

September 3, 2013

EMMAUS BOROUGH COUNCIL

**Emmaus Borough Council  
Agenda  
Tuesday, September 3, 2013, 7:00 p.m.**

1. Call to Order
2. Pledge of Allegiance
3. Personal Appeals, Part I
4. Community Minute
5. Special Presentations

Mayor Winfield Iobst will administer the Oath of Office to:  
Rowan Hobson, Junior Councilman

Wildlands Conservancy – Kevin Fister  
Recognition for Helping with Alpine Trail

6. Reading of Minutes

August 19, 2013

7. Decisions on Bids
8. Communications

- a. Donald Long, 103 N. Lehigh St., Emmaus – One Way Direction on Railroad Street.
- b. Lucille D. Gough, Greater Lehigh Valley VNA – 2014 Financial Support.
- c. Don Cunningham, Lehigh Valley Economic Development – Launch of the Local Government Council.
- d. Tisha Albert, Pennsylvania Liquor Control Board – Application for License, Funk Brewing Company.
- e. Thomas K. Steel, Jr. – RCN – Notice of Intention to Renew Franchise.
- f. Shelly Steiner, Emmaus Special Entertainment Commission – Sunday Evening Concert Series.
- g. Teri Madison, Emmaus Main Street Partners – Bluegrass in the Park Festival Requests.
- h. Laurie A. Moyer and Paulette G. Gilfoil, County of Lehigh – Lehigh County Fair Housing Assessment.

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9. Borough Engineer's Report

10. Solicitor's Report

11. Unfinished Business, Part I

**Ordinance No. 1098 – An Ordinance Amending the Borough of Emmaus Zoning Ordinance to Add Part 10, to Create an Overlay District Entitled “AQCOD – Age Qualified Community Overlay District,” to Establish Guidelines for Future Amendments to the Borough’s Official Zoning Map to Govern the Consideration of Landowner and Other Requests for the Approval of Such Overlay, to Add Definitions, Regulations and Other Requirements for Age Qualified Communities and to Otherwise Authorize the Development of Age Qualified Communities Within the Borough (1<sup>st</sup> Reading 5/6/13) (2<sup>nd</sup> Reading 9/3/13).**

12. New Business

13. Unfinished Business, Part II

Ordinance No. 1100 – An Ordinance Amending the Borough of Emmaus Zoning Ordinance by Amending the Official Zoning Map to Change the Zoning Classification of a 1.155 – Acre Tract of Land Known as 316 Wood Street and Identified by Lehigh County Tax PIN Number, 549474039624 1 from the Medium Density Residential District to the Light Industrial District (1<sup>st</sup> Reading 8/19/13) (2<sup>nd</sup> Reading 9/16/13).

14. Items Not on Agenda, Subject to Rule 9

15. Mayor's Report

16. Committee Reports

**Public Works/(Highway, Water & Sewer) (Labenberg, Brown, Gilbert)**

Next Meeting – September 5, 2013 at 3:00 p.m.

- a. Rules & Regulations (update)
- b. South 2<sup>nd</sup> Street Reservoir
- c. South 10<sup>th</sup> Street Culvert
- d. **Library Lights Project**

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**Health, Sanitation, and Conservation** (Shubzda, Holtzhafer, Waddell)

Next Meeting – September 23, 2013 at 5:00 p.m.

- a. Compost Options
- b. Emmaus and Upper Milford Joint Environmental Advisory Council
- c. Board of Health
- d. Town Hall HVAC System
- e. **Electronics Recycling**

**Parks and Recreation** (Barrett, Holtzhafer, Labenberg)

Next Meeting – October 1, 2013 at 3:30 p.m.

- a. Green Futures Project
- b. Youth Football League Building Agreement
- c. Policies:
  - Bands, DJ's, and Live Performances
  - Pavilion Refund
  - Tents, Canopies, and Items Outside Pavilions
  - Vendor Trucks in Parks
  - Moon Bounce and Inflatable Objects

**Public Safety** (Gilbert, Barrett, Brown)

Next Meeting – September 4, 2013 at 2:00 p.m.

- a. Emergency Operations Plan – Review

**General Administration** (Waddell, Barrett, Labenberg)

Next Meeting – September 4, 2013 at 9:00 a.m.

- a. Emmaus Public Library Expansion Project
- b. **Ordinance No. 1098 - Age Qualified Housing Ordinance (2<sup>nd</sup> Reading 9/3/13)**
- c. HVAC System at Town Hall
- d. Sale of Properties - Appraisals
- e. Town Hall Remodeling Project
- f. Ordinance No. 1100 – 2<sup>nd</sup> Reading 9/16/13

**Budget and Finance** (Holtzhafer, Shubzda, Gilbert)

Next Meeting – September 16, 2013 at 6:45 p.m.

- a. **Bill List—Resolution 2013-20**
- b. Health Inspection Fees

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- c. **Police Employee Pension Plan – Resolution 2013-21**
- d. **Non-Uniform Employee Pension Plan – Resolution 2013-22**

**Community Relations, Planning and Development** (Brown, Shubzda, Waddell)

Next Meeting – September 26, 2013 at 4:15 p.m.

- a. LERTA
  - b. CGI Communications Community Video
  - c. Tree Vitalize Grant – January 2014
17. Junior Council Member’s Report
18. Personal Appeals, Part II
19. Borough Manager’s Report
- a. **Significant Revenue and Expense Items for August 2013**
  - b. **Main Street Partners – Amended Agreement**
20. President’s Business
21. Adjournment

Next Resolution #23  
Next Ordinance #1101

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A Public Hearing was held prior to the start of the Council Meeting, beginning at 7:00 p.m.

**PUBLIC HEARING – ORDINANCE NO. 1098**

Solicitor Dinkelacker reviewed the process for conducting a public hearing and reminded everyone that any comments or questions concerning the Ordinance should be addressed during the public hearing. He explained that the only issue to be considered at tonight’s Public Hearing is Ordinance No. 1098. Solicitor Dinkelacker presented several Exhibits:

- Exhibit 1 – Ordinance No. 1098 – An Ordinance Amending the Borough of Emmaus Zoning Ordinance to Add Part 10, to Create an Overlay District Entitled “AQCOD – Age Qualified Community Overlay District,” to Establish Guidelines

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- for Future Amendments to the Borough's Official Zoning Map to Govern the Consideration of Landowner and Other Requests for the Approval of Such Overlay, to Add Definitions, Regulations and Other Requirements for Age Qualified Communities and to Authorize the Development of Age Qualified Communities Located in Whole or in Part Within the Borough.
- Exhibit 2 – The public notice advertising the Public Hearing. The notice was advertised in the East Penn Press.
  - Exhibit 3 – A letter from Mr. Pepe to the East Penn Press, dated August 8, 2013, providing the public notice to the Press for publication.
  - Exhibit 4 – Affidavit of Proof of Publication from the East Penn Press.
  - Exhibit 5 – A letter from Jennifer Detweiler, from the Department of Law in Lehigh County, acknowledging receipt of the full Ordinance. Solicitor Dinkelacker explained that he summarized the Ordinance, but stated that the entire document was made available for public viewing through the East Penn Press and the Lehigh County Department of Law.
  - Exhibit 5-A – Confirmation that the full Ordinance was submitted to Linda Moyer, East Penn Press, for legal advertisement.
  - Exhibit 6 – A letter dated May 24, 2013 from Solicitor Dinkelacker providing the Ordinance to the Lehigh Valley Planning Commission for approval. Solicitor Dinkelacker explained that the Planning Commission must be given 45 days prior to a Public Hearing for review and comments.
  - Exhibit 7 - A letter dated June 28, 2013, from the Lehigh Valley Planning Commission with comments.
  - Exhibit 8 – A letter dated July 22, 2013 from Solicitor Dinkelacker to Emmaus Planning Commission Chairman, Michael Gibson. Solicitor Dinkelacker explained that the local Planning Commission has 30 days for review and comments.
  - Exhibit 9 – Borough of Emmaus Planning Commission Meeting Minutes with comments by the Borough Planning Commission. The Planning Commission voted 5-0 to recommend enactment of Ordinance No. 1098.
  - Exhibit 10 – A letter dated May 22, 2013, from Solicitor Dinkelacker to the Southwestern Lehigh Municipalities, including the: Borough of Macungie, Borough of Alburdis, Lower Macungie Township, Lower Milford Township, and Upper Milford Township for review and comments. Solicitor Dinkelacker stated that comments were received from all municipalities except the Borough of Alburdis.
  - Exhibit 11 – Upper Milford Township's response dated September 3, 2013. Solicitor Dinkelacker stated that Upper Milford questioned why the Ordinance does not specify an age.
  - Exhibit 12 – Lower Macungie's response dated June 23, 2013, which included a suggestion to include a minimum parcel size and adding criteria for acceptance of an open space. Lower Macungie Township also recommended checking with the Borough of Emmaus Fire Department concerning the minimum recommended space between buildings.

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- Exhibit 13 – Lower Milford Township’s response dated June 14, 2013, with no comments, but a suggestion to include a map in the future.
- Exhibit 14 – Borough of Macungie’s email response dated June 19, 2013, with no comments.

Public Comment

**Attorney John Hacker, 2045 Westgate Drive, Bethlehem, PA - represents the developer of the potential Fields at Indian Creek Development.** Attorney Hacker asked what requirements of the Ordinance will be imposed for portions outside of the Borough of Emmaus. He stated that over 50% of the potential project is located in Upper Milford Township. He referenced Section 1001, #9 – Definition of Tract of Land, The parcel of land comprising the age qualified community in accordance with Section 11.c of this Part 10. For the purpose of this definition, a tract may extend into an abutting municipality, in which case the applicable provisions of this Ordinance shall set the minimum standards for development in the abutting municipality. He questioned where the word tract is used if this references the entire development and where it is not used, if the abutting municipality is free to impose its standards. Solicitor Dinkelacker responded affirmatively. Solicitor Dinkelacker explained that as the Ordinance developed there were concerns on how to deal with issues that might be extraterritorial and may be located outside of the Borough of Emmaus. Borough Council, on the recommendation of the Borough Planning Commission and the Borough Engineer and Staff, etc., are able to modify requirements to make the Ordinance reasonable for the developer to comply with other municipalities’ requirements. The intention was to give flexibility for working with the developer and other municipalities to develop a common scheme.

The Public Hearing concluded at 7:23 p.m.

The Emmaus Borough Council met in regular session on September 3, 2013 in Borough Council Chambers, 28 S. 4<sup>th</sup> Street, Emmaus, PA 18049.

CALL TO ORDER

Mrs. Gilbert called the Meeting to order at 7:24 p.m.

Lee Ann Gilbert	Present
Brian Holtzhafer	Present
Michael Waddell	Present
Brent Labenberg	Present
Wesley Barrett	Present
Nathan Brown	Present
Jeffrey Shubzda	Present
Rowan Hobson, Junior Councilman	Present

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Winfield Iobst, Mayor	Present
Tom Dinkelacker, Solicitor	Present
Shane Pepe, Borough Manager	Present

PERSONAL APPEALS, PART I

A. **Tony Groller, 1302 S. 10<sup>th</sup> Street** – stated that the road work that was completed on Green Drive looks like a checkerboard and asked why the Borough did not hire a contractor.

COMMUNITY MINUTE – None.

SPECIAL PRESENTATIONS

Mayor Iobst issued the Oath of Office to Junior Councilman, Rowan Hobson.

Kevin Fister, Director of Trails and Greenways, Wildlands Conservancy presented a framed print to the Borough of Emmaus for its help and support with the Alpine Street Trailhead project at the South Mountain Preserve. Mr. Labenberg thanked Mr. Fister, the Wildlands Conservancy, and the Public Works Department for its help with the project and stated that his family uses the trail regularly.

READING OF MINUTES

**Motion by Mr. Labenberg, seconded by Dr. Waddell to dispense with the formal reading of the August 19, 2013 Minutes. There were 7 ayes. Motion carried.**

**Motion by Mr. Barrett, seconded by Dr. Waddell to adopt the August 19, 2013 Minutes as drafted. There were 7 ayes. Motion carried.**

DECISION ON BIDS - None.

COMMUNICATIONS

- a. Donald Long, 103 N. Lehigh Street – One Way Direction on Railroad Street. Referred to the Public Safety Committee.
- b. Lucille D. Gough, Greater Lehigh Valley VNA – 2014 Financial Support. Referred to the Budget & Finance Committee.
- c. Don Cunningham, Lehigh Valley Economic Development – Launch of Local Government Council. Mrs. Gilbert stated that there will be a meeting on September 12, 2013 at 7:00 p.m. Mrs. Gilbert stated that she is unavailable for the meeting and Mr. Barrett volunteered to attend.
- d. Trisha Albert, Pennsylvania Liquor Control Board – Application for License, Funk Brewing Company.

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e. Thomas K. Steel Jr. – RCN – Notice of Intention to Renew Franchise. Referred to the General Administration Committee. Mr. Barrett noted that according to the letter, the renewal will expire on August 20, 2017.

f. Shelly Steiner, Emmaus Special Entertainment Commission – Sunday Evening Concert Series. A letter of numerous incidents of harassment by citizens regarding the Sunday Evening Concert Series. Dr. Waddell thanked the Special Entertainment Commission for its hard work for the community.

g. Teri Madison, Emmaus Main Street Partners – Bluegrass in the Park Festival Requests. Mrs. Gilbert stated that the Partners are requesting to sell alcohol at the Bluegrass in the Park Festival to be held at Emmaus Community Park on Saturday, September 28, 2013 from 10:00 a.m. to 8:00 p.m. The Partners are requesting to sell alcohol beginning at 10:00 a.m.

**Motion by Mr. Labenberg, seconded by Mr. Barrett to grant the application submitted by the Emmaus Main Street Partners to sell alcohol at the Bluegrass Festival in the Park to be held at Emmaus Community Park on Saturday, September 28, 2013 from 10:00 a.m. to 8:00 p.m.**

Mr. Labenberg stated the event is a fundraiser and there will be park police available. He also stated that the event was held in 2012 and there were no issues. Mr. Barrett asked Mrs. Gilbert if there was a preferable time to begin serving alcohol, to which Mrs. Gilbert responded noon. Mr. Shubzda stated that he believes alcohol should be served beginning at noon. Mr. Shubzda asked if a full-time officer has been scheduled for the event. Mrs. Gilbert responded that there is not. Mr. Brown voiced concern that there will be alcohol served at Community Park while there are football games being played in the park. Ms. Madison, who was in attendance, stated that the Partners have requested the beer truck to be placed at the Rotary Pavilion, but the Special Entertainment Commission has not decided where the beer truck will be placed.

Mr. Labenberg amended his motion and Mr. Barrett amended his second.

**Motion by Mr. Labenberg, seconded by Mr. Barrett to grant the application submitted by the Emmaus Main Street Partners to serve alcohol at the Bluegrass Festival in the Park to be held at Emmaus Community Park on Saturday, September 28, 2013 from 11:00 a.m. to 8:00 p.m. There were 7 ayes. Motion carried.**

h. Laurie A. Moyer and Paulette G. Gilfoil, County of Lehigh – Lehigh County Fair Housing Assessment. Referred to the General Administration Committee to review with Mr. Farnsworth. Prior to being referred to the General Administration Committee, Mr. Pepe stated that he will ask Mr. Farnsworth to prepare a Memorandum with his comments.

i. Special Entertainment Commission – Request to hold the 2<sup>nd</sup> Annual Bluegrass Festival in the Park to be held at Emmaus Community Park on Saturday,

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September 28, 2013 from 10:00 a.m. to 8:00 p.m. and to place 10' x 10' tents at the Event. Mr. Holtzhafer stated that the Commission has requested all of the parking lots for parking and believes that parking will be an issue due to sporting events being held on the same day. Mr. Pepe responded that parking will be first come first serve for the Bluegrass Festival and sporting events.

**Motion by Mr. Barrett, seconded by Mr. Brown to grant the Special Entertainment Commission to erect 10 x 10 tents at the 2<sup>nd</sup> Annual Bluegrass Festival in the Park to be held at Emmaus Community Park on Saturday, September 28, 2013 from 10:00 a.m. to 8:00 p.m. There were 7 ayes. Motion carried.**

BOROUGH ENGINEER'S REPORT - None.

SOLICITOR'S REPORT

Progress.

UNFINISHED BUSINESS, PART I

Ordinance No. 1098 – An Ordinance Amending the Borough of Emmaus Zoning Ordinance to add Part 10, to Create an Overlay District Entitled, “AQCOD – Age Qualified Community Overlay District,” to Establish Guidelines for Future Amendments to the Borough’s Official Zoning Map to Govern the Consideration of Landowner and Other Requests for the Approval of Such Overlay, to Add Definitions, Regulations and Other Requirements for Age Qualified Communities and to Otherwise Authorize the Development of Age Qualified Communities Located in Whole or in Part Within the Borough.

**Motion by Mr. Barrett, seconded by Dr. Waddell to read Ordinance No. 1098 in short title. There were 7 ayes. Motion carried.**

Dr. Waddell read Ordinance No. 1098 in short title.

Mr. Brown questioned if the pedestrian sidewalk set back could be changed to a minimum of 3' feet instead of 5'. Chad Peters, Hanover Engineering, responded that the distance was established as a result of a calculation of the various right-of-way dimensions and cart ways, etc., as well as creating suitable space for shade trees to grow. Mr. Brown questioned the number of off-street parking spaces. Mr. Peters and Solicitor Dinkelacker explained that off-street parking could include garage space, driveway space, or an off-street community parking space.

**Motion by Dr. Waddell, seconded by Mr. Labenberg to adopt Ordinance No. 1098 – An Ordinance Amending the Borough of Emmaus Zoning Ordinance to add Part 10, to Create an Overlay District Entitled, “AQCOD – Age Qualified**

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**Community Overlay District,” to Establish Guidelines for Future Amendments to the Borough’s Official Zoning Map to Govern the Consideration of Landowner and Other Requests for the Approval of Such Overlay, to Add Definitions, Regulations and Other Requirements for Age Qualified Communities and to Otherwise Authorize the Development of Age Qualified Communities Located in Whole or in Part Within the Borough on its 2<sup>nd</sup> Reading. Roll call vote: Mr. Labenberg, aye; Mr. Holtzhafer, aye; Mr. Barrett, aye; Mr. Brown, aye; Mr. Shubzda, aye; Dr. Waddell, aye; Mrs. Gilbert aye. Motion carried.**

NEW BUSINESS – None.

UNFINISHED BUSINESS, PART II

Mrs. Gilbert reported that Ordinance No. 1100 is scheduled for its 2<sup>nd</sup> Reading on September 16, 2013. Mrs. Gilbert stated that a Public Hearing will be held prior to the September 16, 2013 Council Meeting.

ITEMS NOT ON AGENDA, subject to Rule 9 – None.

MAYOR’S REPORT

Progress.

COMMITTEE REPORTS

a. Public Works Committee

Mr. Labenberg reported that the Committee met on August 1, 2013. He reported that the Emmaus Public Library is interested in participating in the PPL e-power Grant Program. At the August 19, 2013 Council Meeting, the item was referred back to the Committee level. Mr. Labenberg explained that it was unnecessary because the Library has a maintenance reserve fund and will be able to fund the \$2,000 difference from the original estimate for the rebate. Mr. Labenberg stated that the library funding the difference will increase the length of time for the Library to recover the funds. The Committee recommends granting the application from the Emmaus Public Library to participate in the PPL e-power Grant Program.

**Motion by Mr. Labenberg, seconded by Mr. Shubzda to grant the application from the Emmaus Public Library to participate in the PPL e-power Grant Program. There were 7 ayes. Motion carried.**

Progress.

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b. Health, Sanitation, and Conservation Committee

Mr. Shubzda reported that the Committee met on August 26, 2013. The Committee discussed the Electronics Recycling Program and the different options with placing the electronics dumpster at a facility for use by Borough residents. The dumpster is currently located in a fenced area on Klines Lane, next to the Highway Garage. The Committee discussed the importance of being able to track the items being placed in the dumpster as well as the fees for placing certain items into the dumpster. He stated that the site will be open the 2<sup>nd</sup> Monday of the month from 12:00 p.m. to 6:00 p.m. and will require three hours of overtime for the Public Works Department. Mr. Barrett asked if there will be any revenue generated by offering the dumpster. Mr. Shubzda responded that there is not. Mr. Labenberg stated that the dumpster will be closed December through February. Dr. Waddell asked if there is signage for the site. Mr. Pepe responded that the signage has been ordered.

**Motion by Mr. Shubzda, seconded by Mr. Holtzhafer to authorize the Public Works Department to have an electronics dumpster available the 2<sup>nd</sup> Monday of the month from 12:00 p.m. to 6:00 p.m., located in a fenced area on Klines Lane, next to the Highway Garage. There were 7 ayes. Motion carried.**

Mrs. Gilbert stated that she received a phone call from Dan Delong, Upper Milford Township Manager. He is concerned because the Borough of Emmaus is down two members for the Joint Environmental Advisory Council. Mr. Shubzda responded that the Committee discussed the matter and is currently discussing a Council representative to the Committee. Mr. Pepe responded that he will discuss the item matter Mr. Dychala.

The next meeting is September 23, 2013 at 5:00 p.m.

Progress.

c. Parks and Recreation Committee

Mr. Barrett reported that the Parks and Recreation Committee met in a lengthy meeting earlier in the day. He reported that the football league is requesting permission to place a shed on the Multi-Purpose field at Emmaus Community Park. The Committee recommends placing the shed on the 40 yard line on the west side of the field. Mr. Labenberg stated that he will be voting against the motion because he believes that the shed should be placed on the eastern side of the field.

**Motion by Mr. Barrett, seconded by Mr. Holtzhafer to grant the football league's request to place a shed on the Multi-purpose at Emmaus Community Park on the 40 yard line on the west side of the field. There were 6 ayes, 1 opposed (Labenberg). Motion carried.**

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Mr. Barrett reported that there are 45 individuals signed up for the 7<sup>th</sup> Annual Halloween 5K Race. He stated that he has posters available for the race if anyone is interested.

Mr. Barrett reported that the Committee was unable to review all of the formal Policies and Procedures for Band and DJ Requests, Pavilion Refunds, Tents, Canopies, and Items Outside Pavilions, Vendor Trucks in Parks, and a Moon Bounce Policy, including insurance requirements, but will address the items at its next Committee meeting on October 1, 2013.

Progress.

d. Public Safety Committee

The next Committee meeting is September 4, 2013 at 3:00 p.m.

Progress.

e. General Administration Committee

Dr. Waddell reported that the September 4, 2013 Committee Meeting is cancelled.

Progress.

f. Budget and Finance Committee

Mr. Holtzhafer read Resolution 2013-20, authorizing payment of the September 3, 2013 Bill List, as follows:

<b>Bill List</b>	<b>\$</b>	<b>279,067.32</b>
<b>Payroll #17</b>	<b>\$</b>	<b>134,643.03</b>
<b>Payroll Taxes</b>	<b>\$</b>	<b><u>44,956.37</u></b>
<b>Total</b>	<b>\$</b>	<b>458,666.92</b>

Done this 3rd of September 2013.

**Motion by Mr. Holtzhafer, seconded by Mr. Shubzda to approve the September 3, 2013 Bill List. There were 7 ayes. Motion carried.**

Resolution 2013-21 – Amending the Accounting Method of Computing the Police Pension Valuation and Contributions from the Smoothing Method to the Market Value Method to Calculate the Actuarial Value of Pension Assets.

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**Motion by Mr. Holtzhafer, seconded by Mr. Labenberg to adopt Resolution 2013-21. There were 7 ayes. Motion carried.**

Resolution 2013-22 – Amending the Accounting Method of Computing the Non-Uniform Pension Valuation and Contributions from the Smoothing Method to the Market Value Method to Calculate the Actuarial Value of Pension Assets.

**Motion by Mr. Holtzhafer, seconded by Mr. Labenberg to adopt Resolution 2013-22. There were 7 ayes. Motion carried.**

Progress.

g. Community Relations, Planning and Development Committee

Mr. Brown reported that the August 26, 2013 Committee Meeting was cancelled. The next meeting is September 26, 2013 at 4:15 p.m.

Progress.

h. Junior Council Member's Report

Mr. Hobson reported that the Emmaus High School Homecoming week is scheduled for October 8, 2013. The Homecoming Dance will be held on October 12, 2013. He thanked Borough Council for reappointing him as Junior Council Member.

Progress.

PERSONAL APPEALS, PART II

A. Josephine Sadrovitz, 130 N. 4<sup>th</sup> Street – voiced concern that there are many homes in the Borough that are in deplorable condition. Mr. Pepe responded that the Borough has recently repaired the property located at 402 Broad Street and have taken action on the Stiles property. He stated that the legal process is very slow and the Borough has limitations on what it is able to accomplish.

BOROUGH MANAGER'S REPORT

Mr. Pepe reported that the Significant Revenue and Expense Items for August 2013 are in the binders and entertained questions about them. He reported that the Bond Issue Payment is currently due. Mr. Labenberg questioned if the D.E.P. Recycling Performance Grant is based on the amount of recyclables the Borough collects at the compost site and curbside. Mr. Pepe responded that it is based on the amount that is collected curbside. Mr. Labenberg also questioned if the traffic light/maintenance repairs was for the traffic light that was previously hit. Mr. Pepe responded affirmatively.

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Mr. Pepe referenced a Memorandum that he prepared on Friday, August 30. In the Memorandum, Mr. Pepe stated that the Borough previously agreed to allow the Emmaus Main Street Partners to obtain a \$500,000 RACP Grant for the building located at 187-191 Main Street. He stated that Council previously adopted the Agreement based on the fact that the Borough would not incur any liability of paying the Commonwealth of Pennsylvania for any type of violation of the Grant contract. The Borough received notification from the state on Thursday, August 29, that the Agreement needs to be amended. In particular, the Agreement needs to be amended to include that the Borough would be responsible for any reimbursement to the Commonwealth.

Mr. Holtzhafer stated that he has many questions and does not believe he has enough information to make a decision. He also stated that he would like to view the site. Mr. Labenberg stated that he will vote against amending the Agreement because the Agreement was based on the Borough not being liable for any violations of the grant. Mr. Labenberg questioned the financial stability of the developer/contractor and asked what the consequences are if Council does not agree with modifying the Agreement. Mr. Pepe responded that he amended the Agreement per the state's requirement. Mrs. Gilbert stated that Mr. Clock, Emmaus Main Street Partners, is in attendance at tonight's meeting and invited him to answer questions. Mr. Clock stated that the Partners were very surprised that the Agreement needed to be modified. He also stated that the Partners has an agreement with the developer to protect the parties. He stated the project is scheduled for completion by the end of October and there has been interest expressed in leasing part of the building. He asked Council to carefully consider the request. Mr. Brown questioned if the project will be put on hold if the Agreement is put on hold. He questioned what the consequences are if Council does not vote on the Agreement immediately. Mr. Brown stated that he does not believe Council has had sufficient time to view the site and review the Agreement. He asked Mr. Clock if Council can vote on the change to the Agreement at its September 16, 2013 Council Meeting. Mr. Clock stated that modifying the Agreement is crucial for reimbursement from the state and Council needs to act quickly.

Mr. Labenberg questioned if the contractor is financially able to cover the cost of the project and requested financial data from the contractor. He stated that he needs more information before he makes a decision. Dr. Waddell asked what specific language was changed in the Agreement and asked Solicitor Dinkelacker if the wording is strong enough to protect the taxpayers and the Borough of Emmaus. Mr. Pepe reviewed the wording changes. Solicitor Dinkelacker stated that he was not able to review the Agreement and requested time to do so. Mr. Clock reminded that the modifications to the Agreement are a requirement of the state.

Mr. Barrett questioned if the Agreement was a standard boilerplate agreement and how the error in the Agreement occurred. Mr. Pepe responded that the Borough initiated the wording that changed the Agreement and that the Agreement was drafted by Attorney Jack Stover. He stated that the state recently reviewed the Agreement and the error was found. Ron Eichenberg, Vice President, Emmaus Main Street Partners and President of

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Lower Macungie Township Board of Commissioners, stated that he understands the position of Borough Council. He stated that the Partners were under the impression that the Agreement submitted to the state was acceptable. It was not until Thursday, August, 29, that the Partners were made aware that the Agreement was not acceptable. He explained that RACP's are state-regulated and it is necessary to have a municipal host of the RACP. If Borough Council does not approve the modification to the Agreement, the RACP is dead. Until the matter is resolved there will be no funding of the project and the developer will not be reimbursed. Mr. Barrett questioned if the developer has currently received any reimbursement. Mr. Labenberg stated that Council only passed the Agreement because there was no liability to the Borough. Mr. Barrett asked if the potential liability for the project ends when the project is completed. Mr. Pepe responded that the liability for the project ends when the independent audit is conducted and submitted to the state. Mr. Pepe stated that he believes the audit will occur in four stages with a review by the state during each stage. Mr. Brown stated that he believes Council should review the building and vote at the next Council Meeting on September 16, 2013. Mr. Clock invited Council to view the site anytime and encouraged Council to act as quickly as possible. Mr. Brown stated that he would like to make a motion to table the matter so that it will be removed from the table and voted on at the next Council meeting. Mrs. Gilbert stated that she believes the matter should be referred to the Budget and Finance Committee and that they will meet prior to the September 16, 2013 meeting and can make a recommendation to Council. Mr. Labenberg requested financial information from the contractor. Dr. Waddell agreed with Mr. Labenberg and asked Mr. Clock if Council should email him individually to view the site. Mr. Clock responded that he will accommodate Council as needed. Mr. Holtzhafer stated that according to the Agreement, progress reports are required. He questioned if any progress reports have occurred and requested to view the reports. He asked what financial benefit the Emmaus Main Street Partners have received to date and what they intend to receive in the future. He asked, if the Solicitor needs to review the modified Agreement, would the Partners incur the cost. He asked to review the Grant proposal, the liability insurance policies and the discrimination policies of the sub-applicant, Village Center Properties. Mr. Clock responded that the files are available for review at the Emmaus Main Street Partner's Office. Mr. Barrett asked what percentage of the building has been filled. Mr. Clock responded that no leases have been signed but there has been a lot of interest expressed. He stated that he believes individuals are waiting for the completion of the building before committing to a lease. Mrs. Gilbert referred the item to the Budget and Finance Committee and stated that the Emmaus Main Street Partners will receive an answer by September 16, 2013.

Progress.

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PRESIDENT'S BUSINESS

**Motion by Mr. Barrett, seconded by Dr. Waddell to adjourn. There were 7 ayes. Motion carried.**

The September 3, 2013 Meeting of the Emmaus Borough Council adjourned at 9:00 p.m.

Shane Pepe  
Borough Manager

Transcribed by: Paula Weiant  
Administrative Assistant  
September 9, 2013