

EAST BERLIN AREA JOINT AUTHORITY  
128 Water Street  
East Berlin, PA 17316

September 4, 2008

The monthly meeting of the East Berlin Area Joint Authority was held September 4, 2008 at the East Berlin Borough Hall. The meeting opened with the Pledge of Allegiance at 7:00 PM.

**Members Present:** Chairman Gerald L. Mummert; Charles Eisenhart; John Lerew; Gregory Green; and John O'Brien.

**Also Present:** Solicitor Matthew Battersby; Solicitor Andrew Miller; Plant Manager Mike Thoman; Bruce Hulshizer and Mike Schobert of Buchart Horn, Inc.; Authority Secretary Hannelore Furst; David Richards; and Randy Test.

*John O'Brien made a motion to accept the minutes of August 7, 2008 as written. Charles Eisenhart seconded the motion. Motion Carried with all voting in favor of.*

*Gregory Green made the motion to pay the bills for the month of August in the amount of \$47,266.75. The majority of that amount is for the debt service. John Lerew seconded the motion. Motion Carried with all voting in favor of.*

*Charles Eisenhart made the motion to pay the bills for the beginning of September in the amount of \$5,881.09. The motion was second by John O'Brien. There was discussion on what those bills were. Secretary Hanna Furst read the bills and the amounts. These bills would be coming due before the next meeting, so it was decided to pay to avoid the late charges. With no further discussion all voted in favor of. Motion Carried.*

Chairman Gerald Mummert announced there was a proposed revised agreement by the Borough Council that was given to the Authority members to review and report back at the October meeting.

**Engineer's Report:**

Bruce Hulshizer reported on the Susquehanna River Basin Commission (SRBC) letter. Mike Thoman and Randy Test received copies of the draft docket for the new wells approved at Buttercup Farms. SRBC is recommending approval of the wells; the only change would be the thirty day average flow of the larger well would be reduced from 144,000 gallons a day to 130,000 gallons a day. If the Authority had any comments they should fax them to the SRBC. The application for the existing well was also submitted, but SRBC will be reviewing it at a later date.

Bruce also reported DEP had called him, and they are ready to issue the permits for the two wells, with minor change to the well house. He also stated PennDot is replacing the bridge on Route 234 the east side of the town. Three years ago there was some contact with the engineers but nothing since then. Now they have started working on the construction. Bruce and Mike met on site with a PennDot representative. The bridge design would have a lane going right thru the fire hydrant and four service line valves. The fire hydrant needs to be relocated behind the new curb line. There was some discussion on who would be paying for this movement. Bruce commented the standard agreement is 50% each, and there is major paperwork involved. The discussion continued.

Chairman Gerald Mummert entertained a motion to authorize the engineer, Bruce Hulshizer, to make the decision concerning the design and paperwork for moving the fire hydrant. The motion was made by Gregory Green and seconded by John O'Brien. There was some more discussion. Motion Carried with all voting in favor of.

### **Solicitor's Report:**

Solicitor Battersby reported he sent a letter to Andrew Miller, Solicitor for BD Equities as instructed to by the Authority and a copy was sent to the Borough Council and the members of the Authority. Solicitor Battersby requested the letter be made a part of the minutes. He also read the letter. (A copy is made a part hereof)

Solicitor Battersby stated Solicitor Andrew Miller would like to make some comments. Solicitor Andrew Miller stated the original agreement is no longer effective because so many things have changed in the agreement. He also stated there is still a desire to work with the Borough and the Authority. With respect to the bids that are out there now, he is requesting that we ask the contractors to extend for 60/90 days to give his client a chance to work out the financing.

Bruce Hulshizer responded about extending bids, that they should have a plan of action. The benefit of extending the bids is the cost is known; but to re-bid the cost could go up.

Randy Test stated they are working on financing right now and they have several options. They still want to contribute to the project. He continued there were multi investors they are hoping to work with.

The discussion continued with the members giving their opinions. Mr. Green speaking for himself stated this is a great project, and how long is it going to take Mr. Test to get the financing. Charles Eisenhart stated the present contract is void and he doesn't see the Authority doing anything at this point with out a new contract. Solicitor Battersby wanted to know what they were going to finance and thinks they would need the 90 days, because the bids expire on September 19, 2008.

Solicitor Andrew Miller stated they need to know exactly how much time the Authority needs to talk to the contractors. He thinks Susquehanna Bank is their best shot right now to get the financing. Solicitor Miller also stated they don't want to see the authority revamp the project. The discussion continued. Matt Battersby clarified that the Authority is stopping at \$2.6 million. Mr. Green suggested similar agreement but with different dates and numbers. Solicitor Miller also wanted to remind the Authority that developer would put up front \$2.4 million security, the two wells and the water tower and they would be getting some money from rate payers. Charles Eisenhart reminded Mr. Miller that all the rate payers aren't out there yet and how long will it be till they are. The construction cost of the new sewer plant would be \$5.9 million. It was suggested they have an executive meeting to discuss.

### **Public Comment:**

David Richards: Mr. Richards gave a handout to the members concerning his observations. He also requested the minutes of July 3, 2008 delete the words "as David Richards proposed."

Mr. Richards commented on the authority's payment of bills and spending. He felt the sewer project expense should have been capitalized and they should start that immediately.

### **Executive Session:**

The East Berlin Area Joint Authority closed their regular meeting to go into an executive meeting at 7:55 PM; to go over the offer and discuss legal ramifications.

The executive session closed and the regular meeting was reopened at 8:35 PM.

### **Regular Meeting Reopened**

Solicitor Battersby entertained a motion to ask the contractor to extend the bids for 90 days from September 19<sup>th</sup>; require CW Test have the \$2.4 million secured by bank loan of credit no later than October 2, 2008 and amend the agreement to contain house connection fees of \$9,000.00 tied to the phasing plan filed with Hamilton Township; and the developer will guarantee that house connection fees upon issuance of building permits; and pay the fee even if no houses are built in that phase. *Gregery Green made the motion and John Lerew seconded the motion. With no further discussion; all voted in favor of. Motion Carried.*

Having no further business to discuss; Charles Eisenhart made a motion to adjourn the meeting and John O'Brien seconded the motion.

Having no further business to discuss the meeting adjourned at 8:45 PM.

Respectfully Submitted



Hannelore B. Furst  
EBAJA Secretary

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August 25, 2008

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RE: **BD Equities, LP/East Berlin Sewer Upgrade**

Dear Matt and Tim:

I am in receipt of the East Berlin Area Joint Authority/East Berlin Borough notice dated August 8, 2008 of the Authority's intent not to re-bid the East Berlin sewer contract. Because of the unexpectedly high costs of the project, my client, BD Equities, LP, is not able to fund its contribution under the Service Extension Agreement dated December 6, 2006. We cannot proceed on the current bid.

My client requests the municipalities consider the future development of the Buttercup property in any sewer and water planning. We believe the current Act 537 Plan accurately reflects the future sewer needs for the area. We request the plan not be amended at present. We also request that the Borough not withdraw its water withdrawal application to the SRBC. The Buttercup property will almost certainly be developed in the near future with the provision of approved water and sewer service to the property.

My client asks that you continue to keep them informed of the status of the sewer project. My client will do the same regarding the status of the Buttercup property.

Very truly yours,

MILLER, POOLE & LORD, LLP

  
Andrew J. Miller, Esquire

Cc: **BD Equities, LP**