

State College Borough Council
November 15, 2004

The State College Borough Council met on November 15, 2004, in the Council Chambers of the State College Municipal Building, 243 South Allen Street. Mayor Welch called the meeting to order at 7:30 p.m.

Present: Bill Welch, Mayor
Thomas E. Daubert, President
Catherine G. Dauler
Elizabeth A. Goreham
Craig R. Humphrey
Jeffrey R. Kern
Janet K. Knauer
James H. Meyer

Also present were: Thomas J. Fountaine, II, Borough Manager; Terry J. Williams, Solicitor; Ronald A. Davis, Assistant Manager; Barbara J. Natalie, Assistant Secretary; Thomas M. Hart, Lieutenant of Police; Michael S. Groff, Director of Finance; Mark S. Henry, Health Officer; Amy J. Story, Borough Engineer; Joanne K. Lopinsky, Assistant Zoning Officer; members of the media; and other interested observers.

The Pledge of Allegiance followed a moment of silence.

PUBLIC HOUR.

Suggested Revisions to the Borough's 2005 Budget. Patrick Vernon, a resident of Walnut Spring Lane in College Township, understood that the Borough will be faced with funding shortfalls in next year's budget and suggested that, rather than have ordinance enforcement officers monitoring parking lots, they be reassigned to locate vacant lots on which taxable properties could be sited. He also noted that Borough staff expends a lot of time dealing with behavioral issues and recommended their energies be redirected to focus on the positive aspects of living in the Borough.

Kristen Kofmehl, Off-Campus Student Union (OCSU) President residing at 210 West College Avenue, said Calder Way is looking a lot brighter now thanks to Borough staff who worked with the students to have lighting installed. She reported that the OCSU is developing a 2-, 5-, and 10-year plan, which they hope will include input from Council members and Borough staff.

CONSENT ITEMS:

Easement Agreement – Adelpia. The first item of Consent was to take action on an easement agreement for the relocation of utilities associated with the construction of the Schlow Memorial Library.

Mr. Fountaine referred to a Right of Easement for Adelpia Cable Communications to construct, use, maintain, and operate a cable system under the ground from just west of A Alley, along the boundary between the municipal building and the Schlow Memorial Library property, to Allen Street; then along Allen Street to Highland Alley; then along Highland to a point just west of Allen Street. This easement is the same conduit as that previously approved for use by Allegheny Power.

Upon motion of Ms. Knauer, second by Mr. Kern, Council voted 7-0-0 to approve the easement agreement.

Special Activities: Use of Municipal Building for Lighting Menorah. The only other item of Consent was to approve the use of the municipal building's lobby and plaza.

Mr. Fountaine distributed a request to use the lobby in the municipal building and its plaza on December 7, from 5:00 to 8:00 p.m., for the lighting of the menorah. In accordance with

the adopted policy on facility use, he said, requests to use the municipal building must be approved by Council.

Ms. Knauer moved to approve the use, as requested. Mr. Kern seconded her motion, and it carried unanimously.

OLD BUSINESS ITEMS

Centre County Long-Range Transportation Plan. The first item of Old Business was to endorse comments on the second phase of Centre County's long-range transportation plan.

Mr. Fontaine advised that Phase II of the transportation plan deals with projects that do not add capacity to the roadway system, such as bridges, intersections, safety, signals, and transportation demand management, or are concerned with air travel, bicycles, pedestrians, and public transportation. A workshop on this phase of the Plan was held on October 27. The Transportation Commission reviewed this phase of the Plan and recommended a list of projects that should be considered when developing the plan. Because advisory groups are not to forward comments without Council's consent, Mr. Fontaine asked that members review the comments provided and, if there are no objections, authorize them to be forwarded to the Centre County Metropolitan Planning Organization (MPO).

Ms. Knauer moved to approve the Transportation Commission's comments on Phase II of Centre County's Long-Range Transportation Plan, and forward Council's endorsement of the Commission's comments to the MPO. Ms. Dauler seconded her motion.

Ms. Goreham questioned the inclusion of *designated bicycle lanes and any associated "widening" of Easterly Parkway, Allen Street, Waupelani Drive, Gill Street, and McKee Street*. Chris Falzone, Chairman of the Transportation Commission, said this does not necessarily mean a physical widening of the street but, rather, the width of the street being made wider through the elimination of parking, as an example. Mr. Daubert suggested this might be better clarified.

Because she felt such signals may invite a false sense of security, Ms. Knauer asked about the success of *countdown traffic signals* in other communities. Mr. Falzone said they have been successful elsewhere; education and the enforcement of vehicle and pedestrian laws at intersections in State College would go a long way toward making them successful here.

Mayor Welch pointed out that emergency responders have repeatedly opposed center islands because they impede drivers' ability to "squeeze through" when traffic cannot leave the travel lanes. Mr. Falzone answered that islands would not do that if they are constructed correctly. Mr. Daubert added that center islands are not conducive to snow removal.

Mr. Falzone cautioned Council that this is a very long-term plan, most of which listed would not occur unless one of the items fit into a project's development phase. Mr. Kern suggested the items be prioritized before they are submitted to the MPO. He was concerned that an item's weight would be misinterpreted to reflect a higher priority than Council was willing to give it. For instance, he said, *adding a fifth lane on Atherton Street* is not likely to occur and Council has no intention of working toward that goal. Ms. Goreham was not concerned; as long as the items are on the list, they can be rearranged each year to have those Council would like to have done first moved up.

The question was called and Council approved Ms. Knauer's motion by a vote of 5-2-0. Mr. Kern and Mr. Humphrey voted against it.

Zoning Ordinance: Amending Setbacks along Beaver Avenue and In-Lieu-Of-Parking
Next, Council was asked to take action on an amendment to the zoning ordinance to change setback requirements in a part of the commercial district and expand uses for the in-lieu-of-parking fees.

A public hearing on these amendments to the zoning ordinance was held on October 22, Mr. Fontaine recalled. Testimony from that hearing was discussed on November 1. Following discussion, an amended ordinance was prepared to:

- revise front yard setbacks along a portion of Beaver Avenue to require 15 feet for commercial uses and 25 feet for all other uses [no change from the amendment heard];
- expand the list of eligible uses for revenues generated through the fee-in-lieu option to include (1) parking facility renovations that result in a net gain of parking spaces (2) satellite parking facilities; (3) transit subsidies; (4) pedestrian improvements related to parking facilities; and (5) non-routine capital improvements, repairs, or maintenance [the latter added following the hearing];
- allow adjustments to be made from time to time to the fee-in-lieu percentage by resolution of Council, rather than by ordinance [no change from that heard]; and
- allow the in-lieu option to be used for up to 10 percent of the parking for residential uses as long as 90 percent of the required parking is provided on site [no change from that heard on the 22nd].

Ms. Dauler moved to enact Ordinance 1797, amending the zoning ordinance to incorporate those changes described by the Manager. Mr. Daubert seconded her motion.

Ms. Goreham implored Council to rethink their desire to allow in-lieu-of-parking for residential uses. She said she would rather eliminate all parking in the commercial district than to allow owners to pay for parking not provided. Ms. Knauer was also opposed to allowing in-lieu for residential structures. She believed the concept was to benefit a particular project—always unwise; in this instance, she said, particularly unwise because the owner could show no hardship. Both the Planning and Transportation Commissions voted unanimously in opposition to the application of in-lieu for residential uses. Ms. Knauer added her strong belief that it is a mistake to allow developers any opportunity to forsake their responsibility to provide parking for their customers. Mr. Daubert pointed out that developers can currently provide 100 percent of the required parking off site; this ordinance would give them the benefit of paying for 10 percent of the parking but still requires 90 percent of it to be on site. Mr. Meyer also noted that a poll showed that less than 90 percent of the spaces provided are actually rented by the tenants who live in a complex.

Mr. Humphrey moved to remove from the proposed ordinance any and all references that provide for the application of in-lieu-of-parking to be applied to residential uses. Ms. Knauer seconded his motion, but it failed by a vote of 3-4-0. Ms. Dauler, Mr. Meyer, Mr. Daubert, and Mr. Kern voted against his motion.

Council voted 5-2-0 to approve Ms. Dauler's main motion. Ms. Knauer and Ms. Goreham voted against the motion.

In-Lieu-Of-Parking Fee Fixed. Council was then asked to enact a resolution fixing the in-lieu-of-parking fee.

Mr. Fountaine explained that the ordinance just approved includes a provision that allows Council to, from time to time, fix the per-space fee by resolution. During Council's last discussion of this subject, members announced their intent to enact a resolution increasing the per-space fee for the fee-in-lieu option at 75 percent of the full cost of a parking space, based on the Borough's most recent experience, or \$18,750.00 per space.

Upon motion of Mr. Kern, second by Ms. Dauler, Council voted 5-2-0 to enact Resolution 867, fixing the fee at \$18,750.00 per space. Ms. Goreham and Ms. Knauer voted in opposition to the motion.

Property Maintenance/Fire Codes/2003 Edition. The next item of Old Business was to take action on an ordinance adopting the Property Maintenance/Fire Codes, 2003 Editions.

For most of the past year, Mr. Fountaine said, the Borough and the Centre Region Council of Governments' (COG) Code Committee have been working on amendments to the existing Property Maintenance Code, including the provisions in the current Code related to rental housing permit suspensions. The amendment before Council adopts the Property Maintenance and Fire Codes, 2003 Editions, and amends regulations related to rental permit suspension based on neighborhood nuisances. Amendments were presented to the Code Committee in August and Council considered the draft in September. A public hearing was held on the amendments proposed on October 13th. On November 1, Council held a second public hearing on this ordinance; information gathered at that meeting was discussed at

Council's November 8th work session. Since the work session, additional written comments have been received. Based on Council's latest discussion, an amended ordinance was prepared for adoption; the changes include:

- §404.5.2 [Page 10, line 22 and 23 of your November 15 draft] add a sentence that states "For residential occupancy, the minimum gross floor area per occupant shall be 200 square feet."
- §608.1 [Page 13, lines 17 through 21] add the following wording regarding installation of CO detectors: "Within one year of the effective date of this ordinance, an approved carbon monoxide (CO) detector shall be installed in all dwelling units when a fossil fuel or solid fuel appliance is utilized as the primary or supplemental heat source, including water heaters. Fuel-burning stoves for food preparation are exempt from this requirement."
- §902.1 [Page 18, line 31 of your November 15 draft] change the word "all" to "each."
- §1000.2 [Page 21, line 19 and 20 of your November 15 draft] change "alcohol violations other than furnishing to a minor" to read "alcohol possession or consumption by a minor."
- §1000.2 [Page 21, lines 13, 19, and 35] delete the word "listed" on all three lines and replace it with the words "set forth." The sentences, in all three cases, now read "...point(s) shall be assigned for each offense of the following ordinances as set forth in Section 1000.10."

Ms. Dauler moved to enact Ordinance 1798, adopting the 2003 editions of the Property Maintenance and Fire Codes, as amended. Ms. Knauer seconded her motion.

Mr. Meyer moved to eliminate all provisions that make the landlord responsible for tenant behavior (e.g. those covered under the Crimes Code or the Controlled Substance, Drug, Device & Cosmetic Act). Mr. Kern seconded his motion.

Mayor Welch asked if leases could specify conviction of a crime under these acts as cause for eviction. Mr. Williams said they could but Council cannot dictate the terms of a lease and, in Pennsylvania, leases are not required in order to rent.

Mr. Meyer pointed out that a property owner cannot prevent a tenant from breaking the law and, therefore, should not be held responsible for another's behavior. Mr. Kern agreed; he conceded that ownership implies some responsibility but the landlord cannot prevent criminal behavior. Ms. Goreham believed that landlords could better screen their tenants, and provide for eviction based on conviction; these problem persons, she said, should not be permitted to live in the neighborhoods.

Ms. Knauer argued that these landlords are conducting a business; they should be responsible for doing so in a lawful fashion. Mr. Kern gave the analogy of his rental car; the company that rented him the car has no control over how he uses it. If he robs a bank while using the car, the company is not held liable. The problems, he felt, should be assigned to the correct actors.

Ms. Dauler thought the ordinance was fine, as is. Every neighborhood is subjected to behavioral problems, most of which are alcohol-related. This ordinance gives a better mechanism to communicate with property owners.

Mr. Meyer's motion to eliminate certain behaviors from the ordinance failed by a vote of 2-5-0. He and Mr. Kern voted for the amendment.

Mr. Meyer moved to delay enforcement of the ordinance until such time as landlords have an opportunity to renew their leases (giving them a chance to write in a broader scope of causes for eviction). Mr. Kern seconded the motion.

Mr. Kern asked if, in passing this ordinance, it could be interpreted as being retroactive. Mr. Williams said it could not. Because neither the language suggested by Mr. Meyer is mandated nor the lease itself required, enactment cannot be supposed to be retroactive.

Mr. Meyer's motion to delay enforcement also failed by a vote of 2-5-0. Again, he and Mr. Kern voted for the motion.

Ed Sidwell spoke on behalf of the Penn State Greek Alumni Council advising that this group worked with Code Enforcement personnel to draft changes to the Property Maintenance Code insofar as it covered structural requirements but they did not address Chapter 10 of the

Code, the part that deals with the suspension of permits. He asked Council to delay action on this ordinance until next fall when the group could provide their recommendations. Mayor Welch said he sits on the Greek Pride Committee and doubted that what they are planning to do to improve the Greek community would interfere with what is in this ordinance. Ms. Knauer and Mr. Daubert both agreed that the Greek initiative is not, as far as they could see, in conflict with what is before Council.

David Yasovsky, associated with the Fraternity Purchasing Association, appreciated the need for the ordinance but wondered if Council considered the lost employment for those who work in or for a fraternity, if they are closed, and the lost exchange of money generated from these houses that is distributed throughout the community.

Even though he differed with two sections of this ordinance, Mr. Kern said he planned to vote for the main motion because the ordinance is critical to the quality of life of State College.

Mr. Meyer moved to amend the motion to eliminate Section 10 from the ordinance, but his motion was lost for lack of a second.

Patrick Vernon, a resident of College Township who owns rental properties in the Borough, believed the ordinance was necessitated by the abuse of alcohol. To curb this abuse, he suggested Penn State schedule classes on Fridays and Saturdays. He heard of a move on campus to eliminate early morning classes, which he believed would be a mistake. Again, he repeated his earlier suggestions to (1) form an owners group to self-police rentals and (2) offer positive rewards for landlords who do not create problems. Mr. Vernon also recommended that Ms. Goreham, herself a landlord, refrain from voting on this issue.

The question was called and Council voted 6-1-0 to enact the ordinance. Mr. Meyer voted against it.

Sign Ordinance: Amendment to Redefine and Regulate Off-Premise Directional Signs.

The only other item of Old Business was to enact an ordinance to expand the use of off-premise directional signs.

On November 1, Mr. Fontaine recalled, a public hearing was held to receive input on an amendment to the sign ordinance to define and modify rules governing off-premise directional signs. As written (and then amended by Council), off-premise directional signs will be permitted for individual businesses in the C, CP2, PO, and UV districts that do not have frontage along a street or on Calder Way. Shopping centers, in any zone, will be entitled to one off-premise sign, which may display individual businesses and/or their logos, provided the shops are located within the shopping center. All signs are subject to size limitations, Design Review Board review, and permit requirements, he noted.

Mr. Kern moved to enact Ordinance 1799, amending the sign ordinance to extend the use of off-premise directional signs. Ms. Dauler seconded his motion, and it was approved unanimously.

NEW BUSINESS ITEMS

Special Activities: First Night 2004. The only item of New Business was to take action on a request to use public property and waive certain provisions of the fire protection ordinance for the conduct of First Night.

Mr. Fontaine shared a series of requests from the Central Pennsylvania Festival of the Arts with Council wherein they ask to use public property for the conduct of this year's First Night celebration. [He mentioned that pre-approval for use of Central Parklet was secured from the Parks & Recreation Department.] Activities include:

- ice sculptures and performances on the 100 and 200 blocks of South Allen Street, and horse-drawn carriage rides to and from Central Parklet, December 30 through January 2;
- a grand procession on Foster, Fraser, and Allen on December 31;

- a 5-kilometer run on College Avenue on December 31; and
- a 10-minute display of fireworks on Community Field at midnight on December 31.

Upon motion of Mr. Kern, second by Ms. Dauler, Council voted 7-0-0 to enact Ordinance 1800, designating the area and time during which these activities may take place, and waived Sections 203 and 204 of Chapter VI of the Codification of Ordinances, which prohibits fireworks in the Borough.

VOUCHERS. Upon motion of Ms. Knauer, second by Mr. Kern, Council voted unanimously to receive vouchers for the month of October for the Borough of State College, in amount \$2,968,598.16, and, acting as agent for the Centre Region Council of Governments, vouchers totaling \$682,804.78.

MINUTES. Upon motion of Ms. Knauer, second by Mr. Kern, Council voted unanimously to approve minutes of previous meetings, as follows:

- A. Work Session, October 1, 2004, amended to show that Michael Groff, Finance Director, was in attendance;
- B. Regular Meeting, October 4, 2004, as submitted;
- C. Work Session, October 11, 2004, as submitted; and
- D. Regular Meeting, October 18, 2004, by amending the last paragraph on Page 150 to read, *Mr. Kern asked how much revenue was lost to the most recent Courtesy Parking Program. Mr. Groff said the spring break program ran for one week but the Borough did not have the mechanisms in place to calculate revenue losses. Mr. Kern asked how much revenue would have....*

OFFICIAL REPORTS AND CORRESPONDENCE

Mayor's Report. Mayor Welch said he recently attended a meeting of the Teen Pennsylvania Foundation, a 501(c)(3) organization to keep young people living in the Commonwealth. He found it to be a promising initiative with a social component.

President's Report. President Daubert announced an *executive session*, being held following this meeting, to discuss personnel matters and matters of potential litigation.

There being no other business before Council, the meeting was adjourned at 9:03 p.m.

Respectfully submitted,

Barbara J. Natalie
Assistant Borough Secretary