing Board, which, after hearing, found in the Borough's favor. Hog Wild then appealed to the Court of Common Pleas of Adams County, which has upheld the ZHB decision.
- *Tucker Banner*: On June 16, 2009, Tucker Industrial Liquid Coatings, Inc. (Tucker) was cited by the Zoning Officer for an oversize sign on its North Avenue plant. Tucker appealed the citation to the ZHB,

but changed his appeal at the initial ZHB hearing to a request for a variance from the size condition. At a later hearing before the ZHB, Tucker was granted a variance from the size limitation, subject to conditions.

- *Tucker Exception:* On August 4, 2009, Tucker was also cited by the Borough Council for failure to file a special exception for an industrial use in a mixed-use district when building his new plant on North Avenue in 2005. Tucker appealed the citation to the ZHB. After months of testimony and attempts by the Borough and Tucker to come to private agreement on the issues, the ZHB made five decisions (July 7, 2010):

Tucker's appeal of the Notice of Violation was denied.

The Borough's Motion to Dismiss Tucker's Application for Special Exception was denied.

Tucker's Application for a Special Exception for the North Avenue facility was denied.

Tucker's Application for a Special Exception for the King Street facility was denied.

The ZHB adopted Findings of Fact and Conclusions of Law of the hearing.

Tucker has appealed the ZHB's decision to the Court of Common Pleas.

C. The Borough's Financial Position:

Four items will be presented below; the Borough Audited Financial Results, Utility Service Financial Results, Cost of Code Enforcement, and Extraordinary Items.

Borough Audited Financial Results: The Balance Sheet below shows the Borough's change in financial position from 2003 through 2009. The EBAJA separated from the Borough at the end of 2007. 2008 and 2009 are the Borough's first two years of independent operations in over 50 years. Actual revenues and expenses by year and account are available at the Borough Hall.

<u>Assets</u>	2009	2008	2007	2006	2005	2004	2003
General Fund	\$195,352	\$366,699	\$374,272	\$409,814	\$307,163	\$286,453	\$212,943
Special Revenue	\$127,824	\$123,840	\$92,329	\$59,139	\$207,039	\$178,019	\$188,461
Capital Projects	\$10,187	\$17,129	\$228,326	\$90,397	\$102,730	\$114,568	\$122,984
Debt Service	\$313	\$312	\$303	\$300	\$300	\$300	\$300
Prop.Funds -- Utilities	\$60,483	\$57,816	\$856,664	\$792,578	\$693,744	\$621,722	\$604,345
Restricted Funds	\$172,732	\$0	\$0	\$0	\$0	\$0	\$0
Long-Term Debt	<u>\$274,086</u>	<u>\$345,515</u>	<u>\$368,840</u>	<u>\$557,446</u>	<u>\$487,083</u>	<u>\$0</u>	<u>\$0</u>
Total	\$840,977	\$911,311	\$1,920,734	\$1,909,674	\$1,798,059	\$1,201,062	\$1,129,033
 <u>Liabilities</u>							
Prop. Funds -- Utilities	\$0	\$0	\$116,924	\$112,911	\$74,580	\$8,500	\$0
Other	\$553	\$6	\$1,291	\$0	\$0	\$0	\$0
General Long-Term Debt	<u>\$274,086</u>	<u>\$345,515</u>	<u>\$368,840</u>	<u>\$557,446</u>	<u>\$487,083</u>	<u>\$0</u>	<u>\$0</u>
Total	\$274,639	\$345,521	\$487,055	\$670,357	\$561,663	\$8,500	\$0
 <u>Account Equity</u>							
General Fund	\$194,799	\$366,693	\$372,981	\$409,814	\$307,163	\$285,899	\$211,850
Special Revenue	\$127,824	\$123,840	\$92,329	\$59,139	\$207,039	\$178,019	\$188,461
Capital Projects	\$10,187	\$17,129	\$228,326	\$90,397	\$102,730	\$114,568	\$122,984
Debt Service	\$313	\$312	\$303	\$300	\$300	\$300	\$300
Prop.Funds -- Enterprise	\$60,483	\$57,816	\$739,740	\$679,667	\$619,164	\$613,224	\$604,345
Restricted Funds	<u>\$172,732</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total	\$566,338	\$565,790	\$1,433,679	\$1,239,317	\$1,236,396	\$1,192,010	\$1,127,940
Total Liability. and Equity	\$840,977	\$911,311	\$1,920,734	\$1,909,674	\$1,798,059	\$1,200,510	\$1,127,940

Source: Audit statements. Special Revenue is primarily Liquid Fuels money. 2008 and 2009 exclude EBAJA.

Note the changes in debt in 2005, the reduction in Proprietary Funds in 2008 (water and sewer reserves transferred to EBAJA), and the establishment of Restricted Funds in 2009 (Park & Rec. funds moved from the General Fund.)

Utility Service Financial Results: The table below shows the operating results of water, sewer, and trash services provided by the Borough or EBAJA for 2003-2009. Borough Council has twice increased trash rates since 2008. Trash services are now operating with a small surplus. The water and sewer service financial results of the EBAJA since 2007 reflect the costs of separation from the Borough, ancillary physical plant improvements, and increases in sewer rates.

Year	Water			Sewer			Trash		
	Revenue	Expense	Net	Revenue	Expense	Net	Revenue	Expense	Net
2003	\$201,497	\$135,430	\$66,067	\$155,950	\$135,238	\$20,712	\$66,834	\$67,032	(\$198)
2004	\$213,612	\$116,326	\$97,286	\$186,211	\$134,004	\$52,207	\$69,439	\$71,555	(\$2,116)
2005	\$196,911	\$110,621	\$86,290	\$182,584	\$197,790	(\$15,206)	\$71,732	\$79,103	(\$7,371)
2006	\$205,418	\$115,276	\$90,142	\$218,328	\$190,360	\$27,968	\$70,457	\$95,045	(\$24,588)
2007	\$196,988	\$118,198	\$78,790	\$287,592	\$220,148	\$67,444	\$87,393	\$107,037	(\$19,644)
2008	\$185,306	\$186,471	(\$1,165)	\$304,707	\$350,760	(\$46,053)	\$97,877	\$116,652	(\$18,775)
2009	\$185,843	\$227,175	(\$41,332)	\$332,328	\$299,551	\$32,777	\$114,200	\$112,159	\$2,041

Source: Borough and EBAJA operating revenue and expense from required audits.
2008 and 2009 EBAJA operating revenue and expense data exclude project expenses.

Cost of Code Enforcement: Three separate code enforcement actions before the ZHB have taken place in the last 19 months. Two were for violations of the Borough's sign restrictions and were relatively straightforward. The third is an enforcement action for failure to apply for a special exception from the zoning requirements. This enforcement action was more complex. The Borough employed an environmental consultant and additional legal aid in its presentation to the ZHB. The expenses are presented in tabular form below.

Expense Category	Hog Wild	Tucker	Tucker	Grand
	Sign	Banner	Exception	Total
Borough Counsel	\$1,516	\$1,714	\$6,544	\$9,774
ZHB Counsel	\$1,865	\$1,750	\$6,295	\$9,910
Contract Counsel	\$0	\$0	\$100,310	\$100,310
Contract Environ.	\$0	\$0	\$20,371	\$20,371
Other	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>\$6,695</u>
Total	\$3,381	\$3,464	\$133,520	\$147,060

Note: "Other" includes advertising, transcription, and other non-assigned costs.

It should be noted virtually all of the Tucker Exception expenses could have been avoided had Borough Council exercised their zoning, planning, and code enforcement responsibilities in 2005.

Extraordinary Items: Extraordinary Items are those that are generally not budgeted or expected. Some of the items shown below will have a recurrent effect, but were not previously identified.

- *Debt Guarantee:* In May 2009 an audit cost of \$1,000 was incurred to ensure the ability of East Berlin to guarantee the debt incurred by the East Berlin Area Joint Authority to repay its loan from Pennvest.
- *Code Enforcement:* See Cost of Code Enforcement, above. Costs significantly exceeded budget.

- *Act 537 Balloon Payment:* In February 2010 a final Act 537 loan balloon payment of \$37,495 was made. Prior to 2008 no regular payments were made on principal or interest on the loan taken out in 2005. That loan became due in 2010 and was paid off rather than incur an approximate \$3,000 renewal cost.
- *Storm Sewer Replacement:* In May 2010 a contract was let in the amount of \$24,750 to replace the storm sewer running *under* the Borough Hall. The pipe is failing and is of insufficient diameter to handle storm water flows. Complaints have been received on this drainage issue for over a decade.
- *Park Insurance:* In early 2010 the Borough added the cost of liability insurance for the new skateboard park to its insurance policy (\$500) and later, the park pavilion (\$250, est.). The Borough will also provide general maintenance (cost not determined). None of these expenses were included in the planning for the new park.
- *Solar Warning Light:* In July 2010 installation of new, solar powered warning lights to indicate fire equipment exit from the fire house onto Abbottstown Street was completed, at a cost of \$3,912.
- *Joint Comprehensive Plan:* In July 2010 the Borough paid an Adams County invoice of \$1,280 for a contract adopted in 2006 for the development of a Joint Municipal Comprehensive Plan. By Resolution 10-2006-8 the then Borough Council indicated it would allocate the funds. They didn't.
- *Illegal Retirement Increase:* In June 2010 Borough Council became aware that an ordinance adopted in April 2006 increasing the retirement ceiling percentage for Non-Uniformed Employees from 40% to 60% was illegally adopted. Ordinance 2006-3 was not advertised, and there was no allowed public comment, both required by state law. The Council proposed and adopted the Ordinance in a single meeting with little discussion. The Uniformed Employees (police) 50% ceiling was not changed.

No estimate of cost to the Borough for the markedly improved benefit was provided, and there were no comparisons of the proposed increase in pension to the pensions of other local municipalities. That 20 percentage point increase in the ceiling results in a fifty percent increase in received pension.

According to Borough records, in January 2006 the Pennsylvania Municipal Retirement System (PMRS) indicated the adoption of the pension change would immediately increase the unfunded pension liability of the Borough by \$116,918, and the Borough's lagged annual pension cost by \$10,914. These data were never mentioned by the Council. In the following ten years only one person was eligible to retire, and would receive an estimated increase of over \$12,000 in annual pension with the change

As a result of that pension change, the Pennsylvania Public Employee Retirement Commission's biannual financial determination (July 2010) for the Borough indicated the Borough's retirement system is now considered "distressed". The changes in the Borough's pension plan from 2005-2009 are shown below. The End-Of-Year Balance shows the Borough's retirement plan annual standing with the PMRS.

Changes in East Berlin's Pension Plan by Year, 2005-2009

Year	Borough Contributions	PMRS Income	PMRS Deductions 1/	E.O.Y. Balance	Net Change	Membership Active/Other
2009	\$31,553	-\$7,806	\$120,509	-\$153,434	-\$96,762	2/4
2008	\$32,816	-\$2,743	\$375,493	-\$56,672	-\$345,420	4/4
2007	\$29,315	\$24,177	\$223	\$288,747	\$53,268	4/4
2006	\$25,947	\$13,638	\$341	\$235,478	\$39,345	4/3
2005	\$25,626	\$10,926	\$37,777	\$196,134	-\$1,225	3/3

1/ 2009 - transfer of EBAJA employees; 2008 - retire. of Mr. Thoman; 2005 - retire. of Mr. Byers.

Source: Annual Report from PMRS.

The Council has contacted the Pennsylvania Municipal Retirement System to seek redress of this illegal and unwarranted change to the pension system. No official steps have yet been taken on this issue.

D. Other Items.

- *Property Assessment and Taxes:* Adams County has completed re-assessing property values for tax purposes, the first review in about twenty years. Because of this re-assessment, many properties are now valued considerably higher than their previous assessment. Valuation for tax purposes is also at 100%, rather than the previous 50%.

Adams County estimates the taxable valuation of all taxable property in East Berlin Borough to be about \$116 million, up considerably from the about \$29 million (at 50%) for the 2010 tax year. This does not result in a tax windfall for the County or Borough, since the tax rate must be reduced sufficiently to allow the collection of no more than a five percent increase in total property tax revenues compared to before the reassessment.

The Borough's current tax rate is 5.0 mills per dollar of valuation. Absent any changes to the County's new assessments, we anticipate that the Borough's tax rate will be reduced to approximately 1.025 mills, and will likely propose to adopt that change in October 2010.

- *Tax Receipts:* As is nearly universal among municipalities, the borough finances its operations by levies on its citizens. The Borough receives tax payments from six sources, as shown in the table below. (Note that 2009 taxes are only \$1,798 more than 2004, which basically necessitated the property tax increase in 2010.) Real estate taxes are the second largest tax element, and change only if property values increase or the tax level changes (excluding tax payment defaults).. Per capita tax charges (\$10) change as more or less people reside in the borough. The occupation tax is a tax on employers, based on their number of employees. Neither the per capita or occupation tax supplies much tax revenue. The local service tax is a \$52 annual tax on individuals engaged in any occupation within East Berlin Borough.

<u>TAX</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Real Estate Tax	\$110,804	\$113,630	\$112,806	\$114,698	\$114,009	\$111,591
Occupation Tax	\$8,325	\$8,971	\$8,316	\$8,909	\$9,413	\$8,414
Per Capita Tax	\$5,125	\$5,487	\$5,202	\$5,394	\$5,925	\$5,238
Real Estate Trans. Tax	\$41,048	\$24,741	\$17,718	\$23,764	\$40,382	\$8,641
Earned Income Tax	\$115,300	\$119,058	\$128,642	\$149,127	\$140,725	\$132,297
Local Service Tax	<u>\$14,286</u>	<u>\$14,804</u>	<u>\$66,766</u>	<u>\$68,166</u>	<u>\$25,924</u>	<u>\$30,500</u>
Total Taxes	\$294,888	\$286,691	\$339,450	\$370,058	\$336,378	\$296,681

The largest tax source is the earned income tax. This tax, at one-half of one percent (0.005) of wage earnings of East Berlin residents, regardless of where that resident is employed, reflects the general wage income of the citizenry. The earned income tax receipts of the Borough will only increase if residents earn more wage income, or there are greater numbers of residents employed. A general increase in employment in East Berlin will not increase earned income tax revenues unless those added employees are borough residents. For those supporting business expansion in East Berlin, please remember that the boroughs tax revenue increases only if those added employees live in East Berlin.

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

David B. Richards
President, East Berlin Borough Council