

Meeting Minutes
State College Borough Council
May 7, 2007

The State College Borough Council met in a regular meeting on Monday, May 7, 2007, in the State College Municipal Building Council Room, 243 South Allen Street, State College, PA. Mr. Welch called the meeting to order at 7:30 p.m.

Present Bill Welch, Mayor
Catherine G. Dauler, President of Council
Thomas E. Daubert
Ronald L. Filippelli
Elizabeth A. Goreham
Donald M. Hahn
Craig R. Humphrey
Jeffrey R. Kern

Also present: Terry Williams, Borough Solicitor; Thomas J. Fountaine, II, Borough Manager; Thomas S. Kurtz, Assistant Manager; Carl R. Hess, Planning Director; Herman L. Slaybaugh, Zoning Officer/Planner; Michael S. Groff, Finance Director; Amy J. Story, Borough Engineer; Mark A. Whitfield, Director of Public Works; Thomas R. King, Chief of Police; Arthur Caccavale, Parking Manager; Mark S. Henry, Health Officer; Cynthia S. Hanscom, Recording Secretary; members of the media; and other interested members of the public.

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

Public Hour - Hearing of Citizens

Presentation of Proclamations. Mr. Welch presented a proclamation to Dennis McHugh with the National Association of Letter Carriers (NALC) proclaiming May 12, 2007 as "Letter Carrier's Food Drive Day" in the Borough of State College. This is one of the largest one-day food drives in the nation and he encouraged all citizens to participate. Mr. McHugh thanked the Mayor and Council for their recognition of the food drive and recognized all the many people working off the clock to collect the food and distribute it to local food banks.

Mr. Welch also presented a proclamation recognizing the month of May as Motorcycle Safety and Awareness Month to Hal Hallock. Mr. Hallock currently works to educate the public on motorcycle safety through education programs. Mr. Hallock thanked Council and the Mayor and announced that Governor Edward Rendell presented a proclamation at the state level to promote motorcycle safety for the month of May.

Mr. Welch also announced a proclamation presented earlier in the day for the Arbor Day activities. Ms. Dauler reported that she had attended the Arbor Day activities at the Easterly Parkway Elementary School. She commented that it was heartening to see the future in the children and their genuine interest in the new tree that was planted on the school grounds.

Mr. Welch asked if there members of the public wishing to speak. There being none, he closed the public hour.

CONSENT ITEMS

Mr. Hahn moved and Ms. Dauler seconded a motion to approve the following consent items. The motion passed unanimously.

- Special activity to conduct the 2007 Penn State Homecoming Parade on College Avenue on Friday, October 12, 2007, from 5:30 to 8:30 p.m.
- Accept a resignation from Richard Virgil from the Historic Resources Commission, effective immediately.
- Appoint Catherine Dauler and Thomas Daubert to the Tax Increment Financing Committee for Fraser Centre.
- Approve the minutes of March for the following meetings:

March 2, 2007	Work Session
March 5, 2007	Regular Meeting
March 19, 2007	Regular Meeting
March 30, 2007	Work Session

BIDS/CONTRACTS/AGREEMENTS

Project 1-2007 Sidewalk Replacement. Mr. Fountaine said bids for Project 1-2007 Sidewalk Replacement were opened on Thursday, May 3, 2007. The project consists of the removal and replacement of a minimum of approximately 921 square feet and up to a maximum of approximately 20,500 square feet of deteriorated concrete sidewalk throughout the Borough. The bids were advertised in the *Centre Daily Times* in accordance with the Purchasing Ordinance and

a total of six bid packages were released. Five bidders submitted bids, with the low bid from BCS Construction, Inc., in the amount of \$157,385.00. Funding for this award is from the Account #30-439-610, with \$133,062.50 to be assessed to the property owners.

Mr. Filippelli moved to award Project 1-2007 Sidewalk Replacement to BCS Construction, Inc., in the amount of \$157,385.00. Ms. Dauler seconded the motion. The motion passed with a 7-0-0 vote.

Project 2-2007 Curb & Resurfacing. Mr. Fontaine said that bids for Project 2-2007 Curb and Resurfacing were opened on Tuesday, May 1, 2007. This project consists of approximately 1,591 linear feet of curb replacement; approximately 682 square yards of pavement base replacement; 12,099 square yards of profile milling; and 5800 linear feet of resurfacing on various streets and alleys in the Borough; replacement of affected concrete and brick sidewalks/driveway aprons; and adjustment of sanitary sewer manholes/inlets, as required. The resurfacing of the Holmes Foster Park parking lot was included as an alternate. The bids were advertised in the *Centre Daily Times* in accordance with the Purchasing Ordinance and a total of three bid packages were released. Two bidders submitted bids, with the low bid from HRI, Inc., in the amount of \$306,949.25, which includes the alternate. Funding for this project will be from the General Fund.

Mr. Filippelli moved to award the bid for Project 2-2007 Curb and Resurfacing to HRI, Inc., in the amount of \$306,949.25. Ms. Dauler seconded the motion. The vote on the motion was 7-0-0.

Project 10-CDBG-2007 East Irvin Reconstruction Project. Mr. Fontaine said that bids for Project 10-CDBG-2007 East Irvin Avenue were opened on Tuesday, April 17, 2007. This project consists of approximately 655 linear feet of Type II Street Reconstruction which includes profile milling, pavement base repair and resurfacing on East Irvin Avenue and "C" Alley. Also included is the placement of one sanitary sewer manhole and the replacement of the 8 inch sanitary sewer main, laterals, and select curb, sidewalk, and driveway aprons, as required. He added the bids were advertised in the *Centre Daily Times* in accordance with the Purchasing Ordinance and a total of six bid packages were released. Five bidders submitted bids, with the low bid from Terra Excavating in the amount of \$79,013.61. Funding for this contract is from the Community Development Block Grant and Sanitary Sewer Fund.

Ms. Goreham moved to award the bid for Project 10-CDBG-2007 East Irvin Avenue to Terra Excavating, Inc., in the amount of \$79,013.61. Ms. Dauler seconded the motion, which passed unanimously.

Bituminous Patch for 2007. Mr. Fontaine said that bids for the bituminous patch material for the 2007 construction season were opened on Monday, March 26, 2007. The bid is for the various bituminous patch materials required to repair and maintain Borough streets and alleys. The bids were advertised in the *Centre Daily Times* in accordance with the Purchasing Ordinance and a total of five bid packages were released. Two bidders submitted bids, with one company, HRI, Inc. bidding on all 6 items, and the other, Glenn O. Hawbaker, Inc., bidding on 5 of the 6 items. Staff compared the bids for the 5 items on which both companies bid. HRI's bid for these 5 items totals \$24,425.00. The bid from Glenn O. Hawbaker for the same 5 items totals \$25,930.00. HRI is the lowest bidder for the patch material. The recommended award to HRI includes all six items requested in the bid by the Borough. Funding for this project is available in the Highway Aid Budget account.

Mr. Daubert asked when the patch work would be completed. Mr. Fontaine said that it would be done on various streets throughout the summer.

Ms. Dauler moved to award the bid for bituminous patch material for the 2007 patching season to HRI, Inc., the low bidder meeting specifications, in the total amount of \$34,125.00. Mr. Humphrey seconded the motion. The motion passed with a 7-0-0 vote.

PLANNING AND ZONING

Zoning Amendment: Mixed Use Overlay. Mr. Fontaine noted that Council received the proposed ordinance amending the mixed use overlay regulations on February 5 and held a public hearing on March 5. At the hearing 14 people testified on the proposed ordinance. Council took action at their April 2 meeting to publish the Notice of Intent to Enact.

Mr. Fontaine reported that the Notice of Council's Intent to Enact the Ordinance has been published for Council to act on the ordinance. Any changes to the ordinance before enactment would require that the ordinance be returned to the Planning Commission for comment and Council must hold another public hearing.

Mr. Fontaine said Council may (1) enact the ordinance in its current form with minor amendments, or (2) agree on substantial changes to the ordinance that is currently on the table, return the modified ordinance to the planning commission for comment, schedule a public hearing and publish notice of intent to enact the amended ordinance at the June 18 meeting. If Council enacts the ordinance that is currently on the table for consideration, it may also begin a new

process to have the Planning Commission consider any substantial modifications that council members would identify.

Mr. Kern moved to enact the ordinance without amendments. Mr. Humphrey seconded the motion.

Mr. Kern noted that this ordinance has been studied for 12 months and has been reviewed by the Planning Commission. He said he believed the ordinance was a minor change to an ordinance that already exists. He said Council should approve the ordinance or move on.

Council members discussed the process if the ordinance was approved and how any changes could be made at this time or at a later time. It was noted that substantial changes would trigger the requirement for an additional public hearing. Mr. Welch said the cleanest process would be to approve the ordinance and then send proposed changes to the Planning Commission for further review. One minor amendment to the ordinance as suggested by Mr. Filippelli at a previous meeting could be included in the ordinance. Mr. Humphrey agreed that it would be simpler to adopt the existing ordinance and then request any changes be reviewed by the Planning Commission.

Ms. Dauler disagreed; she said she did not see any reason to pass the ordinance as it was written when there were so many changes and suggestions from Council. She suggested Council vote on the ordinance and, if it fails to pass, Council could forward suggested changes to the Planning Commission. They would have 30 days to review the suggested changes which would delay the enactment only a short period of time.

Mr. Daubert asked the result if the ordinance would not pass at this meeting. Mr. Hess explained the existing regulations would remain in place. It would not allow businesses to relocate in the district that needed more than eight employees and would eliminate some of the additional uses proposed in the ordinance. He said he believed the mixed use overlay would be less attractive to an entrepreneur. The existing regulations also require the special exception process to remain in effect, which would require an applicant to go before the Zoning Hearing Board for approval. In addition, the district would continue to prohibit new construction for uses pertaining to mixed use overlay regulations.

Mr. Kern argued that the proposed ordinance before Council satisfies the concept of the mixed use overlay. With this ordinance, the properties could be used in an appropriate manner that provides a barrier to the residential neighborhoods yet encourages the use of the properties. He noted that the Borough has a regional reputation that it is difficult for a developer to move forward. The review of this amendment has been an abomination of the review process and attempts to obtain more control. Council should admit that there is a point where control stops and directions should be set to guide redevelopment, he concluded.

Council voted on the motion to pass the ordinance to award the mixed use overlay regulations with no changes. The vote was 3-4-0 with Mr. Hahn, Ms. Dauler, Mr. Daubert and Ms. Goreham opposed. The motion failed.

Mr. Fontaine suggested Council review proposed changes to the ordinance. Council had submitted suggestions to staff and a memo had been prepared summarizing those changes, he noted.

Mr. Hess explained there were five general areas of concerns raised by Council. They were in regards to parking, limiting building expansion and alterations, permitted uses, site design, and the location where the mixed use overlay would apply.

Council discussed the parking concerns. Mr. Hess noted the Planning Commission recommended parking requirements be set at 1 space per 300 square feet for medical offices and 1 space per 600 square feet for other permitted uses. This would relax the parking requirements. Mr. Hahn suggested the conditional use for reduction of parking in the mixed use overlay area exclude medical and professional office uses. Mr. Hess noted that this exclusion would require an amendment to the off-street parking section of the zoning ordinance.

Mr. Hahn moved to modify the proposed mixed use overlay ordinance in regards to parking as stated above. Ms. Dauler seconded the motion. The vote on the motion was 5-2-0 with Mr. Kern and Mr. Daubert opposed. The motion passed.

Mr. Hess continued by explaining the original amendment did not require a property owner to provide parking on-site. A suggestion has been submitted to require lot coverage and building combined to equal 50 percent of the lot area. Since the zoning ordinance limits the building size to 30 percent or less of the lot, at least 20 percent of a lot will always be available for off-street parking. Ms. Goreham further suggested the ordinance require on-site parking be provided up to the extent that it will occupy up to 50 percent of that lot's coverage or to the extent of the maximum coverage, whichever is lesser of the two standards.

Ms. Goreham suggested modifying the proposed mixed use overlay ordinance to provide parking requirements that reflect the above explained changes. There was no Council action on this proposal.

Mr. Kern moved to the change parking requirements in the mixed use overlay ordinance so that parking on-site would be required up to the 50 percent of impervious coverage but not to exceed the parking requirement. Mr. Daubert seconded the motion, which passed unanimously.

Council discussed limiting the size of buildings. Ms. Goreham suggested applying similar language from the Highway Transitional Zone which limited the building footprint to 2,500 square feet. Mr. Kern commented that he did not have a problem with larger buildings and limiting the size would stifle the business owner. Mr. Hahn disagreed, stating that this is an overlay in a residential zone.

Ms. Goreham moved to amend the Mixed Use Overlay to say:

“No structure used for a Mixed Use Overlay use may have a footprint larger than 2,500 square feet per floor. Existing structures converted to Mixed Use Overlay uses may be expanded to meet, but not exceed, these limitations.”

Mr. Humphrey seconded the motion. The vote on the motion was 6-1-0, with Mr. Kern opposed.

Mr. Hess noted that Council raised the issue on applying the minimum separation for student rentals. He said that, based on the definition of student home in the zoning ordinance, the student home separation rule applies to 1- or 2-family dwellings. However, it is staff's interpretation that the minimum separation between student homes in the R-2 zoning district would not apply to residential uses integrated into a mixed use overlay building.

Mr. Daubert moved to apply the student home separation rule to mixed use overlay properties in the R-2 zoning districts. Ms. Dauler seconded the motion, which passed with a 7-0-0 vote.

Council next discussed the buffer requirements for a view-restrictive screen. Mr. Hess noted that Council member Filippelli suggested we stipulate 1) a minimum height requirement at time of installation and 2) that we include this requirement along alley frontages and not just where a mixed use abuts a residential lot. Staff recommends that if Council agrees to add the requirement that landscape material must be 6 feet in height at the time of installation that it excludes areas of a lot where parking is directly off an alley. Incorporating Mr. Filippelli's suggestion and staff's modification thereto, the proposed change would read:

(b) When a side or rear yard of an overlay use abuts a residential lot or a public alley, the abutting yard shall be buffered with a view-restrictive screen at least 6 feet in height, consisting of plantings, decorative walls or any combination therein. All plant material shall be 6 feet in height at time of planting. Areas of a lot abutting an alley used for parking as provided for in Section 2406.b.(11) of this Chapter are exempt from this requirement and shall be comply with the provisions of Section 2406.b.(11).

Mr. Kern asked why the screening along the back of the building should be required. Mr. Hess explained that the screening would be between the vehicles and the house on the same lot. Mr. Kern noted that the ordinance already requires that the residential character of the house must be maintained and believed this was already covered.

Ms. Goreham moved to approve the amendment as listed above. Mr. Daubert seconded the motion. The vote was 6-1-0, with Mr. Kern opposed.

Council next discussed the areas to be included in the overlay. Mr. Hess reviewed different proposals by Council members noting that the mixed use overlay regulations currently apply to areas on East Beaver Avenue, South Burrowes Street, South Atherton Street, and West Beaver Avenue.

Mr. Daubert moved to exclude the West Beaver Avenue properties from the changes proposed, noting that the Atherton Street property should be included. Ms. Goreham seconded the motion. The motion passed with a 7-0-0 vote.

Mr. Hahn moved to send the ordinance with the proposed changes as approved above to the Planning Commission for comment, schedule a public hearing for June 18, and instruct staff to publish the intent to enact. Ms. Dauler seconded the motion. The motion passed unanimously.

OFFICIAL REPORTS AND CORRESPONDENCE

Mayor's Report. Mr. Welch reported both he and Mr. King had testified in West Chester last week to the Senate Democratic Policy Committee on a 10 percent drink tax. The hearing addressed the law-enforcement and nuisance-crime issues that are particularly common in college communities. According to a Pennsylvania Economy League study, homeowners in college towns have a higher local-tax burden than other homeowners because students generally don't add to local income-tax revenue. Mr. Welch noted that many of the comments were in favor of a drink tax. He noted that one brewer spoke that some bars are trying to do the right thing and should not be punished.

Mr. Welch also invited Council and the public to attend a press conference on Thursday, May 10, addressing the need for consistent funding for public transportation. He commented that this was one of several press conferences being held across the state as part of an initiative from the Governor's office.

President's Report. Ms. Dauler announced that there would be a work session following this regular meeting. She also reported the Mayor would be hosting the University/Borough liaison meeting on May 15 and asked Council members to forward suggested agenda items to the Mayor.

Regional Liaison Reports. Mr. Daubert reported the Centre Region Council of Governments (COG) ad hoc committee to discuss the code revisions for 2007 met and Council members express their concerns for a second means of egress for second floor properties. Currently, the Centre Region Code has regulations that any floor 20 feet above ground would need a second egress. There was pressure to raise that standard to 25 feet. Mr. Daubert asked if Council members agreed. Mr. Kern said he was on the COG Code Committee and he has strongly urged that the 20 foot standard not be increased. All members agreed that both Mr. Daubert and Mr. Kern should take a stand to keep the 20 foot standard in place.

Staff/Committee Reports. Mr. Fontaine reported he had met last week with officers of the Off Campus Student Union and would be arranging a meeting with Council in the future.

Mr. Fontaine encouraged Council and the public to attend a meeting to obtain input on Centre Ride program on Friday, May 18, 2007 in the CATA Board Room at 2081 W. Whitehall Road, at 1:00 p.m.

Mr. Fontaine also noted that the first quarterly report of enforcement activities from the Health Department was included with the agenda. Mr. Daubert asked if there were rental properties that were nearing suspension. Mr. Fontaine said that there were a few properties that had seven or eight points, but none that were near the ten points needed for suspension consideration.

There being no further business, the regular meeting adjourned at 9:12 p.m. After a short recess, the work session was called to order by Ms. Dauler at 9:22 p.m.

Local Ordinance Prohibiting Smoking in Public Places. Ms. Dauler reminded Council that following the discussion on April 9, staff was instructed to prepare a revised ordinance on prohibiting smoking in public places and work sites within the Borough of State College. Mr. Fontaine explained the changes to the ordinance, which included adding a definition of private residence and deleting reference to requirements for posting of no-smoking signs. He noted the effective date would be January 15, 2008.

Mr. Henry provided an update on litigation with other government entities. He noted the Allegheny County ordinance has been litigated and the injunction has expired. Currently the Erie County case is before the Commonwealth Court but a date has not been set. Because there were two similar ordinances already in the Commonwealth Court system, Mr. Kern asked what the Borough's local ordinance would offer that is unique. Mr. Williams said that there were no significant differences. Mr. Kern asked the cost of defending this ordinance in the state supreme court. Mr. Williams said he believed the legal costs would be between \$8,000-10,000 to defend to the appellate court.

Mr. Daubert raised the issue of how this would affect fraternities. He noted the ordinance would not apply to private clubs where there are no employees. In some cases, a fraternity may have one employee that works in the kitchen for a few hours a day. Mr. Williams said he that fraternities may need a specialized definition. The residents' rooms would not be covered but the kitchen could be considered as an area where smoking was prohibited. Mr. Fontaine said that the ordinance can be written either to exempt fraternities by defining them as a private club or to include all areas of the fraternity as public except for the residents' rooms. Mr. Hahn said a public hearing should be held to hear the concerns expressed by fraternity members. He suggested the ordinance included language for both excluding and including fraternities (with exceptions placed on the residents' rooms).

Mr. Filippelli asked if state legislation could be appealed. Mr. Williams replied that it would probably be appealed by the tavern association but would take some time to go through the courts. He noted that the argument from the tavern association was that the ordinance would negatively impact the smaller neighborhood taverns.

Jerry Botalski, 600 East Pollock Road and a member of Penn State Students for Tobacco Awareness, read a prepared statement on the effects and dangers from secondhand smoke, specifically addressing the hazards for bartenders, waiters and waitresses. He urged Council to protect the health and welfare of the general public. He also summarized a recent survey conducted on the University Park campus, noting that 72.1 percent of the students were non-smokers and only 13.3 were social smokers. Over 74 percent of those surveyed supported a state-wide ban on smoking. He noted that Council may be concerned with the cost of defending the ordinance but he said he believed it was small in comparison to the medical costs related to secondhand smoke effects. He said that most bar owners supported a ban on smoking but were concerned with the possible loss of revenue. There was no evidence that a loss would occur or that business would be pushed into the townships. Mr. Botalski said there is progress being made in the number and growing support for a smoke-free environment in the State College community. The success of a local ordinance would depend on the inclusion of all businesses. Legal action would be minimized if all can benefit from the ordinance. He urged Council not to wait on state legislation. Scranton and Philadelphia have led the way with unchallenged ordinances and he urged Council to do the same.

Branden Tarbor, 322 South Allen Street, said the legal costs were estimated between \$8,000 to \$10,000. Earlier in the meeting, Council had approved the expenditure of \$300,000 to repair the roads. He said Council should not be reluctant to spend \$8,000 to protect the health of State College residents.

Mr. Kern asked about enforcement of the ordinance in relation to an appeal. Mr. Fontaine said the ordinance includes enforcement language. He noted the issue was not enforcement but rather defending the ordinance if a legal challenge is made. Mr. Humphrey asked if the ordinance could be enforced under a challenge. Mr. Fontaine said the proposed language sets an effective date of January 2008. In all likelihood, a challenge would be made prior to the effective date and an injunction would be issued.

Ms. Goreham noted that the Scranton ordinance deferred the effective date for bars by one year; this may be why that ordinance had not been challenged. She said the beneficial health effects are seen quickly and Pennsylvania is surrounded by states that have banned smoking in public places. She said this Council should move forward with a local ordinance.

Mr. Daubert said he believed the ordinance should be enforced by the Health Department only; currently there is language that allows the State College Police Department and Centre Region Code Administration officials to enforce it. Mr. Fontaine believed the code enforcement officers would be able to provide a wider enforcement area. Mr. Henry urged the Police Department be included because there would be complaints at all hours and the police would be able to respond.

Council asked that this be placed on a future agenda for further discussion.

Parking Business Plan. Arthur Caccavale, Parking Manager, presented a report and business plan for the parking system. He noted the report will be referred to the Transportation Commission for review and recommendation prior to Council action. Council consideration of the recommended changes will be scheduled at a future meeting.

Mr. Caccavale noted that the parking is a business and the parking fund needs to operate independently. The public parking covered in the report included the three garages, four parking lots, and one deck. He said the plan proposed to find ways to reduce the current parking fund deficit of \$846,199. He noted that by cutting costs and deferring some projects, the deficit can be reduced to \$393,037. By making other revisions to the rate structure, the deficit would be reduced by an additional \$51,680. Changes proposed in the rate structure do not include an overall hourly rate increase. The changes proposed are:

- Eliminate garage fractional rates
- Set a rate of \$.50 per hour from 1:30 to 6:30 a.m. in the garages
- Increase the Sparks Street monthly rental fee to \$40
- Establish a range of monthly rates for the garages, which would include commuter versus 24 hour parking
- Increase hours of enforcement for street meters to 10:00 p.m. (except Thursday) while reducing the evening rates from \$.75 to \$.50.

Mr. Caccavale said that these changes would result in a reduced deficit of \$341,357. The Transportation Commission would receive the report on May 8 and would make recommendations to Council by June 12. He hoped that Council would be able to take action on the plan by June 18 with an effective date of July 1, 2007.

Mr. Fontaine acknowledged the work that went into this report and thanked Mr. Caccavale. He explained that Mr. Caccavale was changing the focus of the parking system to a more business-like approach. The cashiers were being retrained to provide customer service and he had seen an improvement in the system.

There being no further business, the work session adjourned at 10:30 p.m.

Respectfully submitted,

Cynthia S. Hanscom
Assistant Borough Secretary