

The regular meeting of the Borough of Riverdale Mayor and Council opened on the above date at 7:30 p.m. with the Pledge of Allegiance.

Mayor Budesheim presiding.

**ROLL CALL:**        **Present:**     **Astarita, Bush, Falkoski, Guis, Wetzl, Carelli**  
                           **Absent:**        **None**

Mayor Budesheim announced that proper notice of this meeting was made as to time, date, place and agenda.

**APPROVAL OF MINUTES DATED:**

Regular Meeting – July 20, 2009

Workshop Meeting – August 3, 2009

Approval of minutes was tabled until the next meeting.

**PUBLIC PARTICIPATION NO. 1:**

Mrs. Hook, 4 Hamburg Turnpike, inquired about the timeframe to connect to the sewer line. Her septic system needs to be replaced and she would like to avoid that expense as the property is for sale. Mayor Budesheim explained that the sewer authority will not allow us to connect to the system until the inflow and infiltration problem is resolved. We are moving forward and introducing an ordinance tonight allowing a property easement required for the sewer pumping station. Councilman Guis explained how a holding tank could be a temporary option.

There being no further comments, Councilman Falkoski set forth the motion, seconded by Councilman Guis, that the public portion be closed.

**ALL IN FAVOR.**

**UNFINISHED BUSINESS:**

- 1) Continuation of the public hearing on the soil movement application of Yassin Aburomi, 36 Wilson Avenue East.

**PUBLIC HEARING OF SOIL MOVEMENT APPLICATION FOR YASSIN ABUROMI 36 WILSON AVENUE – BLOCK 37 – LOT 9**

Reginald Jenkins, Esq. spoke on behalf of the applicant. He stated that at the previous hearing they had concluded their direct testimony and his understanding is that this evening there will be discussion of the conditions to be placed on the application if approved. They have no objection to the Borough Engineer's report dated August 13<sup>th</sup> that specifies oversight and the requirement for escrow. Mayor Budesheim stated the concerns brought out by the residents were the number of trucks and the effect on the pavement and the wetlands. Mr. Aburomi stated that not every truck in the neighborhood is bringing fill to his house.

Melissa Harsley, 52 Wilson Avenue, asked where the macadam from the torn out driveway is. She stated that since the last time we were here there has been a truck at the property every day. Mr. Aburomi says he will stop but he tells you one thing and does another. He's doing things that may not be legal. He's filling in wetlands and who is stopping it? The road is in bad condition and you are opening the town up to liability. There is nobody to monitor what he is doing or check that the drainage he put in is proper.

**PUBLIC HEARING OF SOIL MOVEMENT APPLICATION (continued):**

Valerie Russinko, 40 Wilson Avenue, stated that she has seen a minimum of four trucks since the last meeting and the dirt is dumped where he is filling in. To say he hasn't had any dirt trucked in since our last meeting is an absolute lie.

Mayor Budesheim asked Mr. Aburomi where the macadam is. He stated that it is piled on his property to accumulate to be transported and he has receipts for what he has dumped.

Mr. Jenkins stated that the driveway did not require separate permitting. He also stated that the main point he's hearing is the concern that things are going on unfettered and without review. One of things stipulated and acknowledged is that the proposed request for soil is going to be subject to the review and close scrutiny of the Borough Engineer. There will be escrow put in the application's approval for just that. The DEP issues are already under the review of the DEP and not affected by what is being proposed here. If there are violations they are to be enforced subject to the town police powers. Mrs. Harlsey stated she is concerned with the aquifer. Mr. Jenkins stated that the concerns are being addressed. Mrs. Harsley presented photos of trucks on Wilson Avenue. Mr. Jenkins objected. Councilman Falkoski stated the permit application and letter from the Borough Engineer specifies the amount of soil to be moved onto the site. If permission is granted by the Council, we can list that as a condition of approval. For anything beyond that, they would have to apply for another permit. Mrs. Harsley stated that if he gets approval to bring in 1000 cubic yards of dirt, he could bring in 4000 cubic yards of mulch and there is nobody to monitor what is coming in the trucks. There is nothing in the ordinance that regulates mulch. Unless the Borough Engineer is there daily it can't be done. Mr. Aburomi stated he would repair any damage to the road caused by this project.

There being no further comments, Councilman Falkoski set forth the motion, seconded by Councilwoman Wetzel, that the public portion be closed.

**ALL IN FAVOR.**

Thereupon, Councilman Guis set forth the motion, seconded by Councilman Falkoski, to approve the following resolution:

Approval of the soil movement permit application from Yassin Aburomi, 36 Wilson Avenue East, contingent upon recommendations specified by Borough Engineer Paul Darmofalski in his letter dated August 13, 2009, and that any additional permits required by the Soil Conservation District and the Zoning Board of Adjustment be obtained.

**ROLL CALL:           Ayes:    Astarita, Bush, Falkoski, Guis, Wetzel, Carelli**  
**Nays:    None**  
**(6 ayes – 0 nays – motion carried)**

Mayor Budesheim requested the Borough Engineer be given receipts for the removed macadam and copies of any correspondence from the DEP regarding the wetlands. He also asked Mr. Aburomi to notify the Zoning Officer when he is expecting any truck deliveries so we can verify the delivery and allay the fears of the residents.

**ORDINANCES:**

- 1) Councilman Falkoski set forth the motion, seconded by Councilman Guis, to introduce the following ordinance and moved its adoption.

**ORDINANCE 10-2009****ORDINANCE ACCEPTING THE CONVEYANCE OF A SEWER  
PUMP STATION EASEMENT FROM TERI MATES**

**ROLL CALL:**      **Ayes:**    Astarita, Bush, Falkoski, Guis, Wetzel, Carelli  
                          **Nays:**    None  
                          (6 ayes – 0 nays – motion carried)

**COPY OF ORDINANCE AND RESOLUTION IN FULL ON PAGE NO. 65-A**

There was Council discussion regarding Ordinance 11-2009 and whether it would accomplish resolving the type of problems experienced in the past.

- 2) Councilman Falkoski set forth the motion, seconded by Councilman Astarita, to introduce the following ordinance and moved its adoption.

**ORDINANCE 11-2009****ORDINANCE AMENDING CHAPTER 75 OF THE REVISED  
GENERAL ORDINANCES OF THE BOROUGH OF RIVERDALE  
ENTITLED "ENTERTAINMENT"**

**ROLL CALL:**      **Ayes:**    Astarita, Bush, Falkoski, Wetzel  
                          **Nays:**    Guis, Carelli  
                          (4 ayes – 2 nays – motion carried)

**COPY OF ORDINANCE AND RESOLUTION IN FULL ON PAGE NO. 65-B**

There was Council discussion regarding whether to introduce an ordinance amending the fees charged for certain development applications. Review of the fees was requested by the Zoning Officer. Consensus of the Council was not to amend the fees.

- 3) Councilman Falkoski set forth the motion, seconded by Councilwoman Wetzel, to introduce the following ordinance and moved its adoption.

**ORDINANCE 12-2009****ORDINANCE AMENDING CHAPTER 164 OF THE REVISED  
GENERAL ORDINANCES OF THE BOROUGH OF RIVERDALE**

**ROLL CALL:**      **Ayes:**    Astarita, Bush, Falkoski, Guis, Wetzel, Carelli  
                          **Nays:**    None  
                          (6 ayes – 0 nays – motion carried)

**COPY OF ORDINANCE AND RESOLUTION IN FULL ON PAGE NO. 65-C****MAYOR REPORT:**

Mayor Budesheim suggested we should consider purchasing defibrillators for some of our buildings and increase the fee for rental of the Community Center by \$20 to help pay for them. Council agreed with the suggestion. Mayor Budesheim also reported on the work at Glenburn. The electric work for the barn was not covered by the grants. The bid amount was \$8,000 and is available in the Open Space Trust Fund. Councilman Guis did not agree with using money from the Trust Fund. He said the concept of Glenburn was to use grant money to refurbish the property. Councilwoman Wetzel stated that without

**MAYOR REPORT (continued):**

electricity the building is not functional. Mayor Budesheim reported that he invited the ten independent gubernatorial candidates to a candidates' night in October. He also reported there is a shortfall in one of the recreation trust funds from last year. Councilwoman Wetzel will try to get verification on the issue.

**BOROUGH CLERK REPORT:**

Borough Clerk Talerico reported that the Fire Inspector did not received a pay increase and had asked if it was an oversight. It was determined that the Fire Inspector and the Assistant to the Tax Assessor should have received a salary increase.

**COMMITTEE REPORTS:**

Councilman Falkoski reported the court report for the month of July.

Councilwoman Wetzel reported on the summer concert series. Raffle ticket sales were disappointing and we should consider funding upfront if we continue the concerts in the future. The street fair will be Sunday, September 6<sup>th</sup>.

**RESOLUTIONS:**

Thereupon, Councilman Astarita set forth the motion, seconded by Councilwoman Wetzel, to approve the following resolutions:

- 1) Payment of Claims, including the following:
  - a. Payment to Gloria Carelli for items purchased to replenish the food pantry from the Trust Account. \$143.87 for groceries from Path Mark and \$171.18 for shelving for groceries from BJ's.
- 2) Payments from Escrow Accounts as follows:
 

a) Darmofalski Engineering	Alexan at Riverwalk	\$7,923.00
b) Darmofalski Engineering	Target Corporation	\$1,255.00
c) Darmofalski Engineering	DR Horton-Grande	\$5,690.00
d) Darmofalski Engineering	Riverside Square	\$ 460.00
e) Anderson & Denzler	DR Horton-Grande	\$3,010.35
f) Anderson & Denzler	Alexan at Riverwalk	\$ 420.00
- 3) **Resolution #72-2009;** Declaration of Governing Body of their review of the 2008 Annual Audit specifically the section entitled "General Comments & Recommendations as evidenced in the group affidavit form.
- 4) **Resolution #73-2009;** Refund of Tax Overpayments.
- 5) Acceptance of a 2000 Chevy Van from the Riverdale Board of Education, which that board has established they no longer have use for the vehicle, for the price of \$1.00.
- 6) Approval of payment to Eagle Land Construction, LLC for completion of the Library project in the mount of \$28,840.00.
- 7) Approval of payment for 2008/2009 snow removal for the following:
 

1) Rock Creek Crossing	-	\$3,868.85
2) Powder Mill	-	\$1,934.42
3) The Grande	-	\$5,319.67
- 8) Approval of purchase of four defibrillators for borough buildings at a cost not to exceed \$2,000 total, and to increase rental charge for the Community Center by \$20.00.
- 9) Approval of Electric work at the Glenburn Barn at a cost of \$8,000 from the Open Space Trust Fund.
- 10) **Resolution #74-2009;** Municipal Employees Salaries 2009.

**RESOLUTIONS (continued):**

**ROLL CALL:**       **Ayes:**   **Astarita, Bush, Falkoski, Guis, Wetzel, Carelli**  
                           **Nays:**   **None**  
                           **(6 ayes – 0 nays – motion carried)**

**COPY OF BILLS LIST AND RESOLUTION IN FULL ON PAGE NO. 67- D, E, F, AND G****OTHER BUSINESS:**

- 1) Request of use of Freedom Park and the softball field by Camfil Farr, Inc. for their yearly picnic to be held on Friday September 4, 2009, during the hours of 12:00 pm to 5:00 pm. (a certificate of insurance has already been submitted)

Councilwoman Wetzel will confirm that the field is available.

- 2) Letter to Governing Body and Borough Attorney Robert Oostdyk regarding Performance Escrow Agreement dated February, 2004, between Rock Creek Crossing, LLC (“RCC”) and Johnson, Murphy, Hubner, McKeon, Wubbenhorst & Appelt, P.C.) (“Escrow Agent”). (copy of letter forwarded with agenda to Mayor and Council)

Borough Attorney Oostdyk will follow up with the Borough Engineer regarding the matter.

**CLOSED SESSION:**

Councilman Falkoski set forth the motion, seconded by Councilwoman Wetzel, RESOLVED that the Mayor and Council go into closed session to discuss a matter of litigation, of which minutes will be kept and released upon completion of these matters.

**ALL IN FAVOR.**

Closed Session being completed, Councilman Falkoski set forth the motion, seconded by Councilwoman Wetzel, to open the meeting to the public.

**ROLL CALL:**       **Ayes:**   **Astarita, Bush, Falkoski, Guis, Wetzel, Carelli**  
                           **Nays:**   **None**  
                           **(6 ayes – 0 nays – motion carried)**

**ADJOURNMENT:**

Councilman Falkoski set forth the motion, seconded by Councilman Astarita, to adjourn the meeting.

**ALL IN FAVOR.**

Adjourned: 9:24 p.m.

Respectfully Submitted:

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Carol J. Talerico, R.M.C.  
 Municipal Clerk

**CLOSED SESSION:****LITIGATION PERTAINING TO NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY:**

Borough Attorney Oostdyk updated the Council on the litigation with the railroad. The borough was served an order to show cause in a lawsuit from the railroad pertaining to the application they filed before the Planning Board for approval to restart their activities. The Planning Board said they had serious doubts about the railroad's position that they were legally entitled to do this. The Planning Board's recommendation was that the borough obtain a decision from the Federal Highway Transportation Board concerning their exemption. The proposed activity was essentially a brick distribution operation. Prior to filing a petition seeking a determination from the Federal Government, the applicant filed a lawsuit seeking a court order stating they are entitled to do exactly what they want to do with the brick business and preventing Riverdale from interfering. The application before the Planning Board had involved the brick company as the co-applicant who would operate the facility. Now they've changed that. There's a new agreement dated just days before they filed their court action which has the railroad operating the brick business themselves. Now the railroad is going to be in the brick distribution business as part of its railroad activity and they may hire such subcontractors as they choose under the agreement. They have an agreement with the brick company that they will work for the railroad. Research into the federal cases has made it fairly clear that as presented to the Planning Board, the Planning Board was right; they were not presenting an exempt activity. Further, it is pretty clear they knew they were not presenting a compliant application so when it came time to go to court they knew they had to change it. The fact that the railroad changed their application tells us that they know full well that the Planning Board was right. They likely preferred not to do it this way because they have liability now. Our position in court is going to be that they went before the Planning Board with a different application. At a minimum they have to tell the Planning Board the truth and put this application on the record before the residents and the board before we go any further. We will continue with the filing with the federal agency for a determination whether this is really an exempt activity. We also learned that this same brick company was doing almost the same operation in New York. They were challenged by the municipality and went to the federal agency and lost. Now it makes us question the new arrangement.

**LITIGATION PERTAINING TO NJDEP VS. NOVARTIS VS. BOROUGH OF RIVERDALE, et al. v.**

Borough Attorney Oostdyk reported on correspondence received from NJIIF stating they are not covering us on this case because it didn't occur during a time we had insurance with them. The hope is we have insurance coverage and we just have to find it.