

Meeting Minutes
State College Borough Council
October 17, 2005

The State College Borough Council met in a regular meeting on Monday, October 17, 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.

Mayor Welch began with a moment of silence and Pledge of Allegiance.

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; Terry J. Williams, Borough Solicitor; Mark A. Whitfield, Director of Public Works; Carl R. Hess, Director of Planning and Community Development; John P. Marchek, Risk Manager; Linda S. Welker, Tax Administrator; Thomas R. King, Chief of Police; Cynthia S. Hanscom, Recording Secretary; members of the media; and other interested observers.

PUBLIC HOUR – HEARING OF CITIZENS

Interfraternity Council Presentation. Brian Bertges, IFC President, thanked Council for the opportunity to speak. He explained that the primary goal of the Interfraternity Council (IFC) was community outreach. The purpose of the IFC is to govern the member fraternities, promote the intellectual, philanthropic, fraternal and social values of the fraternities at Penn State, and maintain cooperation between these social fraternities and the international and national headquarters, alumni, the State College community, and Penn State.

Stephen Hulick, University Relations Chair, spoke on the Greek Ambassador program. This program is one of the ways to reach the community and create a better relationship. Fraternity members can apply to be an ambassador and the fraternities can open their houses on certain days to let the community come in and see inside. The application process should start in November.

Michael Peters announced the IFC would be conducting a haunted house on October 26 and 31 from 6:00 to 9:00 p.m. at 305 East Prospect Avenue, Theta Delta Chi Fraternity. The event would be free and he encouraged people to bring the kids. He added that this was one service the fraternities were providing to the community and he predicted it would be fun for all.

Kevin Kerr, IFC advisor, reviewed the structure of the fraternities and the eight different executive positions that are held by members. When asked about his own position in the organization, Mr. Kerr explained he provides advisory support to the fraternities, meets weekly with the IFC executive board, and communicates daily with fraternity members, advisors or alumni.

Ms. Dauler asked about the executive position of Vice President of Standards. This position coordinates all disciplinary sanctions with the Office of Fraternity and Sorority Life. She noted the IFC also monitors the number of parties. Mr. Bertges said each fraternity is permitted five social functions a semester and each function must adhere to international and national policy. Violations of the policy could mean penalties and sanctions from both the University and the chapter.

Ms. Goreham asked how someone would contact the IFC and Mr. Bertges suggested calling the IFC Hotline at 814-231-6300.

Mr. McCarl asked if faculty advisors were still being used. Mr. Kerr indicated that faculty advisors were not assigned to fraternities, but they were looking into recruiting faculty members. Currently, alumni of the organization act as advisors.

Mr. McCarl also asked about membership and the trends for membership in the last 5 to 10 years. Mr. Kerr noted that membership was down from last Spring by 11 percent. The trend has been on the decline. He believed that, with better publicity, improved national connections, and the restructuring of recruitment, chapters will see a change in this trend.

Mr. McCarl asked how the expense of fraternity membership compared to living costs (room and board) for other students. Mr. Bertges noted that costs are comparable but there were many benefits from being part of a fraternal organization, such as leadership opportunities and contacts.

Mayor Welch asked if there were other citizens wishing to comment during the public hour. There being none, Mayor Welch closed the public hour.

PUBLIC HEARINGS

Zoning Amendment – R3B Side and Rear Yard Depths. Mr. Fontaine noted that on September 19, Council received the recommendations from the Planning Commission for an amendment to modify the way the side and rear yard depths are calculated in the R3B zoning district. The change arose from a request by the YMCA. It came to their attention that existing rules would require an increased setback for any size accessory structure. The intended requirement was for larger accessory buildings. This seemed to be an unintended consequence of the rule, and it adversely affected the YMCA's proposal to enclose a hockey play area with a 12-foot-high fence. The proposed amendment states the rule more precisely to exclude accessory buildings and accessory structures, like fences, from the increased setback required. Both the Planning Commission and Planning Department staff recommend the amendment be adopted.

Mayor Welch opened the public hearing for comment on the amendment. There were no comments from the public and Mayor Welch closed the hearing.

Mr. Daubert asked if this would exclude accessory buildings from being constructed right up against the property line. Mr. Hess indicated in all residential districts an accessory building of less than 144 square feet can be built within the setback area but must be set back 5 feet from the property line.

Ms. Goreham said, in the interest of working with other adjoining municipalities, and since this property abuts the College Township line, she asked if it could be sent to College Township for comment. Mr. Fontaine indicated the proposed amendment was sent to the Centre County Planning Commission as well as the Centre Region Planning Commission (CRPC). Since there is a member of College Township that serves on the CRPC, College Township was put on notice of this change.

Mr. Kern moved to enact Ordinance 1818 to modify the R3B. Mr. Humphrey seconded the motion. The vote was 7-0-0 in favor of the motion. Mr. McCarl, who serves on the board of the YMCA, noted for the record that he did not abstain because this would affect the entire zone and not just the property in question.

CONSENT ITEMS

Black Caucus March. Mr. Fontaine said an application was received to use College Avenue, Garner Street to Allen Street, to conduct the 5th Annual "Now More than Ever" march and rally being held by the Penn State Black Caucus. The march will take place on November 6, 2005. The applicant did agree that, if there are fewer than 75 participants, the march will be held on the sidewalks. If there are 75 or more participants, they will use College Avenue.

Ms. Dauler moved and Mr. Kern seconded a motion to approve the use of College Avenue for the march. The motion passed with a 7-0-0 vote.

Allen Street Closure for a Fundraising Event. Mr. Fontaine said a request was received to conduct a Four Diamonds Fundraiser called "For the Love of Chocolate and Max Kirby." The applicant is requesting use of the Municipal Building Plaza and the closure of South Allen Street from Highland Alley to Foster Avenue on Saturday, October 22, 2005, from 1:00 p.m. to 4:30 p.m.

Ms. Dauler moved and Mr. Kern seconded a motion to permit the use of the plaza and South Allen Street for this activity. The motion passed unanimously.

OLD BUSINESS

2006-2010 Capital Improvement Program. Mr. Fontaine reminded Council that they had received the 2006-2010 Capital Improvement Program at their meeting of September 12, 2005. Council reviewed the document at their meetings of September 23, 30, October 3, and October 10. A public hearing on the Capital Improvement Program was held on October 3. A summary of the changes and revised pages were distributed to Council. In 2006, capital expenditures total \$4,029,488:

Streets	\$2,274,323
Storm Sewers	110,045
Parks	34,000
Municipal Facilities/Other Projects	1,079,815
Sanitary Sewers	443,350
Parking Projects	87,955

Enterprise funds, community development block grant funds, grants, and other miscellaneous sources will pay for all except \$1,137,440 of these costs. The balance will be covered by the

Penn State in-lieu payment, interest, and a transfer from the General Fund. The sanitary sewer and parking projects are self-funded.

Mr. Humphrey suggested the downtown improvements include pots and plants for 2006 rather than 2007. Mr. Kern disagreed, indicating the project was \$35,000 and the money was not available in 2006. Mr. Humphrey believed that funds could be moved from another project for this, such as the bike path. Ms. Dauler noted the Borough had already promised \$55,000 for the State Theatre. There was only so much money that should be funneled into the downtown; therefore, she suggested the improvements be slated for another year.

Mr. Meyer asked about funding sources for the Capital Improvement Program. Mr. Fountaine explained the determination of funding for the projects will occur with the discussion and approval of the annual budget.

Mr. Kern moved to approve the 2006-2010 Capital Improvement Program. Ms. Dauler seconded the motion. The vote was 7-0-0 in favor of the motion.

Noise Waiver Request from Penn State for the HUB Lawn Terrace. Mr. Fountaine noted that Penn State is seeking a waiver to the Borough of State College's Noise Ordinance to conduct six performances or events after dark on weekends (in addition to the AfterFest activity) on the performance area adjacent to the HUB-Robeson Center. These six activities would use amplified sound and be approved, sponsored, and managed by the Office of Unions and Student Activities. Amplified performances during weekend daylight hours and community sponsored events would not count against this total. Penn State has substantially modified the draft procedure for scheduling and approving these events since the last time Council discussed this proposal. Mr. Fountaine distributed a revised policy that included a clause for a 70 decibel threshold at the intersection of Beaver Avenue and Locust Lane.

Stan Latta, Director of Union and Student Activities at Penn State University, was present to answer any questions from Council. Ms. Goreham asked when this was proposed to be built. Mr. Latta indicated it was to be completed in the Spring of 2006. He noted the project will not be done if the waivers are not granted.

Mr. Kern suggested three compromises:

- The Senior Director of Unions and Student Activities (or designee) will monitor the level of amplified sound. Monitoring will occur periodically during the event. The monitoring of amplified sound will be conducted at the corner of Locust and Beaver Avenues using a sound measuring meter approved by the State College Borough Police. If the sound is measured to be greater than 70 decibels, the University will have the amplified sound turned down or terminate the event.
- If Borough officials receive valid complaints regarding the noise level of these events, the Senior Director of Unions and Student Activities (or designee) will be contacted. The level of amplified sound will be monitored within 15 minutes of the Director (or designee) being notified by the State College Borough Police. If the level of amplified sound is greater than 70 db as measured at the corner of Locust and Beaver Avenues the University will have the amplified sound turned down or terminate the event.
- If the State College Borough Police cannot locate the Director or designee within 15 minutes of the complaint, the State College Borough Police will measure the level of amplified sound using an approved device. If the sound exceeds the Borough noise and nuisance limits as established by Ordinance, the State College Borough Police in coordination with the University Campus Patrol can, at their discretion, terminate the event or request that the sound be lowered to an acceptable level.

Mr. Humphrey agreed this was a good compromise.

Mr. Kern moved to approve the waiver request incorporating the three suggestions above. Mr. Humphrey seconded the motion.

Mr. McCarl noted that the events would not end until midnight. He indicated his reluctance in approving events that late.

Mr. Daubert said performances during weekend daylight hours are not counted against the six approved events, which could be a problem. He noted that a Sunday morning event at the HUB lawn terrace required one of the churches on College Avenue to close their windows and doors to hold the service. Mr. Latta assured Council that the University wanted to work with the Borough and could restrict events on Sunday mornings. Mr. Daubert continued that it was worrisome because the Borough could not control when the events could occur during the day.

Mr. Meyer noted the waiver would require a yearly approval. It would be in the University's best interest to work with the Borough so that future approvals would be granted. He did not believe the University would jeopardize the use of the lawn terrace once the work was done.

Ms. Dauler asked if sound projecting north towards Park Avenue had been measured. Mr. Latta indicated measurements were recorded one block from the HUB towards Park Avenue. Ms. Dauler commended Mr. Kern on the compromises he is suggesting but felt that she could not make a decision on this at this time.

Ms. Goreham agreed and moved to table their decision. Ms. Dauler seconded the motion. The vote on the motion was four in favor with Mr. Daubert, Mr. Meyer and Mr. Humphrey opposed. The motion passed.

NEW BUSINESS

First Night. Mr. Fontaine indicated a series of requests were received from the Central Pennsylvania Festival of the Arts to use public property for the conduct of this year's First Night® celebration. 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 on Saturday, December 31;
- 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 at midnight on December 31 in Community Fields.

Ms. Dauler moved to enact Ordinance 1819 designating the area for the First Night activities and waive Sections 203 and 204 of Chapter VI of the Codification of Ordinances, which prohibits fireworks in the Borough. Mr. Humphrey seconded the motion. There being no discussion, the motion was approved with a 7-0-0 vote.

2006 Rules and Regulations for Earned Income Tax. Mr. Fontaine informed Council that they were requested to take the steps necessary to adopt the 2006 Rules and Regulations. The tax collectors within the school district annually review pending legislation, federal and state changes, and litigation to determine if changes are needed. Based on this year's review, several changes have been made to the Rules and Regulations. It should be noted that the changes do not impact revenue that is generated from the collection of this tax.

Mr. Daubert asked if the Borough has the same rules for collection as other townships. Ms. Welker explained the same policy is used but the townships have various rates. The goal is to have uniform collection within the school district.

Mr. Daubert complained that employers can call a salary something else, such as a car allowance, which would not be taxable. There are several types of income that are exempt. Ms. Welker said the tax office was aggressive in getting the correct earned income tax collected; however, there are some things that are mandated by state and federal law on what is considered compensation.

Mr. Kern indicated in the list of items that are taxable and non-taxable there is a "net profit from the business of renting property" and "profits from the operation of a hotel or boarding house." Ms. Welker said there are parts of a business operation that are investment in nature. Mr. Kern asked if income from a rental property would be considered taxable if it was classified as an investment. Ms. Welker noted that it would depend on how it is declared for federal taxing purposes. Mr. Kern said that it was confusing and asked how the tax office discerns the taxable nature of the income. Ms. Welker replied that the Borough would base the taxability on how the individual filed with their state and federal return.

Ms. Dauler moved to adopt the revised rules and regulations. Mr. Kern seconded the motion. The vote on the motion was 7-0-0 in favor.

Increase Towing Fees under the Public/Private Property Towing Ordinance. Mr. Fontaine explained the five approved towing agencies have collectively written a request to the Borough to consider increasing the permitted towing fees under the Public/Private Property Towing Ordinance. Borough Council last increased the permitted towing fees in August 2003. The reasoning for the towing agencies' request is three-fold. First, the fees have not been increased since August 2003. Second, the drastic increase in fuel costs has caused a hardship for the towing companies. Lastly, there has been an increase in their insurance rates because of a limited number of insurance companies who offer towing insurance. Borough Council set the permitted towing fees in 1997 and increased them again in August 2003.

Chief King explained staff met with the towing companies to go over the list of fees. Staff also conducted a review of what other towing companies are charging throughout Centre County. He distributed a handout on those charges. In addition, he received a letter from the American Automobile Association (AAA) confirming that they pay \$3.00 per mile for tows outside of the area.

Ms. Goreham asked about the clean-up fee charged for an accident. Chief King indicated this has been charged by the towing companies in the past; there was no change in the amount.

Mr. Daubert questioned the justification for a \$10 increase. He realized that the price of gas had increased significantly in the past few months but the towing companies are all within two miles of State College. Cathy Tennis, Tennis Towing, explained that there was a \$25 increase over a six-year period in 1983. Rather than have such a dramatic increase, it was suggested that the costs be reviewed every two years.

Ms. Dauler asked about the limited number of insurance companies that will cover a towing agency. Ms. Tennis indicated that the number dropped by half. Brokers cannot find underwriters interested in a towing policy. Because of the lack of interested underwriters, the cost for the insurance has gone up drastically.

The Mayor called for a vote for the approval of Ordinance 1821. On a roll call vote the Ordinance was unanimously adopted.

Exhibits Policy for the Municipal Building. Mr. Fontaine said the lobbies on the first and second floors in the Municipal Building have been used for art displays on several occasions in the past few years. Each request to display an exhibit has been presented to Council for approval. To clear Council's agendas of such routine requests, and to facilitate the use of the lobbies for such displays, a policy on art displays has been drafted for Council's consideration. The policy provides for requests to be submitted to the Borough Manager, who would authorize the display unless the work is deemed inappropriate for a public building. The intent is to encourage art displays but allow the Manager to deny permission to display work that might offend.

Ms. Dauler asked if there was a fee involved. Mr. Fontaine said there was no fee; it was his understanding that Council's intent was to open the lobby areas for displays accessible to the community.

Mr. Daubert questioned whether the Manager should be making decisions on whether or not the display was controversial. Mr. Fontaine said he did not anticipate a problem. If there was a question or concern, he would discuss it with Council. Mr. McCarl agreed that there could be topics that would require a judgment.

Mr. Meyer asked about liability issues with the displays. Mr. Williams indicated the policy indicates the organization or artist was assuming responsibility for theft. However, if Borough staff knocks down the picture or did not take appropriate steps to safeguard the artwork, there may be negligence involved. Therefore, the Borough cannot force the exhibitors to completely indemnify against the Borough.

Ms. Goreham asked if the exhibitors were limited to Borough residents. Mr. Fontaine noted that the policy was open to organizations or artists regardless of location; however, he would give preference to residents in the community. Mr. Daubert noted municipal displays would take precedence.

Mr. Daubert also suggested that a time limit be placed on the displays. Usually, the displays are permitted for 30 days. Mr. Fontaine said he would include that in the policy.

Mr. Kern moved to recommend Council adopt the exhibit policy. Ms. Goreham seconded the motion. The motion was approved with a 7-0-0 vote.

Vouchers. Upon motion of Mr. Meyer, second by Ms. Dauler, Council voted unanimously to receive vouchers for the month of September for the Borough of State College, in amount \$2,740,131.48, and, acting as agent for the Centre Region Council of Governments, vouchers totaling \$1,353,605.16.

OFFICIAL REPORTS AND CORRESPONDENCE

Mayor's Report. Mayor Welch noted that in the past week he had attended civic engagement sessions with campus organizations such as the Undergraduate Student Government. Civic engagement is an effort to promote good citizenship. Discussions were held to find ways to get students more involved in the community.

President's Report. Mr. Daubert announced there would be an executive session following this meeting to discuss litigation.

Staff/Committee Reports. Mr. Fontaine informed Council that they were completing an agreement with Schlow Centre Region Library for a maintenance and custodial contract for the new building located at 221 South Allen Street. This would require hiring two additional employees but the cost would be covered by the contract. If there were no objections, staff would move forward with this contract. No objections were given.

ITEMS OF INFORMATION

Mr. McCarl commented that he attended the Fall Festival in downtown State College last weekend (October 15) and was very pleased. It was well attended and he commended the Downtown State College Improvement District for organizing this event.

Mr. Kern commended the State College Borough Police Department for their work during the football weekend of the Ohio State game (October 8). There were many people in town celebrating and the police officers did a good job of crowd control without confrontation.

There being no further business, the meeting adjourned to an executive session at 8:45 p.m.

Respectfully submitted:

Cynthia S. Hanscom
Assistant Borough Secretary