

Official and Approved Minutes

BERLIN BOROUGH COUNCIL

November 6, 2014 - 7:00 p.m.

1. The President calls the meeting to order.
2. Pledge of Allegiance to the American Flag.
3. President Kerrie Broderick offers a non-denominational prayer.

ROLL CALL

Kerrie Broderick / President

Roger Clarke

Thomas Fisher

Eric Glotfelty

Brett Custer

Barb Zerfoss

John Harding, Jr.

Mayor Joseph Krause

Also in attendance were:

Terry Metzgar, Borough Secretary

Members of the public:

See Attached Roster

Citizen Comments:

4. Minutes of the September 4, 2014, Borough Council meeting for review. (Exhibit P8)

Motion by Tom Fisher and seconded by Barb Zerfoss to approve and accept the minutes of Berlin Borough Council Meeting dated September 4, 2014.

Ayes: 7

Nays: 0

Motion Passed

President's Report

We are considering an upgrade to the borough's archaic municipal billing software system. Our existing Flexabil software is a refugee from the DOS World and costs us roughly \$6656 per year. Its age makes it incompatible with modern printers and it is limited to a single user at a time. So before Cindy can use it, Tammy must sign off. (Exhibit P14)

This decision was deferred pending further software evaluation.

Act 8 Meeting between Berlin Borough and the Berlin Volunteer Fire Department on 102414. In accordance with the provisions of House Bill Number 1133 of 2007, BVFD presented Berlin Borough with an itemized listing of all expenditures. (Exhibit P30)

There was discussion and agreement on the current emergency services needs for the borough and surrounding areas.

The Fire Department representatives provided information as to how the Department expended the \$3,000.00 of funds the Borough of Berlin provided to the Berlin Volunteer Fire Department in 2013.

Motion by Brett Custer and seconded by John Harding to contribute \$3,500 to the Berlin Volunteer Fire Department for 2014

Ayes: 7

Nays: 0

Motion Passed

Motion by Roger Clarke and seconded by Tom Fisher to contribute \$300 to the Berlin Ambulance Association for 2014.

Ayes: 7

Nays: 0

Motion Passed

Announcement that Berlin Borough's Light-Up Night is on 112114.

Do we wish to employ Mr. Lewis as a supplemental code enforcement officer? Consensus is that we should not at this time.

Mayor's Report: Mayor Joseph Krause

Police Report (Exhibit Deferred)

Motion by Roger Clarke and seconded by Brett Custer to approve and accept the Police Report as presented.

Ayes: 7

Nays: 0

Motion Passed

Committee Reports:

Electric & Equipment

Brett Custer (Chair)

Municipal Authority Update / Sewer Plant Project.

Sewer plant

Excavated area for the pad for the blower they're adding rebar that will be put together from Gross Brothers Metal possible pour on Saturday by Dean Lyons

Land acquisition

The acquisition of land of Dale Hostetler property is moving forward. The land is being surveyed by Charles Rhodes

Snyder's

The authority has ongoing talks with Snyder's on their waste management policies

Stoltzfus

Mr. Stoltzfus has accepted our terms and will be moving forward once the authority executes the agreement.

Internal Generation Update:

As part of our effort to explore the cost and benefits of internal generation, we are working with three different engineering consulting firms listed below:

Tangent Energy Solutions Inc. / Cheryl I. Cossel

Power Services Inc. / RL Willoughby

GDS Associates Inc. / Garrett Cole

All of them will work with us up to a point where they want us to "engage" with them for a hefty fee.

So, until we are ready and willing to fork-over some money, we're pretty much on our own in performing a cost benefit analysis.

As things stand now, here is what we think we know.

There are five potential revenue streams from internal generation.

1. In front of the meter generation selling directly to PJM. This is how Chambersburg does it and although it works well for them, it may not be the best for us in that it requires an enormous capital investment and a fairly expensive PJM membership fee. They receive capacity credits from PJM to the tune of \$4.11 per kWh per month or \$123,300 per month. If we were to take a

similar route with 1 MW of generation, it would net us \$4,111 per month or \$49,320 per year. Please note that this price will increase to \$90,000 per year in 2017 as the capacity credit increases to \$7.50 per kWh per month.

2. Behind the meter generation, would not allow for capacity credit but would allow us to reduce our capacity payments a commensurate amount. For example, last year we spent \$160,585.92 per year in capacity payments to PJM. If we were to have 1 MW of behind the meter generation, we would reduce our capacity payment by \$49,320 per year at the present \$4.11 rate and see that increase to \$90,000 in 2017.
3. Peak Shaving / PJM measures our coincidental energy consumption on the five highest summer demand days of the year and uses that base to determine our Peak Load Contribution (PLC) capacity requirement that sticks with us the entire year. If you can predict the time and date (a forecast which AMP provides to us) of the 5 coincident peaks (AKA 5CP or PJM High-Five) and run internal generation to shave that peak, it reduces the PLC an amount commensurate with our installed capacity.
4. Demand Response / In our case demand response would simply involve kicking on our generator during periods of high demand at a time when the pool prices exceed our cost of operation thus reducing the borough's energy consumption and expenditures. There is more to this on the conservation side but is outside the scope of our discussion here.
5. Ancillary Services and Synchronous Services are payments available from PJM the extent of which we have yet to discover.

PERSONNEL & FINANCE

Thomas Fisher (Chair)

Treasurer's Report and Bills:

Motion by Roger Clarke and seconded by Tom Fisher to approve the bills and Treasurer's Report as specified on Exhibit P32.

Ayes: 7

Nays: 0

Motion Passed

Police Officers are not required to contribute to their pension fund but Act 600 still requires annual resolutions to waive that.....hence the following resolution:

RESOLUTION NUMBER 11-14

BERLIN BOROUGH

A RESOLUTION ELIMINATING POLICE OFFICERS' CONTRIBUTIONS TO THE BERLIN POLICE PENSION PLAN FOR THE YEAR 2015.

WHEREAS, Act 600 previously provided for the elimination of members contributions if certain criteria were met, and

WHEREAS, Act 30 amended Act 600 by eliminating certain criteria for the elimination of contributions, and

WHEREAS, the only criteria for the elimination of contributions according to Act 30 is:

Any reduction or elimination of contributions shall be authorized on an annual basis by resolution or ordinance, and;

WHEREAS, Berlin Borough has reviewed this amendment and criteria and unanimously approves the elimination of members' contributions by the Police Pension Plan members for the year 2014.

NOW, THEREFORE, BE IT RESOLVED, that Berlin Borough does hereby ratify and affirm the elimination of members' contributions to the Berlin Police Pension Plan by its members for the year 2014.

BE IT, AND THE SAME IS HEREBY RESOLVED, this 6th day of November 2014.

Motion by Roger Clarke and seconded by John Harding to adopt Berlin Borough Resolution No. 11-14 eliminating members' contributions by the Police Pension Plan members for the year 2015.

Aye:7

Nay:0

Motion Passed

The proposed 2015 budget is attached for your review. Highlights of which are an unchanged tax rate of 1.5 mills (which is among the lowest of any borough in the county) and tentative transfers between accounts in anticipation of our generation project.

Motion by Brett Custer and seconded by John Harding acknowledging receipt of, and tentatively approving the 2015 budget for the Borough of Berlin, with final action on the budget scheduled to be taken at the December 4, 2014, Borough Council Meeting. (Exhibit P37)

Aye: 7

Nay: 0

Motion Passed

Motion by Roger Clarke and seconded by Barb Zerfoss directing the legal advertising of proposed Berlin Borough Ordinance No. 337 relative to establishing the real property tax rate for 2015 at 1.5 mills.

Aye: 7

Nay: 0

Motion Passed

Motion by Roger Clarke and seconded by John Harding that the Borough of Berlin provide a \$15.00 gift certificate to each working Berlin Borough employee for the upcoming Thanksgiving holiday; and furthermore, that the Borough of Berlin provide a \$100.00 payment to each full-time Berlin Borough employee for the upcoming Christmas holiday in appreciation of their service to the Borough of Berlin.

Aye: 7

Nay: 0

Motion Passed

FIRE & GARBAGE

Roger Clarke (Chair)

We're in the process of refurbishing, sandblasting, and painting our seven spare refuse dumpsters. This as part of our effort to inventory and catalog the entire fleet of dumpsters. Please note that refurbishing typically costs less than half of the price of a new dumpster. (Exhibit P51) Much discussion regarding possible bag limits but the council agreed to wait until next year.

BUILDING PERMIT & PROPERTY

John Harding (Chair)

Clem and Nelson are now actively addressing the backlog issues. (Exhibit P52)

Status and list of permits (Exhibit P46)

There are ongoing minor property maintenance issues that we are trying to address on an informal basis.

1. Wilson Roofing Hazard
2. Gindlesperger trailer disassembly
3. Romesberg Roof Replacement at 734 Main Street

Do we wish to add the collection of an AG number and insurance number for any contractor who applies for a permit through CCIS?

The council directed the borough secretary to once again, speak to the following residents regarding property maintenance issues:

Wilson's roof issue

Gindlespurger's abandoned cars and trailers

Sleaseman's car and trailer

Hutchenson's porch on North Street

The council directed the borough secretary to ask that the contractor insurance information and AG information be included in the monthly CCIS Report.

HOUSE

Barb Zerfoss (Chair)

The electrical upgrades to Borough Building Main Distribution Panel are completed. This is part and parcel to the installation of the smoke detector system. It also energizes the spouting heat tape on the north side of the building. Smoke detector installation continues with an ETTC of next week.

Penn State Sponsored Grant Seminar in Somerset on 111814. (Exhibit P54)

Motion by Barb Zerfoss and seconded by Eric Glotfelty to pay all cost associated with sending the borough secretary to the PSU sponsored grant seminar in Somerset on 111814.

Aye: 7

Nay: 0

Motion Passed

STREETS, STORM SEWERS & SIDEWALKS

Eric Glotfelty (Chair)

Final walk through of our 2014 MLF Paving Projects has been completed with final resolution and signatures contingent upon resolution of ponding issues on Esken Street.

MLF paving satisfaction paper not signed.

Someone keeps moving the crosswalk signs off the middle of the road.

Sidewalk ordinance...are we enforcing it now that winter is here. (Exhibit P56)

Equipment update?

Rotating garbage trucks every day?

Eric Glotfelty reports that there remains a ponding issue on Esken and Laurel and the council is directing the borough secretary to contact John Miller (Actually Jim Miller) at NES&L to ask for their help in correcting the problem because of potential liability issues.

POLICE

Brett Custer (Chair)

Update on police foot patrol progress?

Have we increased the frequency of foot patrol?

Officer Norman's report.

PLANNING & PROJECT

Barb Zerfoss (Chair)

Somerset County Boroughs Association November Meeting

Thursday, November 20, 2014

Time: 6:30 p.m. Dinner

Location: Oakhurst Tea Room

2409 Glades Pike Rd.

Somerset, PA 15501

Motion by Eric Glotfelty and seconded by Brett Custer to send any members of the Berlin Borough Council, the Mayor, Borough Secretary, Borough Treasurer, Borough Clerk, Outside Supervisor, and the Borough Solicitor to the SCBA meeting on 112014 with costs to be paid by the Borough of Berlin. (Exhibit P13)

Ayes: 7

Nays: 0

Motion Passed

Motion by Eric Glotfelty and seconded by Brett Custer approving the expenditure of \$100.00 of Berlin Borough funds for items to be provided to the Somerset County Boroughs Association toward the Association's fund raising efforts.

Ayes: 7

Nays: 0

Motion Passed

At 08:29 PM the council adjourned to executive session to review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

At 08:29 PM, Mayor Krause left the meeting.

Motion by John Harding and seconded by Brett Custer to adjourn to executive session.

Aye: 7

Nay: 0

Motion Passed

Motion by Eric Glotfelty and seconded by John Harding to reconvene the regular meeting.

Aye: 7

Nay: 0

Motion Passed

At 09:08 PM, the council reconvened the regular meeting.

Consideration for the hiring a new seasonal worker. (Exhibit P60)

Motion by Eric Glotfelty and seconded by Barb Zerfoss to hire Wade Lensbouer as a Seasonal Laborer at the contract specified rate of \$8.30. This pending successful completion of all necessary drug testing and background check.

Ayes: 5

Nays: 2

Roll Call Vote:

Nay: Kerrie Broderick

Aye: Roger Clarke

Aye: Thomas Fisher

Aye: Eric Glotfelty

Aye: Brett Custer

Aye: Barb Zerfoss

Nay: John Harding, Jr.

Motion Passed

Barb Zerfoss asked to address the council regarding her earlier rebuke. She wished to record in the minutes the narrative that is attached at the end of this document.

Motion by Barb Zerfoss to rescind her earlier rebuke but this motion died for lack of a second.

Motion by Eric Glotfelty and seconded by Tom Fisher to authorize Seasonal Worker Nathaniel Custer to continue the electric system asset inventory project to completion with an estimated cost of \$9,000.

Aye: 7

Nay: 0

Motion Passed

Motion by Eric Glotfelty and seconded by Brett Custer to adjourn this Meeting of the Berlin Borough Council at 09:37 PM.

Aye: 7

Nay: 0

Motion Passed

Note: The next regular meeting of the Berlin Borough Council is scheduled for December 4, 2014, beginning at 7:00 p.m., at the Berlin Borough Council conference/meeting room, 700 North Street, Berlin, Pennsylvania.

Terry L Metzgar

Terry L. Metzgar
Executive Borough Secretary

120514



November 6, 2014

To: All Berlin Borough Council Members

From: Barbara L. Zerfoss, Council Member
210 High St. Berlin PA 15530

Re: Disagreement of Action of Rebuke-May 1, 2014 Council Meeting
Ref: Approved Minutes of May 1, 2014 Berlin Borough Council Meet.

I am expressing my disagreement with the action of Rebuke against me by Council at the May 1, 2014 Council Meeting. I request the following Statement along with Attachments (2) be entered into Council's minutes of Nov. 6, 2014 to reflect my answer of the action of Rebuke against me.

This Council took the rhetoric of a person involved in a personal private domestic dispute within my family and used it to try to intimidate, control and slander me personally. Council used this person's personal vendetta to defame my character falsely on a public forum-the Daily American with absolutely no research, investigation or proof of any of the allegations. None of this person's rhetoric whether true or false had any factual basis and was absolutely no one outside my family's business. Plain and simple it was not a Council matter as Attorney Daniel Rullo, Berlin Borough Solicitor, states in the letters to Atty Jon A. Barkman, Esq. (ref: letter of June 12, 2014 parag.5); and Pam Zerfoss (ref: letter of April 29, 2014).

As to Mrs. Broderick's comment to me of the matter being investigated by the Police, that too was misinformation. If the matter is not a Council matter then it is no Police matter, however it is a Civil matter. As is all true Legal investigations, all parties are contacted to avoid embarrassment and possible. Litigation. Not at any time did any member of this Council, any person representing this Borough or the Borough Attorney contact myself or my Attorney to find out ANY facts concerning the complaints made against me. I am being accused of things by members of this Council I have not done, even now. However, when not in Borough Council Session I am a tax paying Citizen of Berlin afforded all the rights and privileges of ANY citizen of the State and Borough. This Council and/or some of it's members seems intent on restricting my rights both natural and civil. I am expressing my disagreement with the accusations and actions taken against me by my Fellow Council Members regarding this matter. I therefore want a public rescinding of the Rebuke and an apology printed in the Daily American the same forum Council used to attack my character and reputation.

Page (2)

Per PSAB: The action of Rebuke is not recognized in the PA Borough Code. If it doesn't appear in the PA Borough Code, action cannot be taken. Therefore Council has no authority to Rebuke any person. Also, it is not in Roberts Rules of Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barbara Zerfoss". The signature is written in black ink and is positioned below the word "Sincerely,".

See Attachments: Letter of April 29, 2014 to Pam Zerfoss from Atty D.Rullo
Letter of June 12, 2014 to Jon Barkman, Esq. From Atty. D.Rullo

BARBERA, CLAPPER, BEENER, RULLO & MELVIN, LLP
ATTORNEYS AT LAW
SOMERSET, PENNSYLVANIA 15501-0775

NATHANIEL A. BARBERA
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SAMUEL D. CLAPPER
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146 WEST MAIN STREET
POST OFFICE BOX 775

TELEPHONE
(814) 443-4681

FAX
(814) 443-2422

April 29, 2014

Pam Zerfoss
200 High Street
Berlin, Pennsylvania 15530

Re: **Berlin Borough**

Dear Ms. Zerfoss:

I am in receipt of correspondence that you sent to Berlin Borough Council complaining about an incident that occurred on or about December 27, 2013, when your home was being inspected. It is my understanding that your letter contends that a member of the Berlin Borough Council, acting outside the course and scope of her elected position, directed that the building inspectors return to your premises and require changes that had already previously been acceptable.

This letter is to simply inform you that actions by the Borough Council can only be done by a majority vote of the Borough Council and no one individual member has the ability, without direct authorization by the Borough Council, to bind the Borough or to impose obligations upon the Borough or its constituents. If, in fact, it is your belief that this Council member acted outside the course and scope of the Council member's duties, that is a matter you should address directly with the Council member as apparently you have done so in the past as demonstrated by exhibits attached to your previous correspondence.

I am sorry you felt there has been undue influence; however, this letter is to assure you that Council has taken no direct action relative to requiring you to meet any obligations that are not otherwise imposed on all residents similarly situate. I trust this letter is responsive to your inquiry.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

/s/

Daniel W. Rullo

DWR:cab

cc via electronic mailing: Berlin Borough Council
Terry Metzgar

cc: DeAnn McCoy, Esq.

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TELEPHONE
(814) 443-4681

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June 12, 2014

via facsimile

Jon A. Barkman, Esq.
116 North Center Avenue
Somerset, Pennsylvania 15501

Re: **Barbara Zerfoss**

Dear Jon:

When I returned from being out of town for a few days, Berlin Borough Council forwarded to me a list of five questions which apparently you have asked that Barbara Zerfoss inquire of the Borough Council. It is obvious to me in reviewing those questions that either she has not totally informed you of the actions taken or you have a misunderstanding relative to the concerns that were expressed by the Borough Council relative to complaints that have been asserted against Barbara Zerfoss, an elected Borough Council member.

In the list of questions, Barbara Zerfoss apparently contends that she was in some fashion, "censured" and that she is requesting some type of sworn testimony in a full hearing before Council regarding the complaints against her.

Obviously, she has not shown you the letter that I was authorized to issue dated May 2, 2014, and the backup documentation that was supplied to her relative to the complaints primarily from personal matters with her former daughter-in-law. This is not the first time that actions by Barbara Zerfoss have caused complaints. The Borough Council, collectively, has attempted to distance itself and themselves from actions which she takes that are outside the scope of her authority. The letter of May 2, 2014, by its clear language, was intended to remind her of the limitations of her authority and asked that she adhere to those limitations. Therefore, I do not understand where she gets the idea that she was censured as that legal term is defined.

I am sure you are aware of the reserved powers provided to the Borough Council under the Borough Code which specifically authorize among other things actions that are necessary and

proper for the control of the Borough and the maintenance of peace, good government, safety and welfare of the Borough

As in the past, Ms. Zerfoss has had the opportunity to spread upon the Minutes her disagreement with the actions of Borough Council and it is not Council's intentions to conduct a hearing relative to these complaints. We believe the matter is closed by way of identifying that we are not involved in the personal matters between Ms. Zerfoss and the complainant nor does Council want to be drawn into the personal issues which appear in the documentation to be long-standing, protracted and have involved legal counsel as well as the courts.

The letter to Ms. Zerfoss was Council's desire to place her on notice of the limitation of her authority and in the event she is unable to discipline herself to adhere to those limitations, to consider submitting her resignation rather than expose the Borough to liability for her actions.

I trust this letter is responsive to your inquiry. If you need any further information, please do not hesitate to contact me.

Very truly yours,

/s/
Daniel W. Rullo

DWR:cab
Enclosure

cc via electronic mailing: Terry Metzgar
Barbara Zerfoss
cc: Berlin Borough Council

