

May 5, 2008

EMMAUS BOROUGH COUNCIL

Emmaus Borough Council
Agenda
Monday, May 5, 2008 7:00 PM

1. Call to Order
2. Pledge of Allegiance
3. Personal Appeals, Part I
4. Reading of Minutes

April 21, 2008
5. Decision on Bids

2008 Concrete Curb and Sidewalk Contractor (Revised)
6. Communications
 - a. Teryl Madison, Executive Director, Emmaus Main Street Program – Street Lighting on 4th Street
 - b. Jean Braxmeier, 1204 Macungie Ave. – Emmaus Sidewalks
7. Borough Engineer's Report
8. Solicitor's Report
 - a. **Ordinance No. 1028** – Repealing Ordinance 989 of Chapter 21, Part 4 of the Codified Ordinances of the Borough of Emmaus and Providing for the Implementation of a New Ordinance Governing the Installation, Construction and Maintenance of Sidewalks, Curbs, Handicap Ramps and Driveway Crossovers throughout the Borough of Emmaus (**2nd Reading 5/5/08**)
 - b. **Ordinance No. 1041** - Amending Chapter 26, Sections 105 and 106, of the Codified Ordinances, Dealing with the Water Rate Schedule and the Billing and Collection Procedures for the Borough of Emmaus, Pennsylvania (**2nd Reading 5/5/08**)
9. New Business
10. Unfinished Business

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11. Items Not on Agenda, Subject to Rule 6
12. Mayor's Report
13. Committee Reports

Public Works/(Highway, Water & Sewer) (Labenberg, Neely, Waddell)

1. Committee
2. Solicitor
 - a. **Sidewalk Standards**

Health and Sanitation (Holtzhafer, Labenberg, Brown)

1. Committee
2. Solicitor

Parks and Recreation (Barrett, Labenberg, Holtzhafer)

1. Committee
 - a. Raven Mill Property Swap
 - b. Furnace Dam Geese Problem – (Tabled 3/3/08)
 - c. Skate Park
 - d. Review Smoking Policy in Borough Parks
 - e. **Hiring of Two Lifeguards**
2. Solicitor

Public Safety (Gilbert, Barrett, Brown)

1. Committee
 - a. Outdoor Fires
 - b. Request for Two-Hour Parking Signs on Macungie Ave. on East/West Side between Chestnut and Green Streets - (Tabled 4/7/08)
 - c. Fifteen Minute Parking on Macungie Avenue (90 Day Trial – 7/21/08)
 - d. Conditional Hiring of Police Officer (Scheduled for 5/19/08)
2. Solicitor

General Administration (Neely, Gilbert, Barrett)

1. Committee
 - a. Historical Building Ordinance
 - b. **Reappointment of Parks & Recreation Commission Members:**

<u>Name</u>	<u>Term Expires</u>
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Daniel Helffrich	5/1/2011
Brian Holtzhafer	5/1/2011
Michelle Steiner	5/1/2011

2. Solicitor

Budget and Finance (Waddell, Gilbert, Holtzhafer)

1. Committee
 - a. **Bill List (Resolution - 14)**
 - b. **Retired Police Officers Cost of Living Increase**
2. Solicitor

Community Relations/Development (Brown, Waddell, Neely)

1. Committee
 - a. **Downtown Master Plan**
 - b. Web Page Update
 - c. RFP for Southside Industrial Master Plan – Awaiting County Approval
 - d. Triangle Park Construction
 - e. 2009 Anniversary Celebration
 - f. Jr. Council Members
 - g. Emmaus Arts Commission
2. Solicitor

Ad Hoc Committees (Holtzhafer, Gilbert, Barrett, Fosselman, Mayor Iobst)

Community/School Relations

14. Personal Appeals, Part 11
15. Borough Manager's Report
 - a. Significant Revenue and Expense Items for April 2008
 - b. Manager's Report
16. President's Business

Executive Session – Litigation Issue
17. Adjournment

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Next Resolution #16
Next Ordinance #1042

The Emmaus Borough Council met in regular session on May 5, 2008 in Borough Council Chambers, 28 S. 4th Street, Emmaus, PA 18049.

CALL TO ORDER

Council President Waddell called the meeting to order at 7:00 p.m.

Michael Waddell, President	Present
Craig Neely, Vice-President	Present
Brent Labenberg	Present
Lee Ann Gilbert	Present
Wesley Barrett	Present
Nathan Brown	Present
Brian Holtzhafer	Present
Winfield Iobst, Mayor	Present
Frank Procyk, Solicitor	Present
Bruce Fosselman, Borough Manager	Present

PERSONAL APPEALS, PART I

- A. Emil Kantra 4001 Schoolhouse Lane, Center Valley** is an attorney representing Vinart Realty Associates regarding the new sidewalk ordinance. He expressed his concerns with the new sidewalk ordinance and suggested that Council give serious reconsideration to adopting the ordinance.

READING OF MINUTES

Motion by Council Member Barrett, seconded by Council Member Labenberg to dispense with the formal reading of the April 21, 2008 minutes. There were 7 ayes. Motion carried.

Motion by Council Member Brown, seconded by Council Member Barrett to adopt the April 21, 2008 minutes as drafted. There were 6 ayes, 1 abstained (Neely). Motion carried.

DECISION ON BIDS

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Matthews Brothers Concrete sent a certified notice to the Borough retracting their bid for the 2008 Concrete Curb and Sidewalk Contract. Code Official, James Farnsworth, recommends awarding this bid to the second lowest bidder, Zgura Concrete Services in the amount of \$51,852.50. The County was notified and approved the change.

Motion by Council Member Brown, seconded by Council Member Labenberg to award the 2008 Concrete Curb and Sidewalk Contract to Zgura Concrete Services in the amount of \$51,852.50.

Council Member Barrett confirmed with Solicitor Procyk that the original motion granting the bid to Matthews Brothers does not need to be retracted because the bid was withdrawn. Council Member Holtzhafer confirmed that Matthews Brothers will not have a penalty for withdrawing their bid and that they can bid again in the future.

There were 7 ayes. Motion carried.

COMMUNICATIONS

- a. Teryl J. Madison, Executive Director, Emmaus Main Street Program – Street lighting on 4th Street. Referred to Public Safety Committee.
- b. Jean Braxmeier, 1204 Macungie Ave. – Suggestion on costs involved with sidewalk installation. Borough Manager Fosselman will respond.

BOROUGH ENGINEER'S REPORT

None

SOLICITOR'S REPORT

Motion by Council Member Labenberg, seconded by Council Member Neely to read Ordinance No. 1028 in short title. There were 7 ayes. Motion carried.

President Waddell read Ordinance No. 1028 in short title: An Ordinance repealing Ordinance 989 of Chapter 21, Part 4 of the Codified Ordinances of the Borough of Emmaus and Providing for the Implementation of a New Ordinance Governing the Installation, Construction and Maintenance of Sidewalks, Curbs, Handicap Ramps and Driveway Crossovers Throughout the Borough of Emmaus.

Solicitor Procyk stated that Ordinance No. 1028 has been revised from the last draft before Council for its first reading. Parts 401(c)(iv) & 401(c)(v) were added, which deals with the previous exemptions that were granted or denied.

Motion by Council Member Labenberg, seconded by Council Member Neely to adopt Ordinance No. 1028 on its 2nd Reading.

Council Member Labenberg asked Solicitor Procyk's view on the first personal appeal heard tonight. Mr. Procyk said that there can be two positions; based on Judge Black's decision,

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the exemption process was flawed and the only remedy to that situation is to have everyone come before Council again to request an exemption. Mr. Holtzhafer is unclear as to which properties Ordinance 1028 is affecting. Mr. Procyk said that originally (at the 1st Reading) it was for the properties that were denied an exemption and now it is expanded to deal with exemptions that have been granted. Under the old ordinance there were two classes, exemptions granted and exemptions denied; the Ordinance before Council for the 2nd Reading will bring both of those classes forward into the new ordinance without starting from ground zero. Mr. Procyk also explained that repealing Ordinance No. 989 does not change the fact that it was valid from the time that it was adopted until it is repealed. Mr. Holtzhafer confirmed with Mr. Procyk that anyone who has not requested an exemption or have been denied an exemption will need to install sidewalk. Council Member Neely explained the history of the sidewalk ordinance. The sidewalk ordinance that was enacted in 1907 stated that all Borough properties shall have sidewalk if it fronts a public street, but this was never followed. In 2001 and 2002 residents in Country Heights and the Stryer section were notified to install sidewalk due to the roadways being resurfaced. Because of storm water issues in Country Heights, the Lehigh Valley Planning Commission thought that the Borough would need a detention pond on the east side of 16th Street to catch the increased runoff. At that time Council voted to defer the installation of sidewalk because of cost, impediments and that the sycamore trees would need to be removed in the Stryer section. Council then tried to develop an ordinance that would balance different interests; pedestrian safety and areas that are not practical for sidewalk installation. Council set up that the ordinance would permanently exempt areas that did not meet the goal of pedestrian connectivity or if had serious impediments. An exemption procedure was created and the court determined that it was not specific enough. The procedure gave the property owner the opportunity to appeal sidewalk installation to the Public Works Committee, who made a recommendation to Council and then a vote was then taken. Regarding Ordinance 1028, Mr. Neely stated that he agrees with Section 401(c)(iii) and that the prior exemptions granted should remain in effect, but he does not agree with Section 401(c)(iv) and that prior denied exemptions will remain denied. He said it's not fair to impose an ordinance that has been declared invalid upon those that have been denied an exemption. Mr. Neely also feels that anyone who did not seek an exemption before should have the opportunity to appeal again. Council Member Labenberg agrees that anyone that was denied an exemption should be able to go through the process again and that granted exemptions should not change. He said that even though residents had three years to appeal sidewalk installation, they should be given the opportunity again. After discussion, Council agreed to change the deadline for appeals to November 1, 2010. Council Member Holtzhafer is not sure why S. 7th Street from Furnace St. to Borough limits was exempt or the east side of E. Main Street from 164 E. Main going north to Dalton St. Mr. Labenberg said that the properties that are on the same side of the Knauss Homestead on E. Main St. will be required to install sidewalk. Mr. Neely said that the purpose of having the sidewalk on the same side of the Knauss Homestead was to give access to the Homestead and to the ball fields. Mr. Holtzhafer suggested removing Frank Drive from the exempt list because currently there are sidewalks there. The Public Works Committee will look into possible exemptions granted but not listed on the ordinance; Tilghman Street at the end of DeLong Ave. Mr. Holtzhafer confirmed with Council that Arch Street between 10th & 12th Street are required to install sidewalk.

Motion by Council Member Brown, seconded by Council Member Labenberg to table Ordinance No. 1028. There were 7 ayes. Motion carried.

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Council Member Neely said it's almost impossible to say that the sidewalk ordinance will be right, but Council can try and make it as right as possible under the prevailing conditions. President Waddell agreed and thanked the past and present Council for struggling with the sidewalk ordinance and trying to be fair. Council Member Labenberg is concerned about exempted properties that in years to come should have sidewalk.

Motion by Council Member Brown, seconded by Council Member Neely to read Ordinance No. 1041 in short title. There were 7 ayes. Motion carried.

President Waddell read Ordinance No. 1041 in short title: An Ordinance Amending Chapter 26, Section 105 and 106, of the Codified Ordinances, Dealing with the Water Rate Schedule and the Billing and Collection Procedures for the Borough of Emmaus, Pennsylvania

Motion by Council Member Labenberg, seconded by Council Member Brown to adopt Ordinance No. 1041 on its 2nd Reading. Roll Call Vote: Brown aye, Neely aye, Gilbert aye, Labenberg aye, Holtzhafer aye, Barrett aye, Waddell aye. Motion carried.

Progress

NEW BUSINESS

None

UNFINISHED BUSINESS

None

ITEMS NOT ON AGENDA, subject to Rule 6

None

MAYOR'S REPORT

Mayor Iobst asked staff to handle the request from the Veterans to hold the Memorial Day Celebration.

Progress

COMMITTEE REPORTS

a. Public Works Committee

The Committee will meet on May 7th at 8 a.m.

Progress

b. Health and Sanitation Committee

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The Committee will meet on May 8th at 3:30 p.m. to discuss energy reduction.

Progress

c. Parks and Recreation Committee

Motion by Council Member Barrett, seconded by Council Member Labenberg to hire Antonia Adamo at a rate of \$7.15/hour and Lauren Reiss at a rate of \$7.40/hour to work as lifeguards. There were 7 ayes. Motion carried.

Council Member Barrett announced that Colin, an Eagle Scout, will hold a ceremony for the opening of the trail on Orchid Lane leading to Pool Wildlife on May 10th at 11 a.m.

Council Member Barrett said that the Parks and Recreation Commission granted the approval for Chris DeFrain to open the coke wagon.

Progress

d. Public Safety Committee

The Committee met in executive session on April 30th to conduct interviews for the full time police officer. A recommendation will be made at the next Council meeting.

Progress

e. General Administration Committee

Motion by Council Member Neely, seconded by Council Member Gilbert to reappoint Daniel Helffrich, Brian Holtzhafer and Michelle Steiner to the Park and Recreation Commission for terms expiring May 1, 2011. There were 6 ayes, 1 abstained (Holtzhafer). Motion carried.

Progress

f. Budget and Finance Committee

Motion by Council Member Gilbert, seconded by Council Member Holtzhafer to adopt the May 5, 2008 Bill List.

Bill List	\$ 287,623.05
Payroll #9	\$ 101,393.70
Payroll Taxes	\$ 32,201.87
Total	<u>\$ 421,218.62</u>

Done this 5th day of May 2008. There were 7 ayes. Motion carried.

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Borough Manager Fosselman said that the Emmaus Police retirees have requested a 4.1% cost of living (COLA) increase, retroactive as of the first of the year. Conrad Siegel Actuaries provided a cost impact memo. The increase will not have an impact on the General Fund. The police are required to pay any additional costs from the pension fund. The Police Pension Board reviewed the request on April 23rd and recommends approving the increase. The Budget and Finance Committee recommends the request by a 3-0 vote.

Motion by Council Member Labenberg, seconded by Council Member Gilbert to grant the COLA increase for the pension fund. There were 7 ayes. Motion carried.

The Health and Sanitation Committee will review a request from Police Chief Faust on how to save on fuel costs.

Progress

g. Community Relations/Development Committee

Council Member Brown said that Trifecta provided three templates for the new website. He said that the new web page will look nice.

On May 21st there will be a meeting for the Downtown Master Plan to inform stakeholders of the plan. On May 28th at 7 p.m. at St. John's UCC a Public Hearing will be held regarding the Downtown Master Plan.

Council Member Brown said that he is looking into Jr. Council Members.

The next 2009 Anniversary Celebration Committee meeting is May 31st.

Progress

h. Ad Hoc Committees

Community School Relations

One more meeting will be scheduled before the end of the school year.

Progress

PERSONAL APPEALS, PART II

None

BOROUGH MANAGER'S REPORT

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Borough Manager Fosselman said that the Rotary Club is host for some Rotary Members from Brazil. Mr. Fosselman will give tours of the Police, Fire, Ambulance and Public Works Departments.

Progress

PRESIDENT'S BUSINESS

President Waddell and Mayor Iobst spoke at the Mercantile Club on May 3rd in celebration of their 100th Anniversary.

President Waddell announced that the opening day for the Farmers Market was well attended.

President Waddell recessed the meeting for a litigation issue at 8:10 p.m.

President Waddell reconvened the meeting at 8:21 p.m.

Motion by Council Member Waddell, seconded by Council Member Holtzhafer to follow defense council's recommendation outlining his letter of April 29, 2008 for \$1,500.00, plus costs incurred by plaintiff's attorney for Rockmore and Lewis vs. Officer Schmidt.

Council Member Labenberg doesn't feel that the officer did anything wrong and is not in favor of a settlement. He feels it could bring more frivolous lawsuits. Council Member Neely agreed with Mr. Labenberg, but will reluctantly vote for the settlement. He said that this is a perfect example of what is wrong with the system regarding civil right actions and the right to pursue claims. Mr. Neely read the conclusion and recommendation from the Insurance Defense Council, who believes that this is a case with no merit. He said that because this recommendation comes from the insurance company the Borough is put into the position where it has to settle or the insurance company will not give the Borough coverage. Mr. Neely said that the right to a jury trial has always been preserved and tax payers end up spending money on meritless and frivolous cases. Council Member Brown agrees with Mr. Labenberg and is not in favor of the settlement.

Roll Call Vote: Barrett nay, Holtzhafer aye, Labenberg nay, Brown nay, Neely aye, Gilbert aye, Waddell aye. Motion carried.

ADJOURNMENT

Motion by Council Member Neely, seconded by Council Member Labenberg to adjourn. There were 7 ayes. Motion carried.

The meeting of the Emmaus Borough Council adjourned at 8:27 p.m.

Bruce Fosselman

Transcribed by: Renea Flexer

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Borough Manager

Administrative Assistant
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