

Borough of Elmer Minutes

November 9, 2016

CALL TO ORDER: A Regular Meeting of the Borough Council convened in the Borough Hall at 7:30 p.m. with Mayor Stemberger presiding.

FLAG SALUTE AND INVOCATION: Invocation was given by Mayor Stemberger, followed by the pledge of allegiance. Mayor Stemberger noted that adequate notice of the meeting was provided pursuant to the Open Public Meetings Act.

ROLL CALL: Council President Schneider, Council Members Davis, Nolan, Richards, Schalick, and Mayor Stemberger answered to the roll call. Absent: Councilman Zee. Also present were Solicitor Duffield and Chief Financial Officer Strang.

APPROVAL OF MINUTES: Motion Davis, second Nolan to approve the minutes from the Elmer Borough Council Meeting held on October 12, 2016, and to dispense with the reading of the minutes.

Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

Motion Davis, second Nolan to approve the revised minutes from the Elmer Borough Council Meeting of October 14, 2015 due to the omission of the approval of the introduction of Ordinance 2015-15 (see the 2015 Minute Book for revised pages).

Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

Due to a power outage the order of agenda items was modified.

EXECUTIVE SESSION:

**BOROUGH OF ELMER, COUNTY OF SALEM
RESOLUTION AUTHORIZING EXECUTIVE SESSION**

Number 80-16

WHEREAS, N.J.S.A. 10:4-12 allows for a Public Body to go into closed session during a Public Meeting, and

WHEREAS, the Governing Body of the Borough of Elmer has deemed it necessary to go into closed session to discuss certain matters which are exempted from the Public; and

WHEREAS, the regular meeting of this Governing Body will reconvene;

NOW, THEREFORE, BE IT RESOLVED that the Borough Council of the Borough of Elmer will go into closed session for the following reason(s) as outlined in N.J.S.A. 10:4-12:

 X Any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer;
If pending or anticipated litigation, the matter is: Potential litigation involving Police Department

If contract negotiation the nature of the contract and interested party is: _____

(Under certain circumstances, if public disclosure of the matter would have a potentially negative impact on the Borough's position in the litigation or negotiation, this information may be withheld until such time that the matter is concluded or the circumstances no longer present a potential impact);

BE IT FURTHER RESOLVED that the Borough Council hereby declares that its discussion of the aforementioned subject(s) may be made public at a time when the Borough Attorney advises the Borough Council that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Borough or any

other entity with respect to said discussion. That time is currently estimated as the time of said matter. (Estimated date: upon the occurrence of said matters being resolved);

BE IT FURTHER RESOLVED that the Borough Council, for the aforementioned reasons, hereby declares that the public is excluded from the portion of the meeting during which the above discussion shall take place and hereby directs the Borough Clerk to take the appropriate action to effectuate the terms of this resolution.

Motion Richards, second Davis to approve Resolution 80-16 Authorizing Executive Session.

Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

The Mayor and Council Members entered closed session at 7:35 pm. At 7:46 pm Davis made a motion, second Richards, to adjourn the Executive Session and re-open the Regular Meeting. All were in favor and motion carried.

UNFINISHED BUSINESS:

1. Resolutions: The following resolution, tabled from last month, was read by title:

RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER, COUNTY OF SALEM, STATE OF NEW JERSEY, AWARDING CONTRACT TO RICKY SLADE CONSTRUCTION, INC. FOR THE RECONSTRUCTION OF STATE STREET CONTRACT 2

Number 76-16

WHEREAS, Mayor and Council of the Borough of Elmer have solicited bids for the reconstruction of State Street; and

WHEREAS, bids were received and opened on September 8, 2016 for the project; and

WHEREAS, the project was Bid as a Base Contract; and

WHEREAS, four (4) bids were received by the Borough's Acting Clerk; and

WHEREAS, the Borough Council has reviewed the recommendations made by the Borough's Engineer on said bids; and

WHEREAS, Ricky Slade Construction, Inc. submitted the lowest bids for the Base Contract (\$38,455.15); and

WHEREAS, the bids submitted by Ricky Slade Construction., Inc. in the total sum of \$38,455.15 is the lowest monetary responsive bid; and

WHEREAS, the Borough's Engineer and Solicitor have determined that the bids are in conformance with the Bid Specifications and Local Public Contracts Law; and recommend the award of the Contract to Ricky Slade Construction, Inc.; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer that the Contract for the Reconstruction of State Street Contract 2 be and the same is hereby awarded to Ricky Slade Construction, Inc., on its total bid of \$38,455.15 subject to approval by the New Jersey Department of Transportation (NJDOT), and the conditions set forth below.

BE IT FURTHER RESOLVED that the Mayor and Acting Clerk of the Borough of Elmer are hereby authorized and directed to execute the Contract for same.

BE IT FURTHER RESOLVED that the certified checks or bid bonds of the successful bidder and next lowest bidder are to be returned upon the receipt of fully executed Contract and other required documents by the lowest bidder, Ricky Slade Construction, Inc.

BE IT FURTHER RESOLVED that the Acting Clerk of the Borough of Elmer is hereby authorized and directed to return the certified checks or bid bonds to the remaining unsuccessful bidders.

BE IT FURTHER RESOLVED that the Borough’s Chief Financial Officer must certify that sufficient funds are available to award the Contract.

Motion by Davis and second by Richards to adopt Resolution 76-16.

Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

NEW BUSINESS:

1. Ordinances: None.

2. Resolutions: The following Resolutions were read by title only:

**BOROUGH OF ELMER, COUNTY OF SALEM
RESOLUTION FOR PLANNING BOARD ESCROW FUND (Dollar General)**

Number 81-16

BE IT RESOLVED that the Escrow Fund Deposit made pursuant to Article IV, Section 2.30 of the Land Development Ordinance by applicant Dollar General for Site Plan Review in the amount of \$151.00 be distributed and paid as follows:

Amount: \$151.00

To: Fralinger Engineering PA

For: Site Plan Review

**BOROUGH OF ELMER COUNTY OF SALEM
BUDGET APPROPRIATION TRANSFER RESOLUTION**

Number 82-16

WHEREAS, it has become necessary to expend for certain purposes specified in the 2016 budget amounts in excess of the respective sums originally appropriated therefore; and

WHEREAS, there is an excess in one of more appropriations over and above the amount deemed necessary to fulfill the purposes of such appropriations; and

WHEREAS, transfers between appropriations are permitted pursuant to **N.J.S.A. 40A:4-58** when adopted by not less than two-thirds vote of the full membership; and

WHEREAS, the following transfers are in accordance with **N.J.S.A. 40A:4-45.38**;

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Elmer, County of Salem and State of New Jersey, that the following transfers are hereby approved:

| | Transfer Amounts | |
|--|------------------|----------|
| | To | From |
| Revenue Administration (Tax Collection): | | |
| Other Expenses | 1,800.00 | |
| Gasoline | | 1,800.00 |

Housing Inspection:

| | | |
|-------------------------------|----------|----------|
| Other Expenses | 800.00 | |
| Technology: | | |
| Other Expenses | | 800.00 |
| Electricity | 2,000.00 | |
| Technology: | | |
| Other Expenses | | 2,000.00 |
| Municipal Clerk: | | |
| Salaries and Wages | 1,000.00 | |
| Public Buildings and Grounds: | | |
| Salaries and Wages | | 1,000.00 |
| Legal Services: | | |
| Other Expenses | 2,000.00 | |
| Gasoline | | 1,200.00 |
| Parks and Playgrounds: | | |
| Other Expenses | | 800.00 |
| Public Buildings and Grounds: | | |
| Other Expenses | 1,500.00 | |
| Gasoline | | 500.00 |
| Parks and Playgrounds: | | |
| Other Expenses | | 1,000.00 |

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| | Transfer Amounts | |
|----------------|------------------|----------|
| | To | From |
| Telephone | 3,500.00 | |
| Technology: | | |
| Other Expenses | | 3,500.00 |

BOROUGH OF ELMER COUNTY OF SALEM RESOLUTION CANCELING \$2,857.29 OF THE APPROPRIATED RESERVE FOR THE MUNICIPAL ALLIANCE FOR THE PREVENTION OF ALCOHOLISM AND DRUG ABUSE PROGRAM

Number 83-16

WHEREAS, an appropriated reserve balance of \$4,712.29 for the Municipal Alliance for the Prevention of Alcoholism and Drug Abuse Program remains on the Federal and State Grant Fund balance sheet and on the Schedule of Appropriated Reserves for Federal and State Grants as of December 31, 2015; and

WHEREAS, \$2,857.29 of this \$4,712.29 reserve represent the balance of grant monies remaining from the 2015-2016 grant year and prior; and

WHEREAS, the contracts have been completed and no encumbrances are outstanding for the 2015-2016 grant year and prior grant periods; and

WHEREAS, it is necessary to cancel the appropriated reserve balance in the amount of \$2,857.29;

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Elmer, County of Salem, State of New Jersey, assembled in public session this 9th (ninth) day of November 2016, that \$2,857.29 of the \$4,712.29 appropriated reserve for the Municipal Alliance on Alcoholism and Drug Abuse Program be canceled from the record.

**RESOLUTION CANCELING \$1,992.00 OF THE
MUNICIPAL ALLIANCE ON ALCOHOLISM AND DRUG ABUSE PROGRAM
STATE GRANT RECEIVABLE**

Number 84-16

WHEREAS, a receivable balance of \$4,334.00 for the Municipal Alliance on Alcoholism and Drug Abuse Program remains on the Federal and State Grant Fund balance sheet and on the Schedule of State Grants Receivable as of December 31, 2015; and

WHEREAS, \$1,992.00 of the \$4,334.00 receivable represents grant monies remaining from the 2015-2016 grant year and prior; and

WHEREAS, the 2015-2016 and prior grant years are closed and the County has reimbursed the Borough for the grant portion of the project; and

WHEREAS, it is necessary to cancel \$1,992.00 of the \$4,334.00 receivable balance;

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Elmer, County of Salem, State of New Jersey, assembled in public session this 9th (ninth) day of November 2016, that \$1,992.00 of the \$4,334.00 Municipal Alliance on Alcoholism and Drug Abuse Program grant receivable be canceled from the record.

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER, COUNTY OF
SALEM, STATE OF NEW JERSEY AUTHORIZING THE BOROUGH SOLICITOR TO FILE TAX
APPEALS WITH THE SALEM COUNTY BOARD OF TAXATION AND THE NEW JERSEY TAX
COURT WITH RESPECT TO TAX EXEMPTION CLAIMS BY INSPIRA MEDICAL CENTERS, INC.**

Number 85-16

WHEREAS, the New Jersey Tax Court, in the matter of AHS Hospital Corp. v. Town of Morristown, 28 N.J. Tax 456 (Tax 2015) (hereinafter the "AHS Case"), decided that portions of hospital properties in the State of New Jersey may not be exempt from taxation, pursuant to N.J.S.A. 54:4-3.6; and

WHEREAS, the New Jersey Tax Court further decided in the AHS Case that a municipality may impose omitted assessments for the year of appeal and the prior year challenging exemptions of a hospital property; and

WHEREAS, the Borough Tax Assessor did not impose omitted assessments for the 2015 and 2016 years as a result of the AHS Case having only recently being decided; and

WHEREAS, upon information and belief certain properties and/or portions of property located in the Borough of Elmer, County of Salem, may be taxable and not exempt by reason of the AHS Case; and

WHEREAS, the burden of proving that an exemption from taxation should be granted to a property owner is solely upon the property owner claiming that exemption; and

WHEREAS, the Borough Council has determined that it is the best interests of the Borough of Elmer, County of Salem, to file such Petitions, Complaints, Counterclaims and such other pleadings as may be necessary to determine whether or not properties are taxable or exempt within the Borough of Elmer, County of Salem, including challenging the failure to impose omitted assessments for the years 2015 and 2016.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Elmer, County of Salem, State of New Jersey, that the Borough Solicitor is hereby authorized to file such Petitions of Appeal with the Salem County Board of Taxation and Complaints with the New Jersey Tax Court, including the challenging the failure to impose omitted assessments for the years 2015 and 2016, and challenging other claims of exemption for hospital properties and/or portions of hospital properties pursuant to N.J.S.A. 54:4-3.6 and the holding in AHS Hospital Corp. v. Town of Morristown, 28 N.J. Tax 456 (Tax 2015).

Motion by Davis and second by Richards to adopt Resolutions 81-16 through 85-16.

Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

OPEN TO THE PUBLIC: Motion Richards, second Davis to open the public portion of the meeting. All were in favor and the motion carried.

Donna Stemberger, 20 Fourth St., addressed and discussed with Council Members concerns about sidewalk violations and Harvest Day meetings. No action was taken.

CLOSED TO THE PUBLIC: Motion Davis, second Nolan to close the public portion of the meeting. All were in favor and motion carried.

DISCUSSIONS/MOTIONS:

1. Motion Davis second Nolan to receive and file RFPs for Professional Services; all were in favor and motion carried.
2. Motion Davis second Nolan to receive and file bid for Water Services from Garrison Enterprises; all were in favor and motion carried.
3. Motion Davis second Nolan to receive file bids for Solid Waste and Recycling Services; all were in favor and motion carried.
4. Council members discussed amending the code to add Police Department non-resident fingerprinting fees of \$50 and fees for accident report records. The following Ordinance was introduced by title:

ORDINANCE 2016-9 AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER, SALEM COUNTY, STATE OF NEW JERSEY, AMENDING CHAPTER 2 ENTITLED "ADMINISTRATION" AT ARTICLE VII ENTITLED "FEES ESTABLISHED FOR MUNICIPAL SERVICES" OF THE CODE OF THE BOROUGH OF ELMER

Motion Davis, second Schneider to approve the introduction of Ordinance 2016-9.

Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

5. An animal control issue involving the feeding of stray cats was discussed. Solicitor Duffield recommended that the Animal Control Officer be advised to enforce the licensing and vaccination provisions of the Borough Code.
6. Solicitor Duffield updated Council Members on recent Council on Affordable Housing (COAH) legislation.

REPORTS/BILL LIST:

Motion Davis second Nolan to receive and file the October 2016 Tax/Water Collector report; all were in favor and motion carried.

Motion Richards, second Davis to receive, file and spread full upon the minutes the Treasurer's Report for the month of October 2016 (**Page 72a** in Minute Book). All were in favor and motion carried.

Motion Davis, second Nolan, that the bills be paid and charged to their respective accounts (see **Page 72b** in Minute Book). Roll Call: Ayes: Davis, Nolan, Richards, Schalick, Schneider; Nays: None. Absent: Zee. Motion carried.

Motion Davis second Nolan that the Clerk and Mayor's mail correspondence be received and filed. All were in favor and motion carried. The Clerk requested clarification of Reorganization/Regular Meeting starting time (7:00 pm). Mayor Stemberger initiated discussion of holiday decoration installation and suggested getting help from Dept. of Corrections. Council discussed advertising Tax Collector position.

COMMITTEE REPORTS:

Finance/Celebration Public Events: Schalick reported on the stream cleaning activities, and noted that Santa will be in town December 9th;

Public Safety: Schneider summarized the police report;

Streets/Sidewalks/IT: Richards reported on sidewalk damage, hose testing, and street signs;

Borough Hall/Public Property: Davis discussed heater, new clock, and where to chairs for the Election Room;

Water/Street Lights: No report;

Trash/Recycling/Parks & Playgrounds: Nolan discussed leaf pickup for Dec 13 and options for Solid Waste contract approval.

ADJOURNMENT: Motion Richards, second Davis that the meeting be adjourned. Motion carried.

November 9, 2016

Sarah D. Walker, Acting Borough Clerk