

February 13, 2013

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

Invocation was given by Mayor Joseph P. Stemberger, followed by the pledge of allegiance.

Mayor Stemberger noted that the requirements of the Open Public Meetings Act have been met by the filing and posting of the Annual Notice.

President Schneider, Councilpersons Davis, Nolan, Schalick, Williams and Zee answered to the roll call. Absent – None.

Motion Davis, seconded Zee that the last regular meeting and all subsequent meetings be approved and that the reading of the minutes be dispensed with. Motion carried.

Committee reports were made at this time: Public Safety, Finance, Streets, Borough Hall/Property, Trash/Parks & Playgrounds and Solid waste/Recycling/Parks.

Mayor Stemberger introduced Linda Aimee' to Council Administrator of the After School Municipal Alliance Program. Mrs. Aimee' informed Council that the program is helping 9 students at this time, but the money will run out for the program in March and she requested from Council \$1,900.00 to continue the school year (April and May) because the students really need the help that the program offers. President Schneider offered one of his paycheck and Steve Schalick said he would contribute \$100.00 to the program.

The following resolution was introduced:

FUNDING FOR THE CONTINUATION OF MUNICIPAL ALLIANCE AFTER SCHOOL PROGRAM

Number 32-13

BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer that \$1,900.00 be donated to the Municipal Alliance After School Program and shall be divided between different accounts in the 2013 Budget.

Motion Schnieder, seconded Zee that the resolution be adopted as read. Ayes – Schnieder, Davis, Nolan, Schalick, Williams and Zee. Nays - None. Motion carried.

The 2013 Budget was discussed with a 2 or 3 cent tax rate increase as proposed by Borough Auditor, Carol Kiniry.

The following resolution was presented:

TONNAGE GRANT APPLICATION RESOLUTION

Number 26-12

WHEREAS, The Mandatory Source Separation and Recycling Act, P.L. 1987, c.102, has established a recycling fund from which a tonnage grant may be made to municipalities in order to encourage local source separation and recycling programs; and

WHEREAS, It is the intent and the spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and to expand existing programs;

WHEREAS, The New Jersey Department of Environmental Protection has promulgated recycling regulations to Implement the Mandatory Source Separation and Recycling Act; and

WHEREAS, The recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and

WHEREAS, A resolution authorizing this municipality to apply for such tonnage grants will memorialize the commitment of this municipality to recycling and to indicate the assent of the Mayor and Borough Council to the efforts undertaken by the municipality and the requirements contained in the Recycling Act and recycling regulations; and

WHEREAS, Such a resolution should designate the individual authorized to ensure the application is properly completed and timely filed.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer that the Borough of Elmer hereby endorses the submission of the 2011 recycling tonnage grant application to the New Jersey Department of Environmental Protection and designates Cynthia L. Nolan to ensure that the application is properly filed; and

BE IT FURTHER RESOLVED that the monies received from the 2011 recycling tonnage grant be deposited in a dedicated Recycling Trust Fund to be used solely for the purposes of recycling.

Motion Nolan, seconded Davis that the resolution be adopted as read. Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

President Schneider called up for second reading an Ordinance entitled:

ORDINANCE 2013-3

CALENDAR YEAR 2013

**ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS
AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)**

Clerk presented affidavit of publication, motion Zee, seconded Nolan that the affidavit be received and filed. Motion carried.

Motion Zee, seconded Williams that the Clerk read the Ordinance by title only and that the public hearing be held thereon. Motion carried.

Clerk read following ordinance by title only:

ORDINANCE # 2013-3

CALENDAR YEAR 2013

**ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS
AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)**

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.0% unless authorized by ordinance to increase it to 3.5% over the previous year’s final appropriations, subject to certain exceptions; and,

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

WHEREAS, the Mayor and Council of the Borough of Elmer in the County of Salem finds it advisable and necessary to increase its CY 2013 budget by up to 3.5% over the previous year’s final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

WHEREAS, the Mayor and Council hereby determines that a 1.5 % increase in the budget for said year, amounting to \$11,264 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS, the Mayor and Council hereby determines that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of Elmer, in the County of Salem, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2013 budget year, the final appropriations of the Borough of Elmer shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 3.5 %, amounting to \$26,283, and that the CY 2013 municipal budget for the Borough of Elmer be approved and adopted in accordance with this ordinance; and,

BE IT FURTHER ORDAINED, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

Mayor Stemberger announced that the public hearing on the above Ordinance to be open.

Opportunity having been given to those who wished to speak for or against the Ordinance, it was moved by Davis, seconded Zee that the public hearing be closed. Motion carried.

Clerk presented the following resolution:

FINAL RESOLUTION

WHEREAS, an Ordinance entitled **CALENDAR YEAR 2013 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14)** was introduced and passed first reading on January 9, 2013, and

WHEREAS, public hearing has been held thereon;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer, County of Salem, and State of New Jersey, that an Ordinance entitled **CALENDAR YEAR 2013 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14)** be finally adopted and that notice of its adoption be published in the Elmer Times in accordance with law.

Motion Davis, seconded Nolan that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was adopted:

RESOLUTION

Number 23-2013

APPOINT R. MATTHEW RICHARDS EMERGENCY MANAGEMENT COORDINATOR

BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer, Salem County, New Jersey, that R. Matthew Richards be appointed Emergency Management Coordinator for a three-year term beginning January 1, 2013 through December 31, 2015.

Motion Zee, seconded Davis that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was presented:

TONNAGE GRANT APPLICATION RESOLUTION

Number 24-13

- WHEREAS,** The Mandatory Source Separation and Recycling Act, P.L. 1987, c.102, has established a recycling fund from which a tonnage grant may be made to municipalities in order to encourage local source separation and recycling programs; and
- WHEREAS,** It is the intent and the spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and to expand existing programs;
- WHEREAS,** The New Jersey Department of Environmental Protection has promulgated recycling regulations to implement the Mandatory Source Separation and Recycling Act; and
- WHEREAS,** The recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and
- WHEREAS,** A resolution authorizing this municipality to apply for such tonnage grants will memorialize the commitment of this municipality to recycling and to indicate the assent of the Mayor and Borough Council to the efforts undertaken by the municipality and the requirements contained in the Recycling Act and recycling regulations; and
- WHEREAS,** Such a resolution should designate the individual authorized to ensure the application is properly completed and timely filed.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer that the Borough of Elmer hereby endorses the submission of the 2012 recycling tonnage grant application to the New Jersey Department of Environmental Protection and designates Cynthia L. Nolan to ensure that the application is properly filed; and

BE IT FURTHER RESOLVED that the monies received from the 2012 recycling tonnage grant be deposited in a dedicated Recycling Trust Fund to be used solely for the purposes of recycling.

Motion Davis, seconded Nolan that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was presented:

TAX IDENTIFICATION STATEMENT

Number 25-13

- WHEREAS,** The Recycling Enhancement Act, P.L.2007, chapter 311, has established a recycling fund from which tonnage grants may be made to municipalities in order to encourage local source separation and recycling programs; and
- WHEREAS,** There is levied upon the owner or operator of every solid waste facility (with certain exceptions) a recycling tax of \$3.00 per ton on all solid waste accepted for disposal or transfer at the solid waste facility.
- WHEREAS,** Whenever a municipality operates a municipal service system for solid waste collection, or provides for regular solid waste collection service under a contract awarded pursuant to the “Local Public Contracts Law, the amount of grant monies received by the municipality shall not be less than the annual amount of recycling tax paid by the municipality except that all grant moneys received by the municipality shall be expended only for its recycling program.

NOW THEREFORE, BE IT RESOLVED by the Borough of Elmer that the Borough of Elmer hereby certifies a submission of expenditure for taxes paid pursuant to P.L.2007, chapter 311, in 2012 in the amount of \$1,667.00. Documentation supporting this submission is available at 120 South Main Street, Elmer, NJ and shall be maintained for no less than five years from this date.

Motion Nolan, seconded Williams that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was presented:

RESOLUTION

Number 26-13

CONSUMER CONFIDENCE REPORT CONTRACT

BE IT RESOLVED by the Mayor and Borough Council that the Mayor and Clerk be authorized to enter into an agreement with Water Resource Management for the preparation of the 2012 Water Consumer Confidence Report for an amount not to exceed \$1,200.00 which shall be charged to Water Operating: OE in the 2013 Budget.

Motion Davis, seconded Zee that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was presented:

RESOLUTION

Number 27-13

PLANNING BOARD ESCROW FUND

BE IT RESOLVED that the Escrow Fund Deposit made pursuant to Article IV, Section 2.30 of the Land Development Ordinance by Behavioral Crossroads Recovery (Applicant) for Change of Use Application (Purpose of Deposit e.g. Site Plan Application) in the amount of \$2,000.00 be distributed and paid as follows:

\$ 2,000.00 To: by Behavioral Crossroads Recovery

Motion Davis, seconded Zee that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

RESOLUTION

Number 28-13

SALE OF BOROUGH OF ELMER POLICEVEHICLE WITH RESERVATION AND BY SEALED BIDS

WHEREAS, it is the desire to the Borough Council of the Borough of Elmer to sell its police vehicle in accordance with N.J.S.A. 40:A11-36 et.seq.; and

WHEREAS, the Borough is authorized to sell its personal property not needed for public use; and

WHEREAS, the Borough finds that it is in the best interest to sell said vehicle in its “AS IS CONDITION”, and is described in Schedule A attached by “SEALED BID” and with RESERVATION.

WHEREAS, by the sale of the vehicle in Its “AS IS CONDITION” the Municipality shall be relieved of any and all liability by such sale; and

WHEREAS, payment received shall be by cash, certified check or cashier’s check only.

NOW, THEREFORE BE IT RESOLVED, that the Borough of Elmer Municipal Clerk, County of Salem and State of New Jersey is authorized to advertise by publication in the local paper of the Borough of Elmer, the Elmer Times and South Jersey Times, requesting SEALED BIDS starting at not less than EIGHT HUNDRED DOLLARS

(\$800.00). ALL SEALED BIDS received are with the RIGHT OF RESERVATION by the BOROUGH OF ELMER.

BE IT FURTHER RESOLVED that Sealed Bids may be sent to P. O. Box 882, Elmer, NJ 08318. All SEALED BIDS will be opened at the Regular Borough of Elmer Borough Council meeting, 120 South Main Street, Elmer, NJ on March 13, 2013, at 8:00 p.m.

BE IT FURTHER RESOLVED that any questions may be directed to Police Chief Pat Bryan at 856-358-0353 ext. 11.

Motion Davis, seconded Nolan that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was presented:

RESOLUTION

PLANNING BOARD ESCROW FUND

Number 29-13

BE IT RESOLVED that the Escrow Fund Deposit made pursuant to Article IV, Section 2.30 of the Land Development Ordinance by Southwick Properties. (Applicant) Variance (Purpose of Deposit e.g. Site Plan Application) in the amount of \$5,264.00 be distributed and paid as follows:

\$ 60.00 To: Fralinger Engineering
\$5,204.00 To: Fralinger Engineering

Motion Zee, seconded Davis that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following Ordinance was introduced by title only:

FIRST RESOLUTION

BE IT RESOLVED by the Mayor and Borough Council of the Borough of Elmer, County of Salem, and State of New Jersey, that an Ordinance entitled 2013 SALARY ORDINANCE be adopted on first reading, final hearing thereof be held at its regular meeting on March 13, 2013, at 7:30 p.m., Borough Hall, Elmer, New Jersey, and that said Ordinance, together with Notice of Final Hearing, be published in the Elmer Times in accordance with law.

Motion Davis, seconded Nolan that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

Clerk presented letter of resignation from Bonnie Kanady from the Elmer Board of Health effective January 22, 2013. Motion Davis, seconded Zee that the letter be accepted with regrets. Motion carried.

Clerk presented application for Raffles from Elmer Library Association for an Off-Premise Raffle on March 23, 2013.

Motion Davis, seconded Nolan that upon receipt of payment for permits, the application be approved. Motion carried.

Clerk presented Elmer Fire Department membership application from Ian A. Eddy, 100 S. Main St., Apt. F, Elmer, NJ 08318.

Motion Williams, seconded Zee that the application of Ian A Eddy be approved. Motion carried.

Clerk presented Tax/Water Collector's Report for January 2013.

Motion Davis, seconded Zee that the Tax/Water Collector's Report be received and filed.

Treasurer's Reports for the month of January 2013 were presented and read.

Motion Williams, seconded Zee that the reports be received, filed and spread full upon the minutes. I state this Andrew M. Williams. Motion carried.

(Treasurer's Reports – See Pages 25 a in Minute Book)

The following bills were presented and read: (See pages 25 b in Minute Book)

Moved Davis, seconded Zee that the bills be paid and charged to their respective accounts. Ayes - Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays - None. Motion carried.

Clerk and Mayor's mail for the month of February, 2013, was presented and read.

Motion Davis, seconded Nolan that the correspondence be received and filed. Motion carried.

The following resolution was presented:

BOROUGH OF ELMER

RESOLUTION NO. 30 - 13

AUTHORIZING EXECUTIVE SESSION

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

_____ Any matter which, by express provision of Federal Law, State Statute or Rule of Court shall be rendered confidential or excluded from discussion in public (Provision relied upon: _____);

_____ Any matter in which the release of information would impair a right to receive funds from the Federal government;

_____ Any matter the disclosure of which constitutes an unwarranted invasion of individual privacy;

_____ Any collective bargaining agreement, or the terms and conditions of which are proposed for inclusion in any collective bargaining agreement, including the negotiation of terms and conditions with employees or representatives of employees of the public body (Specify contract: _____);

_____ Any matter involving the purpose, lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed;

_____ Any tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection;

_____ Any investigations of violations or possible violations of the law;

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: anticipated litigation concerning the Borough Sidewalk projects. Borough of Elmer vs. HAKS Engineering and retaining Legal Council.

(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);

_____ Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining or any specific prospective public officer or employee or current public officer or employee employed or appointed by he public body, unless all individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting (Subject to the balancing of the public's interest and the employee's privacy rights under South Jersey Publishing, 124 N.J. 478, the employee(s) and nature of discussion is Terms and Conditions of Employment);

_____ Any deliberation of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act of omission for which the responding party bears responsibility;

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.

I, Beverly S. Richards, RMC do hereby certify the above to be a true and correct copy of a resolution adopted by the Mayor and Borough Council of the Borough of Elmer at their meeting held on February 13, 2013 at the Borough Hall, 120 South Main Street, Elmer, NJ.

Motion Williams, seconded Zee that the resolution be adopted as read: Ayes – Schneider, Davis, Nolan, Schalick, Williams and Zee. Nays – None. Motion carried.

The following resolution was presented:

BOROUGH OF ELMER

Number 31-13

RE-OPEN CLOSED MINUTE SESSION

Be it resolved by the Mayor and Borough Council of the Borough of Elmer that the February 13, 2013 closed session portion of the Borough Council Meeting regarding Borough of Elmer vs. HAKS Engineering and retain Legal Council be re-opened to the public.

Motion Schnieder, seconded Schalick authorizing Borough Solicitor, Charles Girard to settle Borough of Elmer v. HAKS Engineering matter in the amount of \$80,000.00 or above. Motion carried.

A discussion on encroachment on the Anthony Property occurred. Councilman Schalick to look into the matter.

There being no further business, it was moved by Zee, seconded by Davis that the meeting be adjourned. Motion carried.

February 13, 2013

Beverly S. Richards, Borough Clerk