

Jermyn Borough
Council Minutes
October 5, 2017

The Jermyn Borough Council held a council meeting on October 5, 2017 at 7:00 p.m. at the Jermyn Community Center, 440 Jefferson Avenue, Jermyn, PA in the Council Chambers.

On roll call present were: Frank Kulick, Robert Parks, John Mark, Dan Markey, Kevin Napoli, Joseph Smith and JoAnne Wilson. Also present were Mayor Smallacombe, Atty. Moran, Dennis Kutch and Ray Rood. Absent were; Bob Chase and Evan Samuelsen.

Mr. Kulick asked everyone to remain standing for a moment of silence for Leah Loomis and also for the 59 victims of the Las Vegas shooting.

MINUTES:

A motion was made by Mr. Markey to accept the September 27, 2017 special meeting minutes and seconded by Mr. Smith; all in favor, motion carried. A motion was made by Mr. Parks and seconded by Mr. Napoli to accept the September 21, 2017 meeting minutes. All in favor; motion carried.

RUSHBROOK CREEK PROJECT:

Mr. Andrew Malene; DEP – thanked council for inviting us here. Mr. Malene said he was here back in January. He said the main topic we talked about in January was the mitigation site that the Army Corp of engineers is requiring us to do that is part of the 105-404 permit which is the permit that we need to construct the project. We have a proposed site. We have gone through the design of that mitigation site and had to do some number crunching and that is complete. We also, have developed the plans for that site as well as all the specifications; they are currently 95% complete. The next step which we are currently working on, our biologist who was here in January, he talked about all the ecological functions that we have to satisfy in this mitigation site, he has to write a report and he is currently working on that. Mr. Malene is not sure how far along he is working on that report. Once we get his report, we will assemble the whole package for the mitigation site only and we will send that to the Army Corp. we hope to have that ready November 1. Mr. Malene said hopefully we do not have any other glitches pop up on us, as far as we are going through this design stage for the mitigation. Once we submit that to the Army Corp of Engineers it will be in their hands as far as review and comment. If they are satisfied with it, hopefully they will issue us a permit.

Mr. Malene said a part of that mitigation site; we are working in an additional area for the project, which requires easements. We have a contractor surveyor, they have come out and have identified majority of the property owners in that area, we still need to have them do some additional work there. Mr. Malene said the Borough owns some of the area but there is a gap between what the Borough owns and where the Pen Dot right of way is. We aren't exactly sure where that is, once we get that taken care of then we will move forward with getting the easement done. As far as the easement documents themselves, the Borough has been anxiously waiting for them. Right now, there is an issue, we would like to have a decision or given

direction from the Borough on this issue and that are the unopened paper streets that we are impacting within the Borough. He believes one is at the downstream end behind Wayne's and an alley at the upstream end between the properties of Carachilo and Edmond's property. There is an unopened alley there, a paper street. The issue is the previous solicitor; he felt he wanted to have the easement descriptions drawn up two separate ways. One with having it just allocated to just one owners and one having it allocated to both, half is split, allocated to each adjoining property owner. DGS attorney has contacted our solicitor Atty. Moran on this issue and Mr. Malene is not sure who makes the decision. In order for us to move forward, we would like to have a decision from the Borough as far as which direction they want to go on the paper streets; the unopened paper streets. That is an issue there, once we get that resolved then DGS will be happy and satisfied to turn over the easement documents to the Borough so they can actually start the acquisition phase to go out and get the signatures, part of the project moving forward.

Mr. Malene said the actual plans and specification package for the overall whole project, we are currently sitting about 80% for that, the design is actually completed and we are still working on the mitigation plans and specifications because that will all tie into the whole big project and that also, that mitigation site influences our quantities, which impacts the cost estimate. Mr. Malene said we will be close as what was currently allocated for the project as far as our cost estimate but we also requested additional funds from the legislatures in this year's budget. Mr. Malene said we will also need a mitigation site permit. Finally, the only major design issue that we have to address are the highway occupancy permits with Pen Dot and potentially three permits that we have to apply for and we are going to hold off on doing those right now until the Borough gets the easements documents and fully committed into doing the acquisition phase and then we will apply for the permits. We are not anticipating any issues, main reason why we wait is because if we get them now and typically the acquisition phase can go from a 1 year to a year and a half by the time we get it all taken care of and the highway occupancy permits are typically a year, sometimes you can get them for two. Instead of us keep going back and renew, we are going to wait until we get closer to the acquisition phase.

George Kelly – Lackawanna County – Introduced Larry West – regional director for Senator Blake. Mr. West thanked DEP for coming here this evening for the update. Mr. West said Senator Blake and Mr. Kavulich have been committed to this project. It is an important issue here in Jermyn. He reassured everyone, between the County, Senator Blake and Mr. Kavulich, we are committed to this project. We are working the best we can, as long as we stay on course and our engineer and solicitors are working together, we should be in good shape. The county applied for Act 13 money for the gap for this project. The grant expired in June 2017; the county did get an extension until June 2018. If need be, we will ask for another extension. Most of the grant money is for utility relocations. The grant is for \$385,000. We are here to assist the Borough in the acquisition process as well.

PUBLIC QUESTIONS:

Andrew Goodwin 607 Jefferson- as a newer resident he has been following along what has been going on with this project. He has heard about the project but has not seen any tentative or recommended deadlines or scheduled events when things are going to happen. He asked when we expect to have things started by. Mr. Malene said these are capital budget funds for the project and first, we have to get all the easements, easements are the right of ways for ingress and

egress and DGS does not let a contractor construction until all the easements are in hand signed off. Speaking from how we done these in the past, it takes about a year, it can take a year to two years. Mr. Goodwin asked where we are with that. Mr. Malene said the documents are drafted and we need to get the mitigation parcels finalized. Mr. Goodwin asked when can we expect to see something start, break soil. Mr. Malene said we will break soil, all things go well maybe 2019, depending upon how quickly, and all the property owners sign off on the easements. Mr. Goodwin said that is something we have to work on as a community.

Donna Stackel- Who is responsible to get the easements. Mr. Kulick said the Borough, once we are allowed to start that process, which are we are not allowed to start yet. Mr. Parry asked why we aren't allowed to start it. Mr. Kulick said until the package is complete and all the permits are issued we can't move forward. Mr. Malene said DGS real estate attorney, they have a certain format, each property owner that is impacted, has various amounts of properties, and they want to make sure each document is exactly the same. They want the exact same language. When they get finalized, they will send them to the Borough and the solicitor will get a copy of those as well and within a matter of instructions, DGS attorney will explain how that process is to go about and it will be up to the Borough however they want to do it. Mr. Parry asked what the attorney's are concerns, what are the hold ups there. Mr. Malene said one of the things is the unopened paper streets and then the unfinished easement documents for the mitigation site, we have to get our surveyor to answer some questions and then we will move forward. Mr. Parry said when it comes to the easements, the people that will grant the easements, do they need to be compensated by the Borough. Mr. Malene said he does not want to answer for the Borough on that. Mr. Kulick said it is a process. Mr. Parry asked will the Borough have to come up with money to satisfy these easements. Mr. Malene said potentially yes, it is a community project, a project for the community and it benefits a number of property owners within the community. Mr. Kutch said all those people that are required to get easements from, will be people that will mostly benefit from the project. The other issue is what the attorney has a concern about, the DGS attorney is that if there is any easements that aren't secured, then the potential exists once we start the project that someone can cause it to stop and then we will subject to delay claims from the contractor. Mr. Parry said the last meeting he was at, the start date was at 2018, and all of a sudden we are at 2019 or 2020. Mr. Rood said he understands the Borough can't do anything until DEP gets done, so really it is DEP that is holding everything up so basically DEP put us back another year. Mr. Malene said we need the Borough to address this unopened street. Mr. Demarco said where is the Borough with this, has the solicitor brought this to council's attention. Atty. Luke Moran said Atty. Larry Moran has been in contacted with the DGS attorney. We are trying to get this finalized as quickly as possible, there are some issues that been touched on, mainly financial, as far as compensating the current property owners and getting agreements from each of the individual property owners to the identical terms. Mr. Demarco said if those two decisions are made then it is on DEP correct. Mayor Smallacombe said this is first he has heard about it.

Mr. Demarco asked if this was communicated at Atty. Moran's office and he dropped the ball or did council know about this and they dropped the ball. Atty. Luke Moran said Atty. Larry Moran was contacted and was just brought to our attention. This is something we can handle relatively quickly. Mr. Kutch asked what the problem is with the paper streets. Mr. Malene said the previous solicitor requested to have two separate sets of documents drawn up on the paper

streets; it would be a lot simpler to have our surveyor just draw up one. Mr. Malene said to have the Borough open the streets or split in half and half to each parcel. Mr. Kutch said those Borough streets are still owned by the Borough, the paper streets, you need those streets for access is that correct? Mr. Paul, those paper streets are on the map, saying no one has claimed that property at this point and we can't nail it down, no one's name is on it, not the Borough's. The DGS attorney needs a determination of the owner. Mr. Kutch said why wouldn't the Borough keep the paper streets, they own them now. Mr. Napoli asked how long ago Attorney Moran was made aware that his was an issue. Mr. Malene said maybe two months ago. Mr. Demarco said and council wasn't aware of this? Mr. Malene said as far as the Army Corp of Engineer goes it is totally out of our control, we are jumping through the hoops in order to get the permit to construct the project. Mr. Rood said there has to be a head man in everything, who is the last person to answer to this all. There is a lack of authority, the ball bounces but where does it stop. Mr. Demarco asked how many council members knew of these two issues before tonight. Atty. Luke Moran said it was never clearly communicated to Atty. Larry Moran that this unopened paper street was the hold up. Mr. Malene said it's not really a hold up but we need an answer or decision.

Mr. Mark said the big hold up is that we do not have a permit from the Army Corp. of Engineers. The senators and federal representatives were up here walking in that creek and we still can't get the permit. That is where the biggest hold up is, once we get that we can move on with easements. That paper street is nothing, it's a quick vote for us, and we did paper streets 50/50. What Mr. Malene is talking about is mitigation. Mr. Rood asked who we can get as our representatives that you know that can do something. Mr. Mark said our Senators and representatives. Mr. West said we have worked on several flood control projects at our office, it is a process and the point that Mr. Mark made about the Army Corp, they can be difficult no doubt about it. There are several parcels that need to be identified. Mr. West said he understands the local concerns, it is hard but we can get there, we need cooperation and DEP is doing the best they can. The next step for us is to make contacts at a Federal level. Our Federal elected officials can make that call, Mr. West was not aware that the Army Corp. was holding anything up. Mr. West said we are committed to working and make sure everyone's homes are taken care of.

Mr. Parry asked once the project is complete, will it automatically mean people will not have to pay flood insurance anymore or will it be reduced. Mr. Mark said they have to redesign the maps and that takes a long time to do that. Mr. Parry asked about the plans being sent to Army Corp of Engineers. Mr. Parry said you are only 80% done after all these years. Mr. Malene said we have only been working on the actual permit application since 2012, like the representatives said; we are going through the process. We have only been working on this mitigation site since January. Mr. West said he will be in touch with DEP and you have our word on behalf of Mr. Kavulich and see if we can get some movement on this. We do not know what the holdup is and we will find out tomorrow and it may just be part of the process but that may be the case here. We are doing the best we can. Mr. Demarco said this council has been the most proactive in keeping on top of these guys that are doing all the work. We have had more public meetings in the last year than we had in the last ten.

Mr. Markey said he has a couple clarifying questions. Mr. West and Representative Kavulich, you are committing to reach out to our Federal officials to investigate hold ups with Army Corps

of engineers. They both responded yes. Mr. Markey asked Mr. Malene if he is committed to submit that packet to the Army Corp of engineers by the November 1 date. Mr. Malene said he is going to try, there is still some work that needs to be done and we are working on it. Mr. Markey said additional survey work needs to be done who is responsible for following up with the surveyor? Mr. Malene said us and will follow up with surveyor. Mr. Markey said we will be committed by the next meeting to have a discussion and vote for the decision for easement contracts for the unopened paper streets. Mr. Markey said he wants to make everyone aware on where we are at with everything, who is responsible for following up and get commitments from everyone, ourselves included. Mr. Markey thanked the public for coming out; it says a lot, you are concerned and committed. He wants to make sure we have all of our ducks in a row. Everyone here tonight has different marching orders and we want to make sure that we are following up and making sure that we are all committed to having answers. Mr. Mark asked Mr. Malene about coming up and putting the drawings in the gym for the residents to see, to show everyone where the easements have to be and their properties. Mr. Mark said most people that are affected by this project, will gain property from this project. Mr. Malene said they will do that once DGS attorney sends the easement documents to the Borough and you review them and get familiar with what is required, we will schedule a public meeting. Mr. Napoli asked if this paper road issue causing the hold up or is it not. Mr. Malene said not necessarily, it's not a holdup we are just looking for direction from the Borough. Mr. Smith said there have been a lot of things that have been done to help Jermyn money wise to get this project going and to make it a reality. Otherwise Jermyn couldn't afford this project. Mr. Smith said we feel that we are up to date on everything that we have to be right now and we can't go any further until the Federal and State agency says go ahead. At this point as far as he understands, we cannot go any further. The idea about the unopened paper streets, we will address it at the next meeting and it will be taken care of on our part, but we can only do so much without the direction of DEP and the Army Corp of Engineers and everyone else involved in the project. When it comes down to it there are so many government agencies and trying to get everyone together is really an unbelievable assignment. Mr. Smith said that is the problem with this whole thing, there are too many people involved in it. Mr. Mark said the Army Corp. will not come here to a public meeting.

Mr. Rood thanked council; they do a diligent work on this project.

- **UPDATE 10/20/17:** An email was sent to the Borough on October 17, 2017 to make corrections on what was previously said at the public meeting. The email reads: DEP stated that the project should be "shovel ready" in 2019. In order for all moving pieces to come together (permits, easements, engineering approval, legal approvals, etc.) the project is tentatively expected to be "shovel ready" until 2022. Preliminary hydraulic modeling indicates that a Certified Letter of Map Revision (CLOMR) from FEMA is not required. A final determination will be made on this issue by DEP and the results will be sent to the Borough.
- In review of the news article from WNEP 16 it was stated that easements could not move forward until permits were obtained. DEP is currently developing a mitigation plan that was discussed during the January 2017 Public Meeting which will require new easements to be developed for this area. The permit process and easement development are parallel events and are not dependent of one another. The easements are currently being developed by a DGS consultant surveyor to correct easement documents at the request of DGS legal. As mentioned at the public meeting on Thursday, the Borough Solicitor will need to make a determination on the unopened streets prior to the surveyor completing these easement revisions. DGS legal will

review all of the revised easements when they are completed and then the easements will be sent to the Borough for signatures. While this process is happening DEP will be continually coordinating with the US Army Corps of Engineers to obtain the construction permit.

Ordinance #14-17:

Ordinance prohibiting engine brake retarder on specific Borough Streets. This ordinance will be submitted to PennDot. A motion was made by Mr. Smith and seconded by Mr. Mark to accept ordinance #14-17, all in favor; motion carried. A copy of this ordinance will be available on our webpage. Mr. Markey asked if PennDot has to approve this. Atty. Moran said yes.

Sign:

Mr. Smith said we received the sign for Tony Cerminaro for the Steamtown Marathon. It is 8ft. wide. He asked if the DPW can install it. It has welcome to Jermyn, PA; home of the Marathon man Tony Cerminaro.

OTHER:

Mr. Markey said he does not think we should let this Valley View estates thing die. There was an unfortunate incident over at Valley View estates and when the article came out online; it said Jermyn man, because Valley View estates always had a Jermyn address. Mr. Markey called the reporter and told them Valley View estates is in Archbald Borough, it is not in Jermyn. The reporter said they go by the address on the police report. He said if it's really in Archbald Borough he would talk to his editor to see if it can get changed for print. In print, it came out as Archbald man instead of Jermyn man. Mr. Markey said he does not think Jermyn should get the black eye for the negative publicity at what goes on at Valley View estates. Mr. Markey called the post master of Archbald and he said he never understood why Valley View estates said Jermyn instead of Archbald and it is something you have to take up with Archbald. Mr. Markey spoke with Atty. Larry Moran and he had a few different ideas and one of the things we want to do is approach Archbald and ask to get these addresses changed to have it read Archbald instead of Jermyn. Mr. Markey does not think Jermyn should continue to get the negative publicity for all the garbage that happens over at Valley View estates. Mr. Mark said the reason is that because the addresses are serviced out of the Jermyn post office but now they are combined and it is just a satellite office now. Mr. Markey said when he called the Jermyn office, they explained that to him as well, but they said it's really up to the Borough of Archbald to change that over. Mr. Mark said we get all the problems from Valley View estates. Mr. Markey said they are removing old junk tires from Valley View estates and so far there are about 100 junk tires. The problem we are going to start having from this is that there are a lot of stray cats that are living in those cats. As those tires go, those tires that are going to start making its way into Jermyn.

The Historical Society will be having their open house on October 22, 2017 from 1pm to 5pm at the United Methodist Church parsonage in Jermyn.

Mr. Kulick read aloud a certificate of recognition for Carl Yanowski.

Mr. Kulick said over the weekend somebody took it upon themselves to plant an excavator on the creek bed on Rushbrook and moved quantity of river stone and dug up the creek bed, which is illegal. DEP has been informed of that and they will investigate it.

A motion was made by Mr. Napoli to adjourn the meeting at 8:45 pm seconded by Mr. Smith, all in favor; motion carried.