

East Stroudsburg Borough, February 5, 2013

A regular meeting of the East Stroudsburg Borough Council was held at the Municipal Building on Tuesday, February 5, 2013. The following members were in attendance: Peter Begley, Roger DeLarco; Ed Flory, Donald Repsher, and Sonia Wolbert. William Reese was absent. Also attending were: Manager James S. Phillips, Solicitor John C. Prevoznik, Engineering Representative Samuel D' Alessandro of R.K.R. Hess Associates, Inc., Codes Official Marvin Walton; and several residents in the audience.

Call to Order/Pledge of Allegiance – President DeLarco

President DeLarco called the meeting to order at 7:31 p.m. The pledge of allegiance was led by Anthony Cervasse.

Minutes of January 15, 2013 Regular Council Meeting

Mr. Repsher made a motion, seconded by Mr. Flory, to approve the minutes of the regular council meeting held Tuesday, January 15, 2013 as submitted; the motion carried unanimously.

Public Comments - Agenda Items

Ann Lesh of Lombardy Lane said she has several concerns with the proposed rezoning amendment. Mr. DeLarco told Ms. Lesh she can make those comments during the public hearing on the rezoning amendment.

Attorney Joseph Wiesmeth said he was here representing Bob Buff and Troy Nauman, owners of the Franklin Hill Road property proposed for rezoning. Mr. Wiesmeth said both men are out of town on business and were not available to attend tonight's meeting.

Public Hearing on Proposed Ordinance No. 1264 – Amending the Code of the Borough of East Stroudsburg, Chapter 157 Entitled Zoning, to Revise Regulations for Signs for Public Recreation Trails and Public Parks

Mr. Flory made a motion, seconded by Mr. Repsher, to open the public hearing on the proposed zoning ordinance amendment; the motion carried unanimously.

Marvin Walton, Codes Official for the Borough, was sworn in as a witness and answered questions posed by Mr. Prevoznik. Mr. Walton testified that a summary notice of the proposed amendment was advertised in the *Pocono Record* on January 19<sup>th</sup> and 26<sup>th</sup>, and that a copy of the proposed ordinance was submitted to the Monroe County Planning Commission and the Borough Planning Commission for review and comment. Also, a copy was submitted to the Monroe County Law Library. The proof of publication was introduced as Exhibit 1, a letter from the Borough Planning Commission recommending approval of the amendment was introduced as Exhibit 2. The letter from James Phillips, Manager, to the MCPC dated Dec. 27, 2012 was introduced as Exhibit 4; the MCPC comments in letter dated Jan. 25, 2013 was Exhibit 3; a copy of the notice to the Law Library dated Jan. 16, 2013 – Exhibit 5. The copy of proposed Ordinance 1264 – Exhibit 6, and a sign-in sheet for persons wishing to testify at this hearing, Exhibit 7.

Mr. Walton summarized the proposed ordinance as allowing signs for public recreation trails and public parks in all zoning districts. The ordinance also allows for a limited percentage of the sign area for the name of sponsors for the sign. Mrs. Wolbert commented that this proposal came from the Stroud Region Open Space and Recreation Commission (SROSRC) as a means to provide for sponsorship of such signs, since the current zoning provisions do not allow for any off-premises "advertising". The actual language was developed by our planning consultant for the Borough, Charlie Schmehl.

Mr. Prevoznik asked for questions from Council – and there were none. Mr. Prevoznik asked for questions from the audience, and there were none. Mr. Prevoznik moved that the exhibits be introduced into the record. Mr. Repsher then made a motion, seconded by Mr. Flory, to close the public hearing; the motion carried unanimously.

Public Hearing on Proposed Ordinance No. 1265 - Amending the Code of the Borough of East Stroudsburg, Chapter 157 Entitled Zoning, To Revise the Zoning Map and Change a Parcel South of Franklin Hill Road West of Route 447 to a New I-M1 Institutional Medical Zoning District; To Establish New Provisions for the I-M1 Zoning District; and to Permit By Right Places of Worship in the C-1, C-2, S-1, I-M, I-M1, I-U, I-UA, and C-1A Districts

Mr. Repsher made a motion, seconded by Mrs. Wolbert, to open the public hearing on the proposed zoning ordinance amendment; the motion carried unanimously. Mr. Prevoznik asked that all persons wishing to speak concerning the proposed ordinance sign in.

Marvin Walton, Codes Official for the Borough, was sworn in as a witness and answered questions posed by Mr. Prevoznik. Mr. Walton testified that a summary notice of the proposed amendment was advertised in the *Pocono Record* on January 18<sup>th</sup> and 25<sup>th</sup>, and that a copy of the proposed ordinance was submitted to the Monroe County Planning Commission on October 12, 2012. The MCPC did make one comment in regard to the proposed ordinance, noting that the proposal “shares some characteristics with spot zoning”. The ordinance was also submitted to the Borough Planning Commission for review and comment. The Borough PC at their Sept. 12, 2012 meeting voted not to recommend approval of the zoning amendment. A copy of the proposed ordinance was also submitted to the Monroe County Law Library, and a copy of the proposed amendment was mailed to the property owners on Jan. 4, 2013. Also, Mr. Walton said he had mailed copies of the notice to all property owners located within 1,000 ft. of the property; and he posted notices along the perimeter of the property.

Mr. Walton said the proposed zoning amendment creates a new I-M1 zoning district, rezones a parcel of approx. 10 acres from R1 to I-M1, and allows places of worship as a permitted use in all zoning districts. Mr. Walton said the new I-M1 district is very similar to the existing I-M district located along East Brown Street; but also allows R1 uses. The ordinance provides greater setbacks than in the existing R1 district, and requires planting of an evergreen tree buffer for all uses adjoining residential uses. Properties to the north of the subject property are zoned B2 commercial (in Smithfield Township), properties to the east are existing residential but also zoned B2. Mr. Walton said existing adjoining uses in the Borough are residential; this is one of the largest undeveloped parcels of property remaining in the Borough. Mr. Walton said the planning consultant had reviewed the “spot zoning” question and advised that was not an issue because of the size of the parcel and the adjoining commercial uses.

Mrs. Wolbert asked how many property owners were notified? Mr. Walton replied 28. Mr. DeLarco asked did the Borough consult with its planning consultant on this ordinance? Mr. Walton said, planner Charlie Schmehl drafted the proposal in consultation with the the Borough’s Zoning Ordinance Review Committee.

Upon question from Mr. Prevoznik, Mr. Walton said the purpose of the proposed I-M1 district is to serve as a transition zone between the existing residential uses and existing and proposed commercial uses along Rte. 447, including the proposed Westfield Hospital facility to be built between Rte. 447 and Franklin Hill Road. Mr. Walton also reviewed the differences in setback requirements, height limitations, and maximum lot coverage between the existing R1 zoning and the proposed I-M1 zoning.

Ann Lesh asked where the existing I-M district is located? Mr. Walton showed the location on the Borough zoning map.

Joseph Wiesmeth asked if the property were rezoned, would it generate more taxes for the Borough? Mr. Walton said he presumed so.

Mr. Phillips noted that the proposed rezoning is based on the fact that the Westfield Hospital facility is to be developed on the adjoining property along Rte. 447.

Ann Lesh asked what is wrong with leaving the property zoned R1? Mr. DeLarco noted that there are long-standing issues with new residential development burdening the schools, while commercial development will not impact the schools. Mr. DeLarco also noted that this property is difficult to develop because of being located within the Flory Pond drainage district.

Mr. Flory stated that zoning needs to be changed sometimes, with changes occurring in the community.

Mr. Wiesmeth said this proposed zoning change will result in mutual benefits to both the property owner and the Borough. If developed under the proposed I-M1 district, only 3 of the 10 acres would be developed because of the buffer requirements included.

Tracy Granger, a resident and member of the Borough Planning Commission, said the PC was concerned about the issue of spot zoning. Mr. Wiesmeth said there is case law which found that rezonings of 10+ acres are prima facie not spot zoning. Ann Lesh asked about the amendment permitting places of worship? Mrs. Wolbert stated that even if this amendment is not approved, Council must still “plug a hole” in our zoning by adopting an amendment to permit places of worship in all zoning districts, so as not to be exclusionary.

Gina Gervasi of Franklin Hill Road asked how many homes would be removed if the property were developed commercially? Mr. Wiesmeth replied, the two existing vacant homes on the property.

Mr. Begley asked what is the likelihood of a medical facility being built on the property which would be tax-exempt? Mr. Wiesmeth said that is unlikely, unless it were to be operated by a religious-affiliated organization, like Lutheran Services.

- Mr. Prevoznik moved that the exhibits be introduced into the record as follows:
- the proof of publication in the *Pocono Record*, Exhibit 1
  - letter from Borough Planning Commission, Exhibit 2
  - comments letter from Monroe County Planning Commission, Exhibit 3
  - letter to property owner from Codes Official M. Walton, Exhibit 4
  - letter notice posted along property perimeter, Exhibit 5
  - copy of the notice to the Law Library, Exhibit 6
  - sign-in sheet for persons wishing to testify at this hearing, Exhibit 7.

Mr. Flory made a motion, seconded by Mr. Begley, to adjourn the public hearing; the motion carried unanimously.

Request by Manager James Phillips to Attend PELRAS Training Conference at State College PA, March 20-22, 2013

Mr. Flory made a motion, seconded by Mr. Begley, to approve the request by Manager Phillips to attend the training with reimbursement of expenses pursuant to Borough travel policy; the motion carried unanimously.

Resolution No.5-2013 - Designating Marvin Walton as the Borough's Agent for the Purposes of Executing Forms and Documents for the Purpose of Obtaining Financial Assistance for "Superstorm Sandy" Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Mr. Begley made a motion, seconded by Mr. Repsher, to adopt proposed Resolution No. 5-2013 designating Marvin Walton as agent for the Borough for obtaining disaster assistance for Superstorm Sandy; the motion carried unanimously.

Proposed Ordinance No. 1270 - Amending the Code of the Borough of East Stroudsburg, Chapter 126 Entitled Sewers, to Revise the Methodology of Determining Rates and Charges and Increasing Sewer Rates

Mr. DeLarco said Council had reviewed the proposed sewer rate changes at the Committee meeting and was in agreement with the proposed changes to better match sewer revenues by customer category with actual sewer usage. Mr. Phillips said he will prepare the necessary ordinance to implement the sewer rates, however a rewrite of the chapter may be needed because all the definitions have to be added to change to the billing method by “equivalent billing unit” as was done with the water rates. After discussion, Mr. Flory made a motion, seconded by Mr. Begley, to authorize preparation and advertising of an ordinance to implement the new sewer rate structure as discussed; the motion carried unanimously.

Proposed Ordinance No. 1271 - Amending the Code of the Borough of East Stroudsburg, Chapter 150 Entitled Vehicles and Traffic, to Revise Section 150-68, Schedule XVI to prohibit on-street parking on Hannah Court, Thomas Point, Blair Court, and Grandview Street

Mr. Repsher made a motion, seconded by Mr. Begley, to authorize advertising of the proposed ordinance to revise parking restrictions in the cul-de-sacs on Hannah Ct., Thomas Pt., Blair Ct., and Grandview St. extension as reviewed; the motion carried unanimously.

Proposed Ordinance No. 1272 - Amendment No. 7 to the Intergovernmental Cooperation Agreement Establishing the Stroud Area Regional Police Department

Mr. Prevoznik suggested that Council may want to defer action on this ordinance until we receive notice that Stroud Township Supervisors and Stroudsburg Borough Council are also willing to adopt this ordinance in its current form. Mr. Flory made a motion, seconded by Mr. Repsher, to table action on the proposed ordinance; the motion carried unanimously.

Ordinance No. 1264 – Amending the Code of the Borough of East Stroudsburg, Chapter 157 Entitled Zoning, to Revise Regulations for Signs for Public Recreation Trails and Public Parks

Mrs. Wolbert made a motion, seconded by Mr. Repsher, to adopt proposed Ordinance No. 1264 as advertised; the motion carried unanimously.

Proposed Ordinance No. 1265 - Amending the Code of the Borough of East Stroudsburg, Chapter 157 Entitled Zoning, To Revise the Zoning Map and Change a Parcel South of Franklin Hill Road West of Route 447 to a New I-M1 Institutional Medical Zoning District; To Establish New Provisions for the I-M1 Zoning District; and to Permit By Right Places of Worship in the C-1, C-2, S-1, I-M, I-M1, I-U, I-UA, and C-1A Districts

Mr. Flory made a motion, seconded by Mr. DeLarco, to adopt proposed Ordinance No. 1265 as advertised. The motion failed by a vote of 2 “yes” and 3 “no”, with Mrs. Wolbert, Mr. Repsher, and Mr. Begley voting against the motion.

Schedule Special Council Meeting for February 14, 2013

Mr. Walton noted that the proposed Ordinance No. 1268, to Establish a Schedule of Compensation and a List of Responsibilities for the Borough Tax Collector for the 2014-2017 Term of Office, was not able to be advertised for action at tonight’s meeting. Mr. Prevoznik said Council needs to set the compensation for the Tax Collector position by February 15<sup>th</sup>. After discussion, Mr. Flory made a motion, seconded by Mr. Begley, to authorize advertising a special meeting for Thursday, February 14, 2013 at 5:00 p.m. for action on the proposed Ordinance; the motion carried unanimously. Mr. Begley made a motion, seconded by Mrs. Wolbert, to hold the special meeting on Friday February 15,

2013 – if for some reason the Thursday date does not work for advertising purposes; the motion carried unanimously.

#### East Stroudsburg University - Revised Parking Management Plan

Mr. Prevoznik said the University has submitted their revised parking management plan which is being reviewed by the Engineer; and he will set up a meeting with the parking committee of Council to discuss it further.

#### Discussion on contractor Insurance Requirements

Mr. Prevoznik said the insurance specifications that the Borough will require of contractors still needs to be resolved for inclusion in the bidding documents for the Ridgeway St. sewerline/waterline project. The Borough will want to still require an A.M. Best “A” rating for the insurance company, but may want to allow a class “7” rating of financial capacity as opposed to a class “10”. Mr. D’Alessandro noted that would still require a firm with \$100-250 million dollars of assets, which should be plenty for this project in the cost range of \$150,000.

After discussion, Mr. Flory made a motion, seconded by Mr. Repsher, to authorize the contractor insurance requirements as discussed; the motion carried unanimously.

#### Proposed Ordinance No. 1269 Amending Floodplain Management Regulations

Mr. Walton said he has prepared a draft of the new floodplain management ordinance using the model ordinance provided by the Monroe County Conservation District. However, Mr. Prevoznik had noted that the MCCD model includes the most restrictive provisions, and could preclude development in certain portions of the Borough if adopted. Mr. D’Alessandro reviewed maps showing the four areas within the Borough where new development would be precluded by the most restrictive provisions; unless a variance was granted. The areas include the Twin Boroughs Recycling Center and the Buttonwood Court area, which are located downstream and upstream, respectively, of the East Stroudsburg Flood Protection levee. The other two areas include the Eagle Glen Plaza and Eagle Valley Plaza areas within the Sambo Creek flood zone. Mr. Walton said he will check on the variance procedures under each model ordinance, so Council can decide on which model ordinance provisions to utilize.

#### Repairs to East Stroudsburg Flood Protection Levee

Mr. Phillips said he was contacted by the U.S. Army Corps of Engineers concerning the repair contract that was awarded by the Corps for work on the levee where damage had occurred from previous high water events. It has been determined that additional damages need to be repaired, which will require an increase in the total contract – and an increase of \$68,000 for the amount of the 20% local share to be funded by the Borough. The Pennsylvania Department of Environmental Protection (DEP) had agreed to reimburse the Borough for the original local match cost; but there is no guarantee that they will be able to fund this additional \$68,000.

Mr. Flory said the Borough does not really have a choice in this matter, the repairs need to be completed; Mr. Phillips said he agrees. Mr. Flory made a motion, seconded by Mr. Repsher, to notify the Army Corps that the Borough will fund the required increase in local share costs for the levee repair work so as to not delay the scheduled repairs; the motion carried unanimously.

#### Public Comments – New Business

Kim Raub of East Stroudsburg University asked when Council will be ready to implement the proposed Rental Housing Licensing and Inspection Program? Mr. Walton said the proposed ordinance is basically in final form, but Council still needs to decide on the maximum density to be allowed under the proposed Gateway District rezoning.

## Correspondence

- Mr. Phillips reported receipt of the following items of correspondence:
- i. Examination Report from the PA Department of the Auditor General - Highway Transfer Program Turnback Account (Prospect Street)
  - ii. Royalty Check Received From Utility Service Partners, Inc. for the 2012 year (\$2,131,00).
  - iii. PA State Association of Boroughs (PSAB) - Annual Conference to be held May 5-8 at Hershey, PA
  - iv. Letter from Alberta Tallada, Tax Collector, requesting a 4% annual increase in the compensation for the Tax Collector position for the new 2014-2017 term.

## Reports

Mayor Martinelli asked if the Borough is still looking at working with the Nature Conservancy on managing of its reservoir forestry property? Mr. Phillips said yes, we have found no reason not to pursue this issue further.

Mrs. Wolbert noted that the Borough still needs an Alternate member to serve on the Board of the Stroud Region Open Space and Recreation Commission (SROSRC).

Mr. Repsher noted that the contractor for Smithfield Sewer Authority has started construction on the sewerline through Zacharias Park, and stated that someone from the Borough should be inspecting work on the Borough property.

Mr. Walton reminded Council members that five members will be needed to serve on the Property Maintenance Appeals Board provided for in the proposed Rental Housing Licensing and Inspection Program ordinance.

Mr. DeLarco asked who will be preparing a proposed ordinance on Sidewalks Requirements? Also, Mr. DeLarco said the criteria for inspections for property re-sales should be expanded to closer match the criteria for the proposed Rental Housing inspections.

## List of Bills Payable – February 5, 2013

Mr. Flory made a motion, seconded by Mr. Begley, to approve the List of Bills Payable and to ratify expenditures and payroll made through February 5, 2013 as submitted. The motion carried unanimously.

## Executive Session for Discussion of Litigation Matters

None

## Adjournment

With no further business, Mr. Begley made a motion, seconded by Mr. Flory, to adjourn the special meeting at 10: 01 p.m. The motion carried unanimously.

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James S. Phillips, Secretary