

Meeting Minutes
State College Borough Council
Monday, September 19, 2005

The State College Borough Council met in a regular meeting on Monday, September 19, 2005, in the State College Municipal Building Council Room, 243 South Allen Street, State College, PA. Mayor Welch called the meeting to order at 7:30 p.m.

Present: Bill Welch, Mayor
Thomas E. Daubert, President of Council
Catherine G. Dauler
Elizabeth A. Goreham
Craig R. Humphrey
Jeffrey R. Kern
Richard L. McCarl
James H. Meyer

Also present: Thomas J. Fountaine, II, Borough Manager; Carl R. Hess, Community Development/Planning Director; Herman L. Slaybaugh, Zoning Officer/Planner; Thomas R. King, Chief of Police; Mark A. Whitfield, Director of Public Works; Michael S. Groff, Finance Director; Linda S. Welker, Tax Administrator; Mark S. Henry, Health Officer; Michele Nicolas, Director of Human Resources; Cynthia S. Hanscom, Recording Secretary; members of the media; and other interested observers.

Mr. Welch began with a moment of silence and the Pledge of Allegiance.

APPROVAL OF MINUTES

Mr. Meyer moved to approve the following minutes as written:

August 1, 2005, Special Meeting
August 1, 2005, Regular Meeting
August 8, 2005, Work Session
August 15, 2005, Regular Meeting

Ms. Goreham seconded the motion, which passed unanimously.

Public Hour - Hearing of Citizens

Deloris Taricani, 919 Greenbrier Drive, thanked Council for the new Beaver Avenue parking garage. She had received many comments from people saying that it was a beautiful building and a good addition to the downtown and the community.

Drew Conly, Executive Vice President of the Interfraternity Council and resident of 300 S. Pugh Street, reminded Council that they were continuing with the TIPS program for the Fall semester. In cooperation with the Partnership against Dangerous Drinking, he was proud to report that 600 undergraduate students have been trained. He said they were trying to find ways to quantify the success of the program with scientific data to show that there is a decrease in dangerous drinking in State College. He told one story where three men had been out drinking and one of the men had passed out after drinking heavily. The other two men remembered what they had learned in the training and, after trying to rouse the drunk individual, took him to the hospital. The training probably saved the man's life.

Mr. Conly added that the Greek Ambassador Program was in its infant stage but they hoped to create a viable program similar to the lion's ambassador program. There are several historic structures located in the fraternity district. The Interfraternity Council was interested in opening them up for tours. The tour could take about 1-1/2 hours with a stop for refreshments along the way. The IFC was working on compiling the history for the tour guide and hoped to have something implemented by November. Ms. Goreham noted that there were many residents in the Highlands neighborhood that may be willing to work with them on this.

PUBLIC HEARINGS

Fire Safety Code Amendments. Mr. Fountaine stated that Council and the Centre Region Code Committee have been reviewing amendments to the Property Maintenance Code for the past few months. Following the most recent Council discussion, the draft amendment has been modified to address concerns raised by Council, the COG Code Committee and public comments. Council should receive public comment on the modifications and schedule further consideration and adoption of the amendment on October 3, 2005.

Mr. Fountaine pointed out that there was an error in Section 702.5.1 in that the date for compliance for a second egress for habitable space on the third floor was listed as July 1, 2006. From discussions with code officials, he believed that date is not realistic to achieve their goal. Tim Knisely, Centre Region Code Administration, stated the original recommendation to Council was for a second egress to be in place within two or three years. The deadline of July 2006 was not realistic; therefore, they were suggesting July 1, 2007. Mr. Daubert asked why the July 2006

deadline was unreasonable. Mr. Knisely indicated construction may need to be done when the units were empty. With the July 2006 deadline, the work could not be done without breaking the current lease. Also, some living spaces may need to be rearranged. Property owners may need time to explore other options. Mr. Kern added that some landlords have indicated that they may need to give up their second floor units because they could not be reconfigured for a second egress. Mr. Knisely said code officials will work with the owners who have difficult floor layouts.

Dan Abruzzo, Chamber of Business & Industry of Centre County and Heritage One, noted that a number of revisions had been made by staff and code officials that originated from recommendations made at the last meeting. He said the vast majority of his organization believed the revised ordinance is reasonable, although costly. This was a good example of the business community working with elected officials. He thanked Council for listening to his concerns regarding the ordinance.

Mr. Daubert stated he had asked at a previous meeting that references be made for life safety violations. Mr. Fontaine explained it had been discussed with the Borough Solicitor and it was determined that legally the definitions did not need to be provided. Mr. Daubert did not agree and felt that without the definition in this ordinance, the code officials could arbitrarily change the enforcement of life safety issues.

David Nevins, Nevins Real Estate Management, first thanked the Borough officials for working with property owners through the review process of this ordinance. He asked about the second means of egress and noted that reference had been made at a previous meeting to providing some leniency for exceptions to setback requirements if a fire escape would need to be constructed to the exterior of an existing structure. Mr. Fontaine explained a change to the zoning ordinance would be required and could not be included in the language for this ordinance, which was an amendment to the Property Maintenance Code.

There being no further comments, Mayor Welch closed the public hearing.

Mr. Kern moved and Ms. Dauler seconded a motion to schedule further consideration and adoption of the amendment on October 3, 2005.

Mr. Kern moved to amend the date for completion of the second means of egress to July 1, 2007. Mr. Humphrey seconded the amendment to the motion. Mr. McCarl asked if a compliance date of August or September would be more convenient to property owners because of the change in lease periods. Mr. Nevins agreed that an August 15 deadline would be better. Mr. Kern agreed to change the compliance date in his proposed amendment to August 15. The vote on the amendment to the motion was 6-1-0 with Mr. Daubert opposed.

Council then voted on the main motion which was to schedule enactment of the ordinance for October 3, 2005. The motion was passed with a 7-0-0 vote.

Ad hoc Tax Study Committee Report. Mr. Fontaine explained, in January, Council appointed an ad hoc Tax Study Committee to consider the most appropriate mix of taxes for the Borough to implement in 2006. The Committee was asked to consider a variety of issues related to the Homestead Exclusion, the Business Privilege Tax and Real Estate Taxes. The Committee filed its report with Council on August 1. The Committee recommended the following actions:

- Enact a Homestead Exclusion in 2006 to exclude the first \$30,000 of assessed value on owner occupied real estate;
- Repeal the Business Privilege Tax in 2006 and levy 2 mills of property tax to replace the revenue from the Business Privilege Tax;
- Freeze the Borough's Earned Income Tax Rate at the current 1.3% rate;
- Lobby the Pennsylvania legislature for meaningful tax reform aimed at changing the income tax base to personal income and authorizing a local sales tax; and
- Adopt a more aggressive approach to defend assessment appeals,

Following Council's initial discussion on this matter, the staff submitted its comments and recommendations on the report. These recommendations were provided to Council on September 6. The staff report generally concurs with the ad hoc Tax Committee's report, with two modifications. These modifications are as follows:

- Staff recommends that the Homestead Exclusion should be explicitly linked to revenue generated by the Emergency and Municipal Service Tax, resulting in a 2006 Homestead Exclusion of \$20,000; and
- Staff recommends that Council discuss an increase in the Earned Income Tax to offset part of the lost revenue from the repealed Business Privilege Tax, resulting in an increase in the Earned Income Tax of .1% and reducing the property tax increase to 1 mill.

Council Member Goreham has also submitted a proposal for Council's consideration. Her proposal recommends that the business privilege tax be retained, but part of the business privilege tax revenue would be diverted to new programs that promote and support economic development and public transportation. The proposal includes the following major elements:

- \$200,000 would go to the following activities:
 - Reimbursement of business start-up or business expansion costs
 - Recruitment of targeted businesses
 - Marketing assistance/market research
- \$200,000 would go to the following activities:
 - Subsidy for public transportation
 - Parking subsidies for employees
 - Market research

At the work session on September 12, it was the consensus of Council that it should hold a public hearing on the recommendations in the ad hoc Tax Study Committee's report. Council also asked, that for the purpose of this public hearing, it did not wish to consider a staff recommendation to include the earned income tax in the business privilege tax debate.

Teresa Sparacino, Executive Director of the Downtown State College Improvement District (DID), expressed support of the elimination of the Business Privilege Tax. She added the Board of Directors reviewed the report and moved to support the recommendations of the ad hoc Tax Study Committee.

Dan Abruzzo, Heritage One and Chamber of Business and Industry of Centre County (CBICC), said the CBICC formed a task force to analyze the recommendations from the report because these are critical decisions that will affect the entire county. The task force studied the report and made recommendations to eliminate the Business Privilege Tax. The Board of Directors endorsed the task force's recommendations. He introduced Tom Taricani, a local certified public accountant who serves on the Board of Directors.

Mr. Taricani acknowledged the other task force members present, Keith Cooper and David Nevins. He noted three major points from the report. First, the report did not just suggest elimination of the Business Privilege Tax; it went further than that and addressed the Emergency and Municipal Services Tax (EMST) and losses in the earned income tax. The report studies all the issues surrounding taxation in the Borough. Secondly, the report communicated that the Borough could not exchange tax revenue from one source to another; the tax revenue should be sourced to all tax payers. In addition, Mr. Taricani said he was concerned with cost containment and the significant size of real estate tax increase and how that will affect redevelopment.

Rhonda Johannesen, 346 Homan Avenue, said she paid the BPT. Although it was a nuisance it was not an unreasonable tax to pay and she did not believe that it should be repealed. It was important to keep a diversified tax base so that one group was not burdened more than another. She asked about adjusting the BPT and Mr. Welch explained enabling legislation did not allow the Borough to alter the amount assessed. Ms. Johannesen cautioned Council that affordable housing was an issue in the Borough. By increasing the real estate tax there would be more hurdles in meeting affordable housing needs.

Geoffrey Wilson, 441 West Nittany Avenue, said he was a resident for 46 years. He has seen many businesses go but not replaced. Although the downtown is better than most, it was not vibrant. In small villages in England it was possible to shop in the downtown all day. There are not enough businesses attracted to the downtown. If they are discouraged because of the BPT then it should be eliminated. Mr. Wilson also commented that the Homestead Exclusion would impact the rental property owners, possibly forcing them to sell the houses back as single-family dwellings. This would be a benefit if some of the homes are restored to owner-occupancy.

Eric Snyder, 517 Hetzel Street, commented the state tax code is confusing. He asked about the Homestead Exclusion creating a real estate tax increase. Mr. Kern explained the Borough could not raise real estate taxes because of the Homestead Exclusion. The Borough is proposing to raise real estate taxes because of the elimination of the BPT. Mr. Snyder said he did not pay the BPT but did not want to see the burden shifted to the residents. He would prefer the change not occur, and if it does, the maximum exclusion of \$30,000 should be given to ensure the residents of owner-occupied properties do not carry the burden of the elimination of the BPT.

David Blizard, 525 S. Barnard Street, said the Borough should have the University, the businesses and the residents share in the tax burden. The residents pay real estate tax, Penn State contributes to the school tax, and businesses pay the BPT. The BPT is a much lower tax than it should be. All components of the State College community should contribute to the tax base. He suggested the tax be rescinded for incoming businesses for five years to see if it would attract more business. Mr. Welch explained the enabling legislation does not permit the Borough to impose a tax on one group but not another. Mr. Blizard commented it was affronting that the businesses do not want to contribute to the tax base. He believed the proposal set forth by Ms. Goreham would address concerns in this regard. Mr. McCarl noted that not all businesses pay the tax. Alcohol sales and certain bank operations are excluded from the BPT. Mr. Welch added those businesses are regulated by the state and cannot be "double" taxed.

Gregg Connolly, 445 Waupelani Drive, said he read several articles on why businesses are leaving the downtown; however, he has seen no empty store fronts. There is some commercial space available but it is less than 10,000 square feet. The conclusion that "businesses cannot be drawn into the Borough because of the BPT" does not seem true. If the tax is rescinded, then

there will be more of a demand to locate businesses downtown, which would essentially expand the business district. If that is the plan, then it should be stated as such. He said the current business tax was “chicken feed.”

Janusz Sikora, 440 East Irvin Avenue, said there are many businesses in town. Without the business tax, there would be no income from them. The businesses are provided services, which is why they pay the tax. He asked what the benefit to the Borough would be if the business were not paying the tax. Mr. Kern responded that there is a misconception that businesses will not be paying a tax. Most will see an increase in the rent because of the increase in the real estate tax. He noted a large portion of the loss in the revenue from the BPT will be borne by the apartment owners. More than half of the Borough residents will be shielded from the tax increase by the Homestead Exclusion.

Ms. Goreham argued that by keeping the BPT, it could become a resource used to address the issues that businesses bring to Council. There are many more concerns that businesses bring to Council that could be addressed through the BPT. For example, the perceived lack of available parking has been a concern for both employees and customers. The revenue from the BPT could be used to provide a free trolley. Another concern is the vacancy rate for commercial space in the downtown. The revenue from the BPT could help to fill those empty store fronts through support of programs to attract both businesses and customers.

Mike Roeckel, 221 East Hamilton Avenue, agreed the revenue from the BPT was important to the community. As a homeowner, he opined that repealing the BPT would be an “unfriendly move.” The businesses want the citizens to provide them with a free ride. Mr. Roeckel also noted the economy could change and the businesses downtown may close anyway. He believed this put the burden on the property owner and asked Council to consider this before moving forward.

William Hartman, 534 West Fairmount Avenue, stated narrowing the tax base would make the Borough more vulnerable. The shifting of the tax should be to the same general group. It was important to minimize the effect on residents, which he believed the Homestead Exclusion would do. For this reason he encouraged Council to award the \$30,000 exclusion rather than the \$20,000 exclusion.

Mr. Kern noted that with the \$30,000 exclusion, 5 percent of qualified property owners would have a \$0 tax bill. As the property values rise, the benefit to the property owner decreases. At the assessed value of \$275,000, there is a breaking point where the property owner would pay more in property taxes with the Homestead Exclusion.

John Lowe, 614 South Fraser Street, said he was member of the ad hoc Tax Study Committee and wanted to clarify a few points. First, he stated that he was in favor of the recommendation before Council. He indicated that 70 percent of the population of the Borough was between the ages of 18 and 24. This age group, comprised mainly of students, paid taxes at a lower level than permanent residents. For example, a student renting in the Borough without working would pay about \$6 in Business Privilege Tax and \$50 per year in real estate tax (paid through the rent that they are charged). A married working couple with a \$200,000 home and combined income of \$80,000 would pay \$1614 a year, or \$807 each. That is 14 times higher than what a student pays through the rental process. It is clear that rental income does not cover the cost of services provided. Most of the Borough's income is obtained through the earned income tax. This is a town that emphasizes income over real estate tax. The only way to shift the burden is to raise the real estate tax, but still protect the homeowner. This is what the Homestead Exclusion does. He encouraged Council to use the maximum amount of \$30,000 rather than \$20,000 for the Homestead Exclusion.

Leanne Maternis, Vice President for Off Campus Student Union and resident of 301 South Pugh Street, said she had posed the question last week on how this will affect smaller rental properties. Mr. Groff said the shift would result in a net increase in tax on a single-family dwelling with three unrelated people. The amount would depend on the assessed value of the unit. Clearly, this would shift some of the burden to the renters. Ms. Goreham noted that according to her figures, the increase in property taxes would require her to raise rents by \$25 per month for each unit.

Pat Vernon, a rental property owner in the Borough, noted the Borough is in a tough position. The BPT should be repealed but having to increase property taxes is a tough decision. Although he agreed that the cost would be small for some properties, it is still an issue of keeping costs under control for a rental manager.

Mr. Nevins said he was in the retail business for many years when he owned a restaurant and bar; at that time he paid the BPT. Now, his business is primarily real estate. With this shift in taxes, he would be impacted negatively. It is perceived that locating a business in the Borough is expensive. Although the amount of the tax may seem to be small, it can be significant because the tax is based on receipts, not net income. He added that the Commonwealth has eliminated this tax for a reason and he believed it should be repealed by the Borough.

Council discussed the status of the BPT within the state. Mr. Groff explained there were 357 municipalities in the Commonwealth that levy the business privilege tax. Most are centered in urban areas. He stressed the fact that the BPT is not illegal but, as a result of tax reform,

municipalities that do not have the tax cannot levy it and those that have the tax are frozen at the current rate. Mr. McCarl reminded Council that, because of court cases, the amount that could be collected through the BPT may be less in 2006.

Mr. Meyer did not believe the Homestead Exclusion should be tied to the EMST since legislation had not yet been passed to allow this to happen. He believed the Borough could use the earned income tax structure to fund the Homestead Exclusion. Mr. Meyer asked if this Council needs to determine how to fund the Homestead Exclusion. Mr. Fontaine explained that would need to occur at the time of budget review. It was important to identify how the EMST will be linked to the revenue source.

Mr. Snyder asked about the EMST and the proposed legislation. Mr. Fontaine explained the EMST is set at \$52.00 but there are amendments introduced that would allow for use of the EMST to offset losses in revenue from the Homestead Exclusion. That bill has not been adopted. Mr. Meyer explained he was suggesting the earned income tax be used to pay for the Homestead Exclusion. The expected BPT for 2005 will be between \$875,000 and \$900,000. However, since the cost to collect the tax is \$90,000, the actual loss in revenue will be about \$800,000. Raising the property tax by 1.8 mills would offset the \$800,000 in lost revenue. Because of the Homestead Exclusion, the burden of the additional real estate tax would be shifted to rental and business property while most of the residents will see no change or a decrease in their real estate taxes. Ms. Goreham asked what would happen if the EMST was no longer allowed. Mr. Fontaine indicated the changes proposed were not to repeal the tax; the changes were to create a higher exemption. The exemption now was set at \$5,200; the proposal before the legislature was to set the minimum exemption at \$12,000. This would create a loss in revenue of \$400,000.

Mr. Kern moved to schedule this for adoption on October 3. Mr. Humphrey seconded the motion, which passed unanimously.

CONSENT ITEMS

Penn State Homecoming Parade. Mr. Fontaine explained an application was received to use College Avenue, Garner Street to Burrowes Street, for the annual Penn State homecoming parade. The parade is to take place on Friday, October 28, 2005, beginning at 5:30 p.m. The parade will begin near Beaver Stadium, go west on Curtin Road, turn south on Bigler, west on Pollock, south on Shortlidge, west on College and north on Burrowes where it will terminate. It is expected the parade will continue until 8:30 p.m.

Mr. Daubert moved and Mr. McCarl seconded a motion to approve the use of College Avenue for this activity, contingent upon approval by PennDOT. The vote on the motion was 7-0-0 in favor.

SCASD Homecoming Parade. Mr. Fontaine informed Council an application to use Westerly Parkway, South Allen Street, and Nittany Avenue to conduct the State College Area High School's homecoming parade had been received. The parade is to be held on Thursday, September 29, 2005, beginning at 5:30 p.m. and ending about 9:00 p.m.

Mr. Daubert moved to permit the use of those streets for the SCASD Homecoming parade. Mr. McCarl seconded the motion. The motion passed unanimously with a 7-0-0 vote.

Annual Halloween Parade. Mr. Fontaine said the Centre Region Parks & Recreation Department applied to use College Avenue, Allen Street, and West Foster Avenue to conduct the annual Halloween parade on Wednesday, October 26, from 6:00 to 8:30 p.m.

Ms. Goreham asked why the Halloween Parade was October 26. Mr. Daubert reported there were other events being held at Memorial Field on Thursday and Friday, October 27 and 28. Therefore, the parade had to be scheduled for Wednesday, October 26. Mr. Daubert reminded the public that Trick or Treat would be Monday, October 31, 2005 from 6:00 to 8:00 p.m.

Mr. Daubert moved to approve the use of the streets for the parade. Mr. McCarl seconded the motion, which passed with a 7-0-0 vote.

Life Chain. Mr. Fontaine explained the Centre County Citizens Concerned for Human Life are asking for permission to form a life chain along the sidewalks of Beaver Avenue (Sparks Street to Buckhout Street) and along Buckhout Street (from Metz Avenue to the Borough line). The chain is to occur on Sunday, October 2, from 3:00 until 4:00 p.m.

Mr. Daubert moved to permit the use of the sidewalks for this activity as long as the participants do not block the sidewalk to passersby, do not block driveways to buildings along these streets, and do not block entrances to any buildings abutting the sidewalks. Mr. McCarl seconded the motion. The vote was 7-0-0 in favor of the motion.

Voting Delegate for the National League of Cities' Annual Business Meeting. Mr. Fontaine noted the National League of Cities' Annual Business Meeting will be held on Saturday, December 10, 2005, at the Congress of Cities in Charlotte, North Carolina. The Borough of State College must officially designate one delegate.

Mr. Daubert moved and Mr. McCarl seconded a motion to designate Craig Humphrey as the voting delegate for the Annual Business Meeting. The motion passed unanimously with a 7-0-0 vote.

ABC RECOMMENDATIONS

Amendment to the Community Development Block Grant (CDBG) Consolidated Plan. Mr. Fountaine said the 2005 Consolidated Action Plan includes allocations of CDBG funds for three specific planning activities that are now being covered using local funds due to the decrease in 2005 CDBG funding. The CDBG Citizens Advisory Committee and staff are recommending Council reprogram these funds to the general administration line item.

Mr. Kern moved to schedule a public hearing for October 3 with action to be taken on November 7 following a mandatory public review period. Ms. Goreham seconded the motion. The vote was 7-0-0 in favor of the motion.

Zoning Ordinance Amendments to the R-3B. Mr. Fountaine reminded Council they had received a request from the YMCA on July 18 to amend the Zoning Ordinance to accommodate the development of a hockey rink. Because of rear yard setback requirements in the R3B, the 12-foot high fence needed to surround the rink would be prohibited. The proposed lights would be on poles 25 feet in height and the maximum in the R3B is 20 feet. Council referred the request to the Planning Commission on August 1.

The YMCA previously sought a variance from the provisions of the ordinance but was denied based on the fact that no hardship could be shown. The YMCA is seeking an amendment to the ordinance, and after careful consideration staff believes there is merit in changing the rear yard setback as calculated in the R3B.

Two other changes requested (fence height and light height) were rejected on the basis that the existing zoning rules are not flawed. The proposed change in setback solves the YMCA's fence height problem. In addition, the YMCA is able to illuminate the site using fixtures that comply with the current rules, albeit those fixtures are more expensive than those selected using the 25-foot poles.

Mr. McCarl moved to receive the amendment and schedule a public hearing for October 17. Mr. Kern seconded the motion. The vote was 7-0-0 in favor of the motion.

Ms. Dauler said she was the Council liaison to the Planning Commission and attended most of the Commission's discussion on this request. She did not agree with the Planning Commission members in regards to the height of the light poles. The light poles needed to be 25 feet and the height limit was 20 feet. The YMCA consulted with Whitehill Lighting Supply and determined that fixtures could be installed at 20 feet that would provide the appropriate amount of light without intruding on the neighboring residential properties; however, the cost of the fixtures would be double that of the 25-foot poles. The 20-foot fixtures were more appropriate for parking garages and not athletic fields.

Mr. Slaybaugh explained changing the height of the light poles would change the proposed zoning amendment. Mr. Hess indicated the Municipalities Planning Code requires that it be referred to the planning agency for the 30-day review period.

Council discussed the reasons why the Planning Commission did not include this in the original recommendation. Mr. Slaybaugh explained the Commission asked the YMCA representative if the fixtures could be made to work at 20 feet. The YMCA consultant found a fixture that complied with the ordinance but would be more expensive. Ms. Dauler believed it would be financial hardship on the YMCA and asked that the ordinance be modified to permit the 25 foot poles. Mr. Meyer asked the height of the light poles on the streets. Mr. Whitfield responded they were 20 to 24 feet high.

Ms. Dauler moved to forward an amendment to include an allowance for 25-foot light poles to the Planning Commission. Mr. Kern seconded the motion. The vote on the motion was 6-1-0 with Ms. Goreham opposed, the motion passed.

Commercial Incentive Zoning/Conditional Use Criteria. Mr. Fountaine explained Council reviewed the Commercial Incentive Zoning and Conditional Use Criteria at their meeting of August 8 and forwarded the proposed ordinances to the Planning Commission at their meeting of August 15. Council should decide the area to be included for the Commercial Incentive District and the area where the Conditional Use regulations would be applicable and schedule a public hearing. Since this ordinance involves an amendment to the zoning map, thirty days notice to all affected properties must be given before the hearing. Thus, the earliest date that a public hearing may be held is November 7, 2005.

Mr. Daubert moved that the Commercial Incentive District include both the original area and the two areas to the east proposed by Council. Mr. Kern seconded the motion. The motion was approved with a 7-0-0 vote.

Mr. Kern moved to provide a parking bonus for underground parking. The motion was seconded by Ms. Dauler. The motion passed unanimously with a 7-0-0 vote.

Council discussed offering incentives and bonuses for street level commercial. Mr. Hess explained the CID did not mandate first floor commercial uses. Council decided to include a mandate for non-residential or non-parking on the side facing the street. The central business district already has a mandate restricting residential uses on the first floor. Mr. Daubert asked why bonuses would be offered to developers for first floor commercial if it is already required. Mr. Hess explained the ordinance restricts first floor to non-residential; it does not require commercial uses. By applying this throughout the area, it would offer an incentive for the commercial uses that Council would like to see.

Ms. Dauler moved that incentives and bonuses for street level commercial apply only to the area in the CID where this is not a mandatory provision. Mr. Kern seconded the motion. The motion passed with a 7-0-0 vote.

Mr. Kern moved that the conditional use zone be expanded to the area as recommended by Council. Mr. Meyer seconded the motion.

Mr. Daubert said he would like to limit the area. He did not agree that the conditional use would be appropriate for College Avenue east of Sowers Street. He moved to amend the motion to exclude the area east of Sowers Street. Ms. Dauler seconded the amendment. The amendment passed with a 7-0-0 vote.

Ms. Goreham asked if signature development required upscale market rate housing. Mr. Hess explained the minimum lot size would have to be 30,000 square feet; this would allow for 150,000 square feet in gross floor area, 40 percent of which would have to be non-residential. Mr. Hess showed the possible locations where lots could be consolidated to accumulate 30,000 square feet.

Mr. Meyer asked why the minimum lot size was set at 30,000 and if it could be set lower, such as 28,000 square feet. Mr. Hess said a 30,000 square foot lot seemed to be the size parcel needed to do this type of development. Mr. Meyer asked Tim Fulton, Susquehanna Real Estate, if the minimum lot size could be reduced. Mr. Fulton did not believe the project could be built on a 28,000 square foot property; even 30,000 square feet may be too small. The current proposal for the Fraser Street site was 50,000 square feet and development was very tight.

Council discussed the definition of a signature building. It was agreed that a signature building should be something that stands out in size as well as design.

Council voted on the original motion to expand the conditional use area. The vote was 7-0-0; the motion passed.

Ms. Dauler moved to include regulations in the conditional use criteria to include flexibility provisions related to alley setbacks, as recommended in the Cineplex Development Proposal. Mr. Daubert seconded the motion. The vote on the motion was 7-0-0; the motion passed.

Mr. Daubert moved to schedule a public hearing on the zoning ordinance amendment for November 7. Mr. Kern seconded the motion, which passed unanimously.

BIDS/CONTRACTS/AGREEMENTS

Penn State University Agreement to Open Thorn Alley. Mr. Fontaine said that staff received a request from the property owner of 137-139 North Patterson Street to connect Thorn Alley to West Campus Drive in order to better facilitate delivery trucks to their business. Thorn Alley is a municipal alley and West Campus Drive is a private street belonging to Penn State. The Agreement will permit the property owner to construct the connection of the alley to West Campus Drive. Once the alley is built, the Borough would be responsible to maintain the alley. Both the Planning and Transportation Commissions reviewed the request. A public hearing was held on May 16, 2005, regarding the connection. Since the public hearing, the Board of Trustees of Penn State University met and approved the opening of Thorn Alley.

Mr. Kern moved to authorize the President of Council to execute the agreement on Council's behalf. Mr. McCarl seconded the motion. The motion passed unanimously with at 7-0-0 vote.

OLD BUSINESS

Post North Patterson Street No Parking Any Time. Mr. Fontaine explained a request was received from a business owner on North Patterson Street to post North Patterson Street "NO PARKING". Presently, the west side of the street from Grass Alley to the lands of Penn State is posted for 2 Hour Parking. The street width is 24 feet, and in accordance with ITE (Institute for Transportation Engineers), the street is too narrow to safely accommodate parking. The Borough-wide traffic counts taken in November of 2003 indicated that 1526 vehicles per day use the street. Users include tractor-trailer delivery trucks, school buses, residents, and as an access to the West Campus graduate housing development. At Council's meeting of August 1, Council

voted to deny the request to remove on-street parking from North Patterson Street. During the work session on August 8, it was requested that this item be placed back on the agenda for further review. At the meeting of August 15, Council's motion to approve the request failed because of a split vote. Since one member of Council was absent from that meeting, Council asked that this Ordinance be brought back for a third consideration when all of Council could be present.

Ms. Dauler moved to adopt Ordinance 1816 to prohibit parking on both sides of North Patterson Street. Mr. Kern seconded the motion. The vote on the motion was 5-2-0, with Ms. Goreham and Mr. Daubert opposed.

NEW BUSINESS

2006 Community Development Block Grant (CDBG) and HOME Programs' Consolidated Annual Action Plan. Mr. Fontaine informed Council the 2006 Consolidated Annual Action Plan provides details on proposed projects for federal CDBG and HOME grant money during fiscal year 2006. The CDBG Citizens' Advisory Committee reviewed the Plan at its meeting of September 12 and recommended it be approved by Council.

Mr. Daubert asked that justification be provided for the administrative cost for the program. He would rather see that more money go to those agencies that provide human service needs to the community.

Ms. Goreham moved to receive the proposed Consolidated Plan and schedule a public hearing on October 3 with action on the Plan scheduled for November 7. Ms. Dauler seconded the motion, which passed unanimously.

Transfer of Adelphia to Comcast. Mr. Fontaine explained, on June 10, 2005, the Borough received a formal request to consider a cable television franchise transfer from Adelphia to Comcast. Council must act on this request within 120 days from receipt of the official notice. Council referred this matter to the Centre Area Cable Consortium for review and recommendation. The Consortium retained the services of Adrian Herbst of Baller Herbst Law offices to assist in its review. The Consortium has concluded its review and is recommending that Council approve the transfer.

This transaction is a complicated transaction involving Adelphia Cable Communications, Time Warner and Comcast. The transfer is further complicated by the Adelphia bankruptcy proceedings. The franchise will first transfer to Time Warner, and then to Comcast. The Consortium's consultant reviewed the technical, legal, operating and financial capacity of Comcast to carry out the transaction and operate the system. They have concluded that Comcast has the capacity to operate the system. There were no issues of non-compliance identified in the State College franchise.

Ms. Goreham asked if this would allow any leverage for the Borough. Mr. Fontaine noted the franchise renewal is ongoing. It is with the franchise renewal that leverage may be applied for special services, such as C-NET funding. Ms. Dauler noted the municipal managers are tackling the issues on the cable franchise renewal and should be commended. It is a very complicated and complex process. She had attended some of the meetings and felt it was very worthwhile. This is good example of how the elected officials depend on the municipal managers for guidance and leadership.

Mr. Daubert asked if the document had been reviewed by the Borough Solicitor. Mr. Fontaine explained the legal counsel, Adrian Herbst with Baller Herbst Law, had reviewed the documents. He added that Baller Herbst Law has a strong background in cable franchise law.

Ms. Dauler moved to adopt Resolution 887 approving the transfer and authorizing the officers of the Borough to execute documents related to this action. Ms. Goreham seconded the motion, which passed unanimously.

Pension Obligations for 2006. Mr. Fontaine said Act 205 of 1984 (as amended by Act 189 of 1990) requires that a budget for the Borough's pension obligations for the upcoming year be submitted to Council prior to September 30 of each year. This budget is based on actuarial costs of the pension plans, obtained from the Borough's actuary, and an estimated payroll figure, which staff develops in house. Next year's pension cost is estimated to total, at a minimum, \$1,094,560.00, which represents a Minimum Municipal Obligation (MMO) of \$410,551 for the Police Pension Plan and \$684,009 for the General Government Plan.

Mr. Fontaine noted that the 2006 MMO is less than the 2005 MMO primarily because the projected payroll is less than 2004. There were 27 pay periods ending in 2004, but only 26 this year. Also, the amortization requirements are lower than last year, but still significantly higher than 2003 and prior years due to investment losses incurred in 2001-2002. The total MMO will be offset by state aid, estimated at \$777,237.00, leaving a balance of \$317,323.00.

Mr. Kern noted the general government plan unfunded liability was much higher than the police pension. Mr. Fontaine explained that in the past state aid funded only the police pension plan and it was now funding both programs.

Ms. Dauler moved to receive the municipal obligation for 2006. Mr. Humphrey seconded the motion, which passed unanimously.

Receive Vouchers for the Month of August 2005. Mr. Meyer moved and Ms. Dauler seconded a motion to approve the vouchers for August 2005 in the amount of \$3,942,009.96 for the Borough of State College, and as agents for COG in the amount of \$1,865,024.78. The vote on the motion was 7-0-0; the motion passed.

OFFICIAL REPORTS AND CORRESPONDENCE

Liaison Reports

Mr. McCarl reported there was a public hearing of the Tree Commission and again he commended the knowledge of the Commission members and the professionalism of Alan Sam, Borough Arborist.

Mr. Fontaine thanked Mark Whitfield and the public works staff for work on September 6 to prepare a pumper truck to go to Mississippi in the wake of the devastation from Hurricane Katrina.

There being no further business, the meeting adjourned at 10:17 p.m.

Respectfully submitted,

Cynthia S. Hanscom
Assistant Borough Secretary