

State College Borough Council  
September 20, 2004

The State College Borough Council met on September 20, 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; Barbara J. Natalie, Assistant Secretary; Thomas R. King, Chief of Police; Michael S. Groff, Director of Finance; Mark A. Whitfield, Director of Public Works; Mark S. Henry, Health Officer; Carl R. Hess, Planning Director; Herman L. Slaybaugh, Zoning Officer; Edward C. Holmes, Parking Facilities Coordinator; Michele Nicolas, Human Resources Director; members of the media; and other interested observers.

The Pledge of Allegiance followed a moment of silence.

**PUBLIC HOUR.** No one spoke to issues absent from the prepared agenda.

**CONSENT ITEMS**

**Special Activities: West Fairmount Avenue Block Party.** The first item of Consent was to take action on an application to use a portion of West Fairmount Avenue for a picnic.

Mr. Fountaine distributed an application to use West Fairmount Avenue, between Barnard and South Gill Streets, for a neighborhood picnic. The event is to occur on September 25, 2004, from 3:00 to 7:30 p.m.

Upon motion of Ms. Dauler, second by Mr. Daubert, Council voted 7-0-0 to approve the use of Fairmount Avenue, as described, for the purpose stated.

**Special Activities: Sidewalks for Farm Sanctuary Walk.** Council was then asked to take action on a request to permit the use of sidewalks for a farm sanctuary walk.

Mr. Fountaine said he received a request to use sidewalks to conduct a farm sanctuary walk on October 10, beginning at 1:00 p.m. The walk is to advance an understanding of the applicants' work in rescuing and protecting farm animals. The walk begins and ends at Sunset Park, and most of it is confined to campus. Prior approval for use of the Park has been granted by the Parks & Recreation Department, he added.

Upon motion of Ms. Dauler, second by Mr. Daubert, Council voted 7-0-0 to approve the use of sidewalks, as listed in the application, for this activity.

**Ordinance 1794: Zoning Ordinance Amendment to Adjust the Height of Structures in the R3H and ROA Zoning Districts.** The third item of Consent was to re-enact Ordinance 1794, an amendment to the zoning ordinance.

On September 7, Mr. Fountaine said, Council enacted Ordinance 1794, an amendment to the zoning ordinance that adjusted the rules applicable to calculating height in the R3H and ROA zoning districts. Ordinance 1794 also increased the permitted height range, from 20 to 30 percent of the average heights of adjacent buildings. Because the ordinance was not published in the newspaper within the required seven days of approval by the Mayor, Mr. Fountaine requested that Council re-enact it.

Upon motion of Ms. Dauler, second by Mr. Daubert, Council voted unanimously to re-enact Ordinance 1794.

**Resolution 861: Emergency Due to “Ivan” Declared.** The only other item of Consent was to approve a resolution declaring an emergency due to tropical depression “Ivan.”

Mr. Fontaine said that on September 17 and 18 “Ivan” resulted in rainfall that created emergency conditions in parts of the Borough. Centre County Commissioners adopted a declaration of emergency at 2:00 a.m. on September 18. By enacting this resolution, Mr. Fontaine advised, those property owners who may have had property damaged by this storm can take advantage of any potential disaster assistance.

Ms. Dauler moved to enact Resolution 861. Mr. Daubert seconded her motion and Council approved it unanimously.

### **BIDS/CONTRACTS/AGREEMENTS**

**Bids: Project 17-2004.** The first item of this category was to take action on bids to reconstruct Ridge Avenue between Burrowes Street and Allen Street.

Mr. Fontaine shared the results of bids received on September 13 for Project 17, the reconstruction of a portion of Ridge Avenue. The availability of specifications was advertised in accordance with the Purchasing Ordinance. Six contractors expressed an interest in doing the work; four bid on the Project:

Glenn O. Hawbaker, Incorporated .....	\$102,565.00*
Daniel R. Hawbaker, President	
State College, PA	
DAC Enterprise.....	\$119,346.75*
Douglas A. Crestani, Owner	
Julian, PA	
HRI, Incorporated .....	\$145,185.00
Jeffrey E. Reeder, Vice President	
State College, PA	
Paradise Contracting, LLP .....	\$166,165.00
Mark Campolongo, Partner	
Bellefonte, PA	

\* Denotes mathematical errors corrected by staff

Mr. Fontaine noted that the Project is expected to take 60 days to complete; it will begin on September 30. Funding for the project is available in Accounts 30-439-619 and 30-436-605.

Ms. Knauer moved to award Project 17 to Glenn O. Hawbaker, Incorporated, the low bidder, in the amount of \$102,565.00. Ms. Goreham seconded her motion.

Mr. Daubert was concerned that the work would remain incomplete through the winter if the asphalt plants had to close early. Mr. Whitfield believed the work could be done in 30 days; if inclement weather prevents completion, the roadway can be sealed for use until spring.

The question was called and Council voted unanimously to approve Ms. Knauer’s motion.

**Bids: Beaver Avenue Parking Garage.** The only other item of this category was to take action on bids received for the construction of the Beaver Avenue parking garage.

Mr. Fontaine reminded members that Council met on September 13 and announced its intent to award a contract for the construction of the Beaver Avenue parking garage to Leonard S. Fiore, Incorporated, of Altoona, Pennsylvania, the low bid responder, in the base bid amount of \$11,197,000.00. At that time Council also accepted bid alternate 4, the deletion of sidewalk snow melting equipment, a deduction of \$95,000.00. All subcontractors are to be approved by the project architect, Tim Haahs, as required by the bid and contract documents. Since September 13, Tim Haahs reviewed the bids in detail and confirmed that Leonard S. Fiore is the lowest responsible and responsive bidder and recommended that

Council award the contract for the Beaver Avenue parking garage to Leonard S. Fiore, Incorporated, and issue a notice to proceed on or before October 4, 2004.

Ms. Dauler moved to award the contract for the Beaver Avenue parking structure to Leonard S. Fiore, Incorporated, in the amount of \$11,102,000.00, as recommended by the project architect, and authorize all applicable officers of the Borough to execute the contract documents. Mr. Humphrey seconded her motion.

Ms. Knauer said she would vote against the motion because she believed the garage, as planned, is too large, too intrusive, and too expensive. Mr. Meyer pointed out that this garage has been a part of Council's agenda for the past six years. The Borough is losing parking spaces even as this garage is being built. All of the studies show a need for this facility and for at least the number of spaces this structure will accommodate. He said he had no problem voting for the motion.

When the question was called, Council voted 6-1-0 to approve Ms. Dauler's motion. Ms. Knauer voted against it.

## **OLD BUSINESS ITEMS**

**Overlay for Subdistricts 7 and 8 of the *Downtown Vision and Strategic Plan*.** The first item of Old Business was to take action on a proposal to create overlay regulations for subdistricts 7 and 8 of the *Downtown Vision and Strategic Plan*.

Mr. Fontaine reminded Council that the proposed Atherton corridor overlay zone was discussed on September 13. The six members present at that discussion were divided on what course of action to follow. There was some degree of agreement, at a conceptual level, on the validity of the approach used to encourage the types of development recommended in the *Vision Plan*, but there was no similar agreement on how the overlay would actually effectuate the desired development. To proceed toward implementing the goals of the *Downtown Plan*, staff recommends the following:

1. Request that the processing pending ordinance continue and delete tax parcels 36-011-253-0000 [512-516 West Beaver Avenue], 36-011-260-0000 [400 West Beaver Avenue], 36-011-262-0000 [212 South Atherton Street], 36-011-264-0000 [320-332 West Beaver Avenue], 36-011-266-0000 [316 West Beaver Avenue], and 36-011-267-0000 [310 West Beaver Avenue] from those governed by the proposed pending ordinance.
2. Request the Planning Commission develop an alternative overlay amendment using a base of FAR of 2.0 for residential, a base height limit of 55 feet for residential, and other more clearly defined incentives.
3. Request the Planning Commission to submit the alternative overlay to Council by Council's December 6<sup>th</sup> meeting.

Recently, staff met with the developers and discussed ways to bring the proposed development plan for the Balfurd site into line with some of the recommendations contained in the overlay district proposal. The project proposed by the developer is a student housing project with 48 2-bedroom and 20 1-bedroom apartments. The building plan also provides for 1,800 square feet of commercial space on Beaver Avenue. The building setbacks include 30 feet from Beaver Avenue and 17-½ feet from Highland Alley, with balconies on both Highland Alley and Beaver Avenue. Staff asked the developer to include additional commercial space on the Beaver Avenue frontage to provide pedestrian-oriented activity. Staff also noted the problems at many residential buildings in the community resulting from balconies, particularly on those balconies not facing a primary street. Staff asked that the developer either move the building forward to create a larger rear setback, or eliminate balconies from the rear of the building. The developer agreed to work these suggestions into the design of the building; however, a zoning amendment will be required before the building plan can be modified. Required amendments will include a reduction in the front setback for the commercial space, and an allowance for a limited in-lieu parking payment to meet no more than 10 percent of the required parking. The reduction in setback would reduce the front setback from 30 to 15 feet between Fraser Street and H Alley. This brings the setback in line with the setback requirement east of Fraser Street on Beaver Avenue. It will allow the

additional commercial space for the development on Beaver and allow the developer to move the building forward on the lot to increase the rear setback and the distance between residential buildings on Highland Alley. This will provide some mitigation for rear balconies. The proposed 10 percent in-lieu parking allowance would apply only if 90 percent of the parking requirements are met on the site. Currently, the developer can move as much as 100 percent of the required parking off site. Staff reviewed other downtown residential buildings and compared the parking requirements with actual tenant usage. Although it is difficult to compare because the residential buildings were constructed under varying parking requirements, most, if not all, residential buildings use less than 90 percent of the total parking for tenants. So, if the Borough were to allow a 10 percent in-lieu payment, there does not appear to be any adverse impact on surrounding neighborhoods. If Council concurs with these proposals, Mr. Fountaine continued, the amendment must be sent to the Planning Commission for comment. A public hearing could be scheduled for October 22 with adoption of the amendment scheduled for November 1.

Mr. Daubert moved to (a) continue processing the pending ordinance and remove those tax parcels recommended by the Manager from the overlay, request that the Planning Commission develop an alternative overlay, submit it to Council by December 6<sup>th</sup>, and (b) forward a proposed amendment to the Planning Commission to reduce the setback and provide limited residential in-lieu parking in the Commercial District, (c) schedule a public hearing on the Commission's setback and in-lieu recommendations on October 22, and (d) plan to take action on the amendment on November 1. Ms. Dauler seconded his motion.

Ms. Goreham said she could not support any in-lieu-of-parking payment amendment because, where it has been applied in the past, problems of illegal parking rentals occurred in adjacent neighborhoods. She also thought the subdistricts, as depicted in the *Vision Plan* needed to be retained, in tact. Ms. Goreham felt the needs of a few should not overshadow the needs of the entire community. She sympathized with the unfortunate timing of events surrounding the Balfurd development and hoped the developers would abide by the regulations in the ordinance yet to come.

Mr. Daubert presented suggested minimums and examples of incentives that could be considered by the Planning Commission (which he developed from Council's past discussions). He asked members to consider his suggestions and refine it on September 24 so the Commissioners have a base from which to deliberate when they next meet.

Ms. Knauer moved to amend the motion by removing only 310, 316, and 320-332 West Beaver Avenue from the properties affected by the overlay regulations. Mr. Humphrey seconded her motion.

Mr. Kern's opinion was that the ordinance is flawed; for that reason, he planned to vote against the motion. Mr. Meyer considered Ms. Knauer's suggestion, to remove only the Fogelsanger's three parcels from the equation, to be spot zoning, which he would vote against.

Ms. Knauer's amendment was approved by a 4-3-0 vote. Mr. Kern, Mr. Meyer, and Ms. Dauler voted against the motion.

Ms. Knauer moved to remove the 10 percent in-lieu-of-parking payment from the main motion. Ms. Goreham seconded her amendment.

Mr. Kern said there was a time when State College had an in-lieu-of-parking payment for residential structures. Ms. Knauer said her motion is not based solely on cost. Although she did not think \$25,000.00 per space for off-site parking was enough to pay, she believed that allowing developers to shirk their responsibilities for providing for their tenants parking hurts the downtown and results in problems for surrounding neighborhoods.

The question was called and Council defeated Ms. Knauer's amendment by a vote of 3-4-0. Mr. Daubert, Mr. Kern, Mr. Meyer, and Ms. Dauler voted against it.

Mr. Daubert moved to amend the motion to instruct that the Planning Commission, in its review of the proposed ordinance, reference Section D on Page 2 of the proposed ordinance. Mr. Kern seconded the motion, and it carried unanimously.

Ms. Goreham moved to amend the motion to stipulate that all funds collected from the in-lieu-of-parking fees be used for traffic mitigation in the neighborhoods. Ms. Knauer seconded her motion. Following counsel from the Solicitor—that in-lieu fees are specifically designed for the creation of new parking and could be used for no other purpose—Ms. Goreham withdrew her motion.

Robert Seibel, 510 East Fairmount Avenue, read a prepared statement in which he stated the proposed changes appear to be of more advantage to a mix of uses rather than student housing. Although the Balfurd developers have told Council the changes will deprive them of an anticipated financial gain, he could see no way they would lose money since selling their property under the new regulations would still yield a sizable gain in relation to what they paid for the land. To allow this student housing, he thought, pushes the downtown further toward a student ghetto; it sends the message to all property owners that the *Vision Plan* is not worth the paper it is written on; and the exemption of these properties from the overlay regulations places the Borough in jeopardy of claims of spot zoning. He urged Council to consider these factors seriously.

Jacqueline Melander, Chair of the Historic Resources Commission and past member of the Vision Committee residing at 651 Fairway Road, spoke to the importance of the committee's vision as documented in the *Vision Plan*. She considered the *Plan* an opportunity to meet all residents' needs. She did not believe creative uses are currently being considered and asked that, as these circumstances are being considered, Council look at what is available and work to achieve the goals presented to them in the *Vision Plan*.

Leif I. Jensen, 529 East Prospect Avenue, expressed concern about downtown development. He did not want, nor did he believe State College needs, another high-rise. He pointed out that a lot of hard work went into the preparation of the *Vision Plan* and he was baffled by the motion before Council. Mr. Jensen requested that members oppose the move to eliminate these properties.

Albert E. Luloff, 1238 South Garner Street, agreed that the Vision Committee spent a lot of time on the *Vision Plan*. If approved, Council's action will say a lot to those who created it. He, too, was adamantly opposed to the removal of the corner properties.

Ms. Dauler said she was also a member of the Vision Committee but Council has been presented with an unanticipated set of circumstances. However she felt personally, she said, it would not be fair to the developer to require them to comply with the proposed ordinance when they arranged for the sale of the property under existing zoning regulations. Ms. Dauler thought the proposed overlay should receive more discussion and that discussion should include the stakeholders of affected properties. Ms. Knauer was disappointed with the motion. She considered it naïve to believe that these are unexpected circumstances. She pointed out that the *Vision Plan* provides alternatives for the development of land under the overlay regulations, which are not being considered by the developers.

Mr. Kern thought market surveys should be developed throughout the downtown and overlays be created across-the-town. He did not consider the proposal before Council to be a final consideration and he believed it should have input from others, including the Planning Commission. He believed that, if Council pushes this legislation through, it would put State College at risk of losing the overlay zone, its zoning for the commercial district, the 3-unrelated provision, and its entire zoning structure, as well as significant financial revenues. Ms. Goreham felt it was a mistake to govern from fear; she thought it was time for Council to stand and deliver because the future of downtown State College is at stake. Mr. Humphrey considered this situation as one person attempting to maximize his own economic interest to the detriment of the Borough. It is not what the community wants. In his mind, opposing the elimination of those parcels is the responsible thing to do.

When the question was called, Council voted 4-3-0 to approve the main motion, as amended. Mr. Humphrey, Ms. Knauer and Ms. Goreham voted against it.

**ICC Property Maintenance/Fire Code/2003.** The only other item of Old Business was to prepare comments on a new Property Maintenance/Fire Code.

Mr. Fontaine reminded members that they reviewed a proposed ordinance to adopt the International Property Maintenance Code/2003 edition, at the September 13 work session. The proposal contains staff's recommended amendments to regulate property maintenance, fire prevention, and the rental housing permit revocation/suspension process. He presented Council with an amended ordinance comparing existing and proposed language and asked that Council express their views on what changes need to be made.

Ms. Knauer moved to submit those issues set forth in the proposal by staff (and others discussed by Council at this meeting) to the Centre Region Council of Governments Code Committee for consideration. Ms. Dauler seconded the motion.

Greg Mussi, Director of the Code Administration Department, was in attendance to discuss any changes put forth by Council. Mr. Daubert asked that *dwelling unit* be defined; a proper reference to the construction code be inserted where applicable; the Manager be the sole authority for deciding whether or not to revoke a permit; and appeals to decisions made be processed through the Borough's Rental Housing Revocation Appeals Board (except when the issue is strictly a Code infraction, in which case the appeal would be heard by the Building & Housing Code Board of Appeals).

In addition, Mr. Daubert felt that those properties having multiple violations should be inspected more frequently than those that did not. Mr. Kern agreed. He was also concerned with those properties that are 70 to 100 years old and have not been properly maintained for the past 20 years. They are beginning to be dangerous places to live. State College cannot afford to ignore the problem. Code inspectors should inspect these properties more often also, Mr. Kern said, and, if fees have to be raised to do that, so be it.

Ms. Goreham asked that a system be put in place that would allow a property owner to find out how many violations have occurred at his or her property. Mr. Fontaine said the problem is that multiple departments issue violations and cite occupants or owners. These are reviewed by a Housing Task Force on a monthly basis. A method of compiling more timely information will have to be devised.

So that neighborhood issues and unsafe buildings can be addressed by staff, Mr. Fontaine told Council that owner-occupied structures have been included under certain sections of the Property Maintenance Code. Members agreed that this was a positive step.

Council voted unanimously to approve Ms. Knauer's motion.

## **NEW BUSINESS ITEMS**

**Bond Issue: Series of 2004 - \$9,995,000.00.** The first item of New Business was to take action on the sale of a bond issue to finance the construction of the Beaver Avenue parking garage.

Mr. Fontaine informed Council that staff is recommending that approximately \$9,995,000.00 be received from the sale of a bond issue to finance the construction of a parking garage on Beaver Avenue at Fraser Street. This is the first of two bond sales, the second of which will occur in 2005. Bids for the sale were accepted via an Internet auction this morning, at 11:00 a.m. Chris Gibbons of Concord Public Finance and Richard Wood, the Borough's bond counsel, were in attendance to explain the results of the auction. Mr. Gibbons and Mr. Wood provided an ordinance and other documents for enactment in order to complete the sale.

Mr. Meyer moved to enact Ordinance 1795, approving the sale of bonds, in approximate amount \$9,995,000.00, and authorize the execution of all documents to effect the sale, as described. Ms. Dauler seconded his motion.

Mr. Gibbons explained that the bond issue was less than \$10 million to take advantage of lower issuance costs. The Internet sale resulted in seven firms making offers with the low borrowing rate submitted by Legg Mason at 4.2491 percent (which includes XL Capital insurance costs totaling \$28,300.00). Accepting this offer, Mr. Gibbons said, will save the Borough \$25,000.00 in annual payments over the course of the issue.

Ms. Goreham asked about the relationship of assuming this indebtedness with respect to a potential tax increase. Mr. Fontaine reiterated an earlier explanation to Council stating there is no general tax revenue involved with this issue; this structure is intended to be constructed and the issue repaid solely from money acquired through the parking system.

Mr. Wood detailed the requirements for issuing bonds and reviewed each section of the enabling ordinance. He noted that all required notices have been published, and the Borough will enjoy a call date for the bonds of five years. Mr. Wood congratulated staff for their prudent management of funds, which resulted in an AAA3 rating.

Council voted 6-1-0 to approve Mr. Meyer's motion. Ms. Knauer voted against it.

**2005-2009 Community Development Block Grant (CDBG) and Home Investment Partnerships Program (HOME) Programs' Consolidated and 2005 Action Plans.** The first item of New Business was to receive the 2005-2009 CDBG/HOME Consolidated and 2005 Action Plans.

Mr. Fontaine distributed the Plans and explained that they provide detail on the need for and expenditure of federal money in the coming five years. The CDBG Citizens' Advisory Committee reviewed the Plans at its meeting September 13 and recommended it be approved.

Upon motion of Ms. Knauer, second by Ms. Goreham, Council voted 7-0-0 to receive the Plans and schedule a public hearing to be held on October 4. Mr. Fontaine pointed out that action on the Plans cannot be taken until November 1, which follows a mandatory public review period. The Plans, he added, must be submitted to HUD by November 15.

**Civil Service Regulations Governing Promotions: Amended.** The only other item of New Business was to consider the approval of changes to Civil Service regulations governing the promotion of police officers.

At its meeting on September 7, Mr. Fontaine said, the Civil Service Commission voted to clarify its regulations for promoting police officers. The clarification was prompted by a question and subsequent appeal earlier this year. An officer who had been demoted from the rank of Corporal successfully argued before the Commission that his prior service as Corporal rendered him eligible to test for the rank of Sergeant. Although it was the intent of the regulations that only officers currently holding the rank of Corporal may test for Sergeant, the regulations were not clear. Similar language is in the regulations on the standards for the rank of Lieutenant, so an amendment for the standards for that rank was approved as well. The Commission also amended the regulations to include a requirement for "satisfactory service" in the experience requirements for Corporal and Sergeant. This change was approved for consistency in the standards for all three promotional ranks. The requirement for "satisfactory service" had previously been in the regulations only for the rank of Lieutenant. Following discussion, the Commission also voted to define the term "satisfactory service" to mean that officers must not have received a disciplinary suspension in the 1-year period prior to testing for promotion. In accordance with Ordinance 1307, these changes are subject to Council's approval, he said.

Upon motion of Ms. Knauer, second by Ms. Goreham, Council voted unanimously to enact Resolution 862, approving the changes recommended by the Civil Service Commission on September 7, 2004.

**Vouchers.** Upon motion of Ms. Knauer, second by Ms. Dauler, Council voted 7-0-0 to receive vouchers for the month of August 2004, for the Borough of State College, in amount \$4,672,679.24, and, acting as agent for the Centre Region Council of Governments, vouchers totaling \$828,505.41.

**MINUTES.** Upon motion of Ms. Dauler, second by Ms. Humphrey, Council voted unanimously to approve minutes of previous meetings, as submitted and as follows:

- A. Work Session, July 12, 2004;
- B. Regular Meeting, July 19, 2004;
- C. Regular Meeting, August 2, 2004;
- D. Work Session, August 9, 2004;
- E. Regular Meeting, August 16, 2004; and a
- F. Special Meeting, August 30, 2004.

#### **OFFICIAL REPORTS AND CORRESPONDENCE**

**Mayor's Report.** Mayor Welch was one of many who attended Friday's State College High School's football game and rededication of Memorial Field, held during tropical depression "Ivan." He said his shoes are almost dry.

Mayor Welch announced that he has been named Co-Chair of the Campus Community Partnership Against Dangerous Drinking.

**President's Report.** President Daubert announced an *executive session*, held by Council just prior to this meeting to discuss a matter of potential litigation.

**Liaison Reports.** Ms. Knauer reported that the Tree Commission met last week and heard from a resident who detected that a tree on his property had root rot. He reported it to the Public Works emergency number on Saturday morning and by that afternoon the tree was removed. The resident was ecstatic with the service provided by this Borough.

Mr. Kern commended the Public Works crews for their phenomenal effort during the "Ivan" storm, and Mayor Welch recognized their work ahead of the storm to clear storm water outlets to prevent flooding.

Ms. Goreham advised that the COG Transportation Committee met last week to discuss the projects being recommended to the Centre County Metropolitan Planning Organization (MPO). She requested that those items be discussed by Council before they are approved by the County.

Ms. Goreham also mentioned that the ad hoc Parks Committee met recently and will be asking each participating municipality to prioritize their capital parks and pool projects for the next five years. This information will be used to determine how a reorganized regional parks/pools program could operate.

There being no other business to come before Council, the meeting was adjourned at 9:12 p.m.

Respectfully submitted,

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Barbara J. Natalie  
Assistant Borough Secretary