

East Stroudsburg Borough, May 28, 2013

A special meeting of the East Stroudsburg Borough Council was held at the Municipal Building on Tuesday, May 28, 2013. The following members were in attendance: Peter Begley, Roger DeLarco; Ed Flory, Don Repsher, William Reese, and Sonia Wolbert. Also attending were: Manager James S. Phillips; Solicitor John C. Prevoznik; and Engineering Representative Russell Scott IV of R.K.R. Hess Associates, Inc.

Call to Order/Pledge of Allegiance – President DeLarco

President DeLarco called the meeting to order at 7:30 p.m. Russ Scott led the pledge of allegiance.

Minutes of May 21, 2013 Regular Council Meeting

Mr. Flory made a motion, seconded by Mr. Reese, to approve the minutes of the regular council meeting held Tuesday, May 21, 2013 as submitted; the motion carried unanimously.

Public Comments - Agenda Items

None.

Public Hearing on Proposed Ordinance No. 1276 – An Ordinance of the Council of the Borough of East Stroudsburg on Behalf of the Borough of East Stroudsburg Authorizing a Fourth Amendment to an Intermunicipal Water Service Agreement and Facilities Transfer Agreement, dated May 6, 1999, and Three (3) Subsequent Amendments Thereto, Between the Borough of East Stroudsburg and the Brodhead Creek Regional Authority Which: 1) Clarifying the Numbering of Previous Amendments Thereto; 2) Redefining Water Service Area; 3) Inserting a new Exhibit B; 4) Extending the Term of the Agreement; 5) Authorizing Expansion of Authority Service Area in Smithfield Township; 6) Delineating Connection Points; 7) Providing a Corrected Exhibit A; 8) Ratifying and Adopting All Previous Actions Not in Conflict with this Ordinance; and 9) Authorizing Other Necessary Action.

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

Mr. Prevoznik noted that he also serves as Solicitor for the Brodhead Creek Regional Authority (BCRA), and R.K.R. Hess Associates also serves as Engineer for BCRA; for the record he would not be offended if Council wants to have independent counsel or consultant review the provisions of the proposed amendments to the Intermunicipal Water Service Agreement between the Borough and BCRA. Mr. Prevoznik then went on to review the history of the Intermunicipal Water Service Agreement between the Borough and BCRA, and these proposed amendments.

Kenneth Brown, Manager for BCRA, stated that the Authority will be submitting information to Pennsylvania Department of Environmental Protection (PA DEP) by the end of this month, on the water allocation permits that have been before PA DEP for several years. It is anticipated that DEP will be acting on these permits soon, because one permit is needed for BCRA to be able to expand their service area in order to provide water service to the proposed new Kalihari Water Park Resort in Tobyhanna Township. Another permit is for the water allocation for bulk water that BCRA purchases from the Borough. The timing of these events may also enable the Borough's water allocation permits, that have been "sitting" with DEP for several years, to be acted upon soon. These events are what make it optimal for action on this amendment to the Intermunicipal Water service agreement that has been in effect since 1998.

Mr. Prevoznik said the major points of the Agreement are, that the term of the Agreement will be extended for a period of twenty-five (25) years or until Dec. 31, 2038,

and the amount of the water allocation provided to BCRA will not increase over the current 250,000 gpd in the current agreement.

Mr. DeLarco opened the public hearing to comments or questions from the public, and there was none. Mr. DeLarco then asked for comments or questions from Council. Mrs. Wolbert asked if there was any reason that the Borough might want to consider selling water to additional areas outside the Borough? Mr. Prevoznik said that via the Facilities Transfer Agreement in 1999, the Borough had “sold” or transferred its customers located outside the Borough to BCRA; in order that the Borough would not ever be subject to having the rates for those outside customers being subject to regulation by the Public Utility Commission (PUC). Thus it is unlikely that the Borough would want to consider any new customers or sales outside the Borough.

Mr. Phillips reviewed the following exhibits for the public hearing, and asked that they be introduced into the record for the hearing:

- Exhibit 1 Copy of notice of Public Hearing and Intent to Enact the proposed Ordinance to approve the amendment.
- Exhibit 2 Copy of Proof of publication of the notice in the *Pocono Record* on May 20, 2013.
- Exhibit 3 Copy of the entire proposed Ordinance.
- Exhibit 4 Copy of the proposed Fourth Amendment to Intermunicipal Water Service Agreement and Facilities Transfer Agreement.
- Exhibit 5 Copy of letter to Monroe County Law Library transmitting full copy of the proposed ordinance.
- Exhibit 6 Sign-in sheet for public hearing.
- Exhibit 7 Map of proposed new water service area in Smithfield Township to be served by BCRA.

Mrs. Wolbert made a motion, seconded by Mr. Repsher, to close the public hearing; the motion carried unanimously.

Ordinance No. 1276 – An Ordinance of the Council of the Borough of East Stroudsburg on Behalf of the Borough of East Stroudsburg Authorizing a Fourth Amendment to an Intermunicipal Water Service Agreement and Facilities Transfer Agreement, dated May 6, 1999, and Three (3) Subsequent Amendments Thereto, Between the Borough of East Stroudsburg and the Brodhead Creek Regional Authority Which: 1) Clarifying the Numbering of Previous Amendments Thereto; 2) Redefining Water Service Area; 3) Inserting a new Exhibit B; 4) Extending the Term of the Agreement; 5) Authorizing Expansion of Authority Service Area in Smithfield Township; 6) Delineating Connection Points; 7) Providing a Corrected Exhibit A; 8) Ratifying and Adopting All Previous Actions Not in Conflict with this Ordinance; and 9) Authorizing Other Necessary Action.

Mr. Flory made a motion, seconded by Mr. Reese, to adopt proposed Ordinance No. 1276 as advertised; the motion carried unanimously.

Water Allocation Permit Applications by the Borough on file with the Pennsylvania Department of Environmental Protection and the Delaware River Basin Commission

Russ Scott stated that the Borough was issued a permit by the predecessor agency to PA DEP in 1956 for diversion of water from the Michaels Creek into the East Stroudsburg Reservoir within the Sambo Creek watershed. The application for renewal of this permit has been on file with PA DEP but has languished there. Now the proposed Kalihari Resort project is pushing the issuance of the permit. DEP may require a pass-by flow requirement for the Michaels Creek, and may change the withdrawal basis for the permit to year-round use.

Mr. Scott said the Sambo Creek permit is via an Order of Confirmation from 1945 that authorizes the Borough to withdraw up to 2.0 mgd of water from the Sambo Creek. There is no expiration date for this Order. Mr. Prevoznik said there is no case law on these “Orders of Confirmation”; but the Borough may have a good position to claim that application for renewal of this permit is not necessary.

Mr. Scott said the issue is what to do with the Michaels Creek Diversion Permit, which has expired but the Borough has applied for renewal. The options include:

1. Keep the current application before the DEP, which includes an increase in the requested water withdrawals.
2. Revise the application, to keep the same terms and conditions in the permit as previously.
3. Withdraw the application.

Mr. Phillips noted that part of the previous discussions with DEP was concerning the implementation of a “management plan” for the Michaels Diversion, to better utilize withdrawals only when needed for the Reservoir. Mr. DeLarco said he had participated in some of the discussions concerning these permit issues; and by revising the application on file for the Michaels Diversion it is hoped that this will reduce the amount of scrutiny of the application by government agencies and others. Mr. DeLarco also noted that there is now more development along the Michaels Creek than 50+ years ago when the permit was issued, which could effect any pass-by requirements.

Mr. Prevoznik suggested that the Borough work through its Engineer, and the special counsel appointed previously for this matter, Randall Hurst of Mette Evans & Woodside, to revise the permit applications with and for PA DEP and the DRBC.

Mr. Flory made a motion, seconded by Mr. Reese, to authorize R.K.R. Hess Assoc., Inc. to work with Environmental Counsel Hurst to rescind the application on file with DEP for the Sambo Creek allocation and assert our rights under the 1945 Order of Confirmation; and to revise the application for the Micheals Creek Diversion to retain the same basic withdrawal amounts as at present. The motion carried unanimously.

#### Resolution No. 11-2013 - Preparation and Submittal of Penn WORKS grant application for Rehabilitation of Middle Reservoir Dam

Mr. Repsher made a motion, seconded by Mr. Reese, to adopt proposed Resolution No. 11-2013 to authorize R.K.R. Hess Associates, Inc. to prepare and file a Penn Works grant application for the Middle Dam rehabilitation work with the Pennsylvania Department of Community and Economic Development (DCED). The motion carried unanimously.

#### Public Comments – New Business

None.

#### Reports

Mayor Martinelli asked Mr. Phillips to have the DPW crew check on several utility patches on Elizabeth Street.

Mrs. Wolbert said she is working with interested volunteers for the Revitalization Committee.

Mr. Repsher asked if Smithfield Township has connected its customers to the new sewerline along Rte. 447? Mr. Phillips said the sewerline has been constructed, but is not yet in use.

Mr. Phillips reported that the Stroud Region Open Space and Recreation Commission (SROSRC) has decided to proceed with leveling the concrete floor at the Day St. Community Center, former Garage area; at a cost of \$9,500.

#### Executive Session for Discussion of Litigation and Real Estate Matters

Mrs. Wolbert made a motion, seconded by Mr. Begley, to adjourn into executive session at 9:05 p.m.; the motion carried unanimously.

At 9:16 p.m., Council members reassembled in the meeting room, and Mr. Repsher made a motion, seconded by Mrs. Wolbert, to reconvene the public meeting; the motion carried unanimously. Mr. Prevoznik said the executive session was held to discuss a Litigation matter.

#### Appointment of Special Counsel

After discussion, Mr. Repsher made a motion, seconded by Mr. Begley, to appoint the firm of Manko, Gold, Katcher, & Fox, LLP as special counsel to handle the CERCLA action in regards to the U.S. Environmental Protection Agency order for the 66/68 Analomink St. Building owned by the Borough. The motion ended in a 3-3 tie with Mr. Begley, Mr. Repsher, and Mr. DeLarco voting “yes”, and Mr. Flory, Mr. Reese, and Mrs. Wolbert voting “no”. In order to break the tie, Mayor Martinelli voted for the motion, which then carried 4-3.

#### Adjournment of Special Meeting

Mr. Repsher made a motion, seconded by Mrs. Wolbert, to adjourn the regular meeting at 9:25 p.m.; the motion carried unanimously.

---

James S. Phillips, Secretary