

# 15418

July 10, 2001  
Kutztown, PA

The regular meeting of the Kutztown Borough Council was called to order at 7:30 p.m. by the President, Mr. Eric A. Ely, with other members present: Mr. Malcolm A. Eidle, Mr. Carl W. Mantz, Mr. Archie L. Follweiler, Jr., Mrs. Jan M. Crooker, and the Mayor, Mr. James W. Schwoyer. Mr. John E. P. Schmoyer was absent. Mr. Timothy G. Dietrich, Borough Solicitor; Mr. Keith A. Hill, Borough Manager/Treasurer; Mr. Richard F. Celmer, representing the Borough's planning and water/wastewater engineering firm of Spotts, Stevens, & McCoy, Inc.; Mr. Bruce Follweiler, Municipal Utilities Division Superintendent; Sergeant James Hirko, Jr.; Mrs. Bonnie Bray, Borough Secretary; Mr. Kenneth Kern, member of the Borough Planning Commission; Veronica Arehart, representing the Tri-Valley YMCA, Fleetwood, PA; Mr. Robert Watrous, Director of Judicial Affairs at Kutztown University; Residents James Gangewere, Mark Gangewere, Scott Wagaman, Marge Hassler, Elouise Slick, Philip Walck, Dorothy Frey, Sandy Muth, Robert E. Gangewere, Joan Gangewere, Frances Leibensperger, Keith Gery, Betty Schroeder, Evelyn Adams, Dorothy Fox, Janet Starner, Jed A. Starner, Yvonne Alesi, Carol Erb, Roxanne Moyer, Fay A. Werley, Dave Walker, Diane Thomas, Karlene Brintzenhoff, Jule and Mike Rhode, Jacob Sayshen, Mary Ryan, Kelly Ryan, Patrick Ryan, Abigail Ryan, Robert N. Shade, Bud Lambert, William Alesi, Art Goldberger, Dan Allen, Harry D. Eshleman, Barbara N. Peters, William Fox, Jonathan A. Grim, Daniel Courtenay, George Muugi, and Jasperdean Kobes; Chris Santarelli of Santarelli Construction, Temple, PA; Carl Lobb, Kutztown property owner; Business owners Richard Smith and Donald Miller; Alexandra Rodriguez, reporter for the Reading

Eagle/Reading Times; and Kelly Harding, reporter for The Kutztown Area PATRIOT were also present.

President Ely recessed the Council meeting at 7:31 p.m. for the purpose of conducting a Public Hearing on the proposed ordinance amending Chapter 225, entitled "ZONING," of the Kutztown Code so as to extend the student home separation requirement to certain portions of the C-C and C-1 Zoning Districts. Mr. Dietrich reported that the Public Hearing was advertised in the June 14 and 21, 2001 issues of The Kutztown Area PATRIOT and the May 31, 2001 issue of the Reading Times/Reading Eagle, as it appears in the Proofs of Publication in the office of the Borough Secretary. Mr. Dietrich read aloud the caption of the proposed ordinance amending Chapter 225, entitled "ZONING," of the Kutztown Code so as to extend the student home separation requirement to certain portions of the C-C and C-1 Zoning Districts. President Ely asked if anyone had any questions or comments.

Michael Rhode addressed Council to oppose the enactment of the proposed ordinance prohibiting students in commercial zones abutting residential zones. He first thanked Mr. Archie Follweiler for his help in completing a real estate analysis on Mr. Rhode's property located at 224 West Walnut Street. He cited many incidents over the past 23 years involving property damage, nuisances and threats involving students. Mr. Rhode explained that his property will probably be affected more than any other property by the proposed three-story dormitory, with college students living on all four sides. He pointed out that in the past, his family never opposed the neighbors with student rentals, but rather he is opposing the concentration of students in the three-story building. He stated that the community is now thoroughly ruined, and he is being forced to move after

# 15420

75 years of his family living in the same house. Mr. Rhode stressed that the only way his family can afford to relocate is to make their home a rental property for students or to sell it as the same, and if Council enacts the ordinance tonight, he will be forced to take a \$30 to \$40 thousand dollar loss of property value if he cannot sell as a rental property. He blamed the University as much as anyone. He told Council that his wife had missed work because of an anxiety attack. Mr. Rhode pleaded with Council to consider changing the zoning to high density, with a limit of six renters.

Robert Gangewere indicated that he was in favor of Council enacting the ordinance, stating that it's time for Council to represent the people and do something about the problem of overloading the town with students. He suggested that the University should provide for student housing. Diane Thomas supported the Rhodes' position. Philip Walck supported the amendment because it will prevent further development. Karlene Brintzenhoff indicated that she is in favor of the amendment but would like Council to consider excluding the 200 block of West Walnut Street in the amendment. She commented that Mike and Jule Rhode are godparents to her children and feels she is smack in the middle of a war, on one side supporting the amendment and on the other side opposing the amendment because of the Rhodes.

President Ely responded that Council may consider allowing owner-occupied student housing in the Borough. Kelly Ryan recommended amending the proposed ordinance to allow low density zoning to accommodate students living on their own if the proposed ordinance is not already set in stone. President Ely replied that he is not in favor of more students living alone. Jacob Sayshen, owner of the Kutztown shoe factory, asked if the shoe factory could be converted to dormitories. Mr. Ely responded that

dormitories would not be permitted in the shoe factory. Mrs. Yvonne Alesi reminded Council they must look at long range plans asking themselves how the town is going to be able to accommodate students in the future. She supports the amendment and further commented that if Kutztown University wants more students, then the University should accommodate them in Maxatawny Township. Mr. Daniel Allen vigorously opposed the zoning amendment because he will not be able to sell his house. He pointed out that the proposed zoning amendment does not make any difference for the people living in the 200 block of West Walnut Street. Janet Starner addressed Council as a resident of the Borough. She stated that she has great compassion for the residents of the 200 block of West Walnut Street, but that the proposed zoning amendment is not about the 200 block of West Walnut Street, but rather it's about the entire community. She commented that the proposed zoning amendment is a logical remedy for the situation the Borough is now facing, further explaining that the residents are at the "*tipping point*," a term used by biologists to designate "near extinction." She reminded everyone that not just the voices heard tonight should be considered but also the 1996 Borough Comprehensive Plan. She read from Page 198 of the Comprehensive Plan. Mrs. Starner asked Council to also consider a solution for the residents of the 200 block of West Walnut Street. Donald Miller expressed his opposition to the ordinance, pointing out it is too late. President Ely adjourned the Public Hearing and reconvened the Council meeting at 8:13 p.m.

Mr. Ely acknowledged the comments submitted by the Berks County Planning Commission and the Borough Planning Commission regarding the proposed ordinance amending Chapter 225 of the Kutztown Code.

# 15422

Mr. Ely opened up the discussion to Council. Mrs. Crooker commented that she wrote the passage from the 1996 Borough Comprehensive Plan read earlier by Mrs. Starner. She apologized that there is no perfect solution for everyone but that Council needs to do what is best for most everyone. Mrs. Crooker suggested that the Planning Commission review the Kutztown Code to recommend some type of relief for the residents of the 200 block of West Walnut Street. A motion was made by Mrs. Crooker, seconded by Mr. Mantz, Resolved, That the following ordinance be enacted and ordained, with the recommendation for the Borough Planning Commission to review the Kutztown Code so as to provide Council with possible solutions to offer some relief to the residents of the 200 block of West Walnut Street:

## ORDINANCE NO.6-2001

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA AMENDING THE CODE OF THE BOROUGH OF KUTZTOWN, BY AMENDING SECTION 225-25.1 ENTITLED "STUDENT HOME", OF CHAPTER 225 ENTITLED "ZONING", SO AS TO EXTEND THE STUDENT HOME SEPARATION REQUIREMENT TO CERTAIN PORTIONS OF THE C-C AND C-1 ZONING DISTRICTS WHICH ADJOIN THE R-1, R-2 AND R-3 RESIDENTIAL DISTRICTS.

Mr. Mantz commented that it is extremely imperative that the residential character of the Borough be maintained, particularly in light of the passage from the 1996 Comprehensive Plan which was read earlier by Mrs. Starner in regard to the family contributing the most to the community. He pointed out that students are a part of the community, but not in enclaves throughout the community. He empathized with Michael and Jule Rhode, as well as Dan Allen and similarly situated residents of the 200

block of West Walnut Street and urged Council to consider Mrs. Crooker's proposal for some modification through a subsequent ordinance as a remedy for the residents in the 200 block of West Walnut Street. The following vote was cast: Mrs. Crooker, Aye; Mr. Mantz, Aye; Mr. Follweiler, Aye; Mr. Eidle, Aye; and Mr. Ely, Aye. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Follweiler, Resolved, To approve and accept the Minutes of the May 8, 2001 Council Meeting, with the following correction:

On page 15364, the sentence immediately following the motion awarding the 2001 Streets Project shall read: "The Borough Manager indicated to Council that a change order will need to be subsequently issued to delete portions of the scope of work to meet the budget."

Passed by unanimous vote.

President Ely asked if there was anyone who wished to address Council before proceeding with the agenda. Mr. Donald Miller asked Council to consider not starting the street work on Main Street until after this Friday, July 13, 2001.

Under Borough Planning Commission, regarding the request of the Planning Commission to advertise for the position of recording secretary and to offer a \$50 appearance fee to the recording secretary for each Planning Commission meeting, in addition to an hourly rate of \$13 for clerical work done outside the meeting, Mr. Hill suggested paying a two-hour minimum instead of the \$50 appearance fee, especially because the recording secretary is not required to do stenographic record keeping. Mr. Kern countered that the person filling this position will provide invaluable assistance to

# 15424

the Commission as it works to plan for the future of Kutztown, and the technical support required of this position will become even more critical with the additional workload of a joint comprehensive plan. He added the recording secretary must have the skills to be able to condense the material discussed at meetings. Mrs. Starner agreed that writing summaries of minutes is more difficult than simply transcribing minutes verbatim; and in addition to these skills, the Planning Commission wants to attract a well-qualified candidate with computer skills and electronic mail capacity. A motion was made by Mrs. Crooker, seconded by Mr. Eidle, Resolved, To authorize advertisement, if needed, for the position of the recording secretary for the Borough Planning Commission and to offer a \$50 appearance fee to the recording secretary for each Planning Commission meeting, in addition to an hourly rate of \$13 for clerical work done outside the meeting. Passed by unanimous vote.

Mr. Kern reported that the Planning Commission reviewed the need for new sidewalk on the south side of Normal Avenue in the section between the Saucony Bridge on Normal Avenue and the new Wilson Manor housing facility at the intersection of Willow Street and Normal Avenue; and after considerable discussion and consultation of the Comprehensive Plan, the Planning Commission recommends that Borough Council require that sidewalk be constructed on the south side of Normal Avenue between the Saucony Bridge on Normal Avenue and the new Wilson Manor housing facility at the intersection of Willow Street and Normal Avenue so as to provide a safe pathway for students who walk to school and for the residents of the new Wilson Manor housing facility. A motion was made by Mrs. Crooker, seconded by Mr. Mantz, Resolved, To accept the recommendation of the Borough Planning Commission to require that

sidewalk be constructed on the south side of Normal Avenue between the Saucony bridge on Normal Avenue and the new Wilson Manor housing facility at the intersection of Willow Street and Normal Avenue; And Be It Further Resolved, To set a deadline of September, 30, 2001 for the sidewalk work to be completed. Passed by unanimous vote.

Under Public Relations Committee, a motion was made by Mrs. Crooker, seconded by Mr. Mantz, Resolved, To accept the Borough Code Office Report for June, 2001. Passed by unanimous vote.

Mrs. Crooker reviewed the Borough Code Office Report for Quarterly Comparison of Fees for the Second Quarters of 2000 and 2001.

Under Police Committee, Mayor Schwoyer submitted the Police Report for the month of June, 2001, copies of which were given to Council. He reported the following fines were collected:

District Justice Greth	May, 2001	\$7,366.78
Clerk of Common Pleas	May, 2001	\$1,013.75
Secretary's Office	June, 2001	\$2,720.00
Commonwealth of PA	January-June, 2001	\$1,856.96

Mr. Dietrich presented and read aloud the caption of the proposed ordinance authorizing the Borough of Kutztown to enter into an agreement with Berks County and other political subdivisions to provide reciprocal emergency assistance. A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To introduce the proposed ordinance authorizing the Borough of Kutztown to enter into an agreement with Berks County and other political subdivisions to provide reciprocal emergency assistance, And



# 15426

Be It Further Resolved, To authorize advertisement with intent to enact and ordain said proposed ordinance at the August 21, 2001 Council meeting. Passed by unanimous vote.

Mayor Schwoyer announced to the public that the street and storm sewer work on Main Street will soon begin and may cause some temporary inconveniences for several weeks.

Under Streets & Refuse Committee, a motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To approve Change Order No. 1 for Bracalante Construction, deleting Items A and B and completing Items C2, D and E as needed for the 2001 Streets Project, including the deletion of the reconstruction of Chestnut Street from South Laurel Street to Park Alley and Normal Avenue from the elementary school bridge to Constitution Boulevard for a total decrease of \$66,764.00. Passed by unanimous vote.

Mr. Mantz reviewed the Engineering and Traffic Study pertaining to the restriction of left turn movement from Strausser Alley onto Sacony Alley, conducted by Great Valley Consultants in accordance with PennDOT Publication 201, Engineering and Traffic Studies, Section 201.54, Turn Restrictions. He reported that Joseph Rogosky of Great Valley Consultants is recommending that left turn movements be prohibited from Strausser Alley onto Sacony Alley in the northbound direction. Mayor Schwoyer suggested installing a stop sign on North Baldy Street at the intersection of Sacony Alley, traveling in a northbound direction. A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To authorize the Solicitor to prepare an ordinance to prohibit left turn movements from Strausser Alley onto Sacony Alley in the northbound direction, And Be It Further Resolved, To incorporate Mayor Schwoyer's request that a stop sign be placed

on North Baldy Street at the intersection of Sacony Alley, traveling in a northbound direction. Passed by unanimous vote.

Mr. Kelly Ryan commented that better policing of Sacony Alley is required since vehicles are frequently parked in the alley and cause congestion.

Under Personnel Committee, President Ely called for an Executive Session at 8:45 p.m. to discuss nonuniformed and uniformed personnel matters, as well as a real estate matter. The Executive Session ended and the Council meeting reconvened at 9:40 p.m.

A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To ratify authorization for the Borough Secretary to send the June 25, 2001 letter to Jesse Kemp, advising Mr. Kemp that unless he responds to the Borough by July 16, 2001 regarding his intentions to return to his position within a reasonable period of time thereafter, the Borough will be forced to take action to terminate his position and all benefits with the Borough and to hire a new employee to fill his position. Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To ratify approval to advertise for the full-time position of Refuse Laborer I. Passed by unanimous vote.

Under Recreation Committee, a motion was made by Mr. Follweiler, seconded by Mr. Mantz, Resolved, To approve the June 27, 2001 request from St. John's Evangelical Lutheran Church, Kutztown, PA, to authorize a special swimming pool fee of \$1.00 per person for Tent Troupe, a visiting youth group consisting of approximately 25 members, performing in Kutztown on July 17, 2001. Passed by unanimous vote.

# 15428

A motion was made by Mr. Follweiler, seconded by Mr. Eidle, Resolved, To approve the July 5, 2001 request from the Tri-Valley Branch of the YMCA of Reading and Berks County for the use of the Kutztown Swimming Pool for recreational swim time for the children enrolled in the playground program at the Kutztown Borough Park on Monday mornings, July 16, 30 and August 6, 2001 from 10 a.m. to 11 a.m., during which time there are no Borough swim lessons scheduled, with the understanding that the YMCA will absorb the cost of the lifeguards for the hour. Passed by unanimous vote.

Under Grounds & Buildings Committee, a motion was made by Mr. Follweiler, seconded by Mr. Mantz, Resolved, To approve Change Order No. 6 in the amount of \$1,720.00 for Spotts Brothers, Inc., Schuylkill Haven, PA, to replace gutter and downspouts on the existing building for the Public Works Facility project. Passed by unanimous vote.

Under Public Works Committee/Electric Supply Engineering, a motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To increase the pole attachment fee for Borough-owned poles to \$20 per pole. Passed by unanimous vote.

Under Telecommunications, a motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To accept any extensions on deadline dates granted to the Borough by any of the vendors submitting proposals to the Borough's second set of RFP's for the telecommunications project. Passed by unanimous vote. Mr. Ely asked Council if there were any objections to continuing with the telecommunications project. There was a consensus among Council members for the Borough Manager and the Information Technologies Director to continue to negotiate the terms of the telecommunications project and strive toward revenue projections. Mr. Follweiler asked if Council should

consider holding another special meeting to bring the public up-to-date on the telecommunications project. Mr. Ely responded that the telecommunications project was already discussed extensively at the special public meeting held on May 22, 2001.

Under Wastewater Engineering, Mr. Eidle had nothing to report.

Under Water Supply Engineering, Mr. Eidle reported that the pilot testing is completed for the Water Treatment Plant.

Under Finance Committee, Mr. Ely had nothing to report. Mr. Hill advised that if negotiations are completed for the telecommunications project before the August 21, 2001 Council meeting, Council may want to consider scheduling a special meeting sooner.

Under Miscellaneous, Mr. Ely tabled the agenda item regarding scheduling and advertising for a special workshop with Council and Borough staff members until the next Council meeting.

Mr. Ely reviewed the recommendation from the Town of Bloomsburg to oppose the Amusement Tax Legislation, House Bill No. 866. A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To adopt the following resolution:

## RESOLUTION NO. 17A-2001

BE IT RESOLVED BY the Borough Council, Borough of Kutztown, Berks County, Pennsylvania, that it opposes the adoption of legislation, House Bill No. 866 (PN 965), in the General Assembly to reduce the amount a municipality may impose on Amusements within their municipality to four (4%) percent;

BE IT FURTHER RESOLVED that

- The Amusement Tax is paid by the user as an “add-on” to the price of admission;
- The “business” does not pay the amusement tax, therefore, it does not affect their bottom line;
- “Businesses” affected by the amusement tax in Pennsylvania are thriving;

# 15430

- The “industry” will continue to charge the total cost and keep the portion of the tax reduction as profit providing no benefit to the user;
- Most neighboring states charge Sales Tax on amusement prices, ranging from 3.5% to 6%;
- Most neighboring states allow local sales or admission taxes, ranging from 2% to 11.5%;
- Some neighboring states have total maximum rates of 15% or more with Pennsylvania’s maximum 10%; and
- The proposed legislation will reduce the amount across the State with the exception of Pittsburgh and Philadelphia, which brings to question, why the exemption.

IT IS FURTHER RESOLVED that the Borough Council of the Borough of Kutztown will need to increase its Real Estate Taxes by Fifteen Thousand Dollars (\$15,000.00) to make up the loss of revenue due to the proposed legislation.

The Borough Council, Borough of Kutztown, hereby authorizes that this Resolution be distributed to appropriate State and Local officials as well as the appropriate statewide organizations representing the interest of local government including education.

DULY ADOPTED AS A RESOLUTION this 10<sup>th</sup> day of July, 2001, by the Council of the Borough of Kutztown, Berks County, Pennsylvania, in lawful session duly assembled.

Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To approve the expenses associated with the Berks County Association of Boroughs clambake.

Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To appoint Donald Sechler as a member of the Kutztown Municipal Authority, whose term will expire in December, 2001. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To authorize the President and Vice President (Finance Committee) to review and approve the payment of bills and authorize the necessary transfer of funds, with the list of bills to be reviewed and approval ratified by the entire Council at the July 31, 2001 meeting;

**15431**

And Be It Further Resolved, To adjourn the Council Meeting upon vote. Passed by  
unanimous vote. The meeting ended at 10:03 p.m.

Prepared and  
Attested by: Bonnie Bray  
Secretary