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August 5, 2003
Kutztown, PA

The regular meeting of the Kutztown Borough Council was called to order at 7:30 p.m. in the Kutztown Municipal Building 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. Gennaro A. Marino. Mr. James W. Schwoyer was absent. Mr. Timothy G. Dietrich, Borough Solicitor; Mr. Jaymes A. Vettraino, Borough Manager/Treasurer; Mr. Dale Kratzer, representing the Borough's planning and water/wastewater engineering firm of Spotts, Stevens, & McCoy, Inc.; Mr. Bruce Follweiler, Municipal Utilities Division Superintendent; Mr. Theodore R. Cole, Chief of Police; Mr. Richard J. Diehm, Planning/Zoning Administrator; Mr. Frank P. Caruso, Director of Information Technologies; Bonnie Bray, Borough Secretary/Human Resources Director; Mr. Kenneth Kern, member of the Borough Planning Commission; Mr. Robert Watrous, Director of Judicial Affairs at Kutztown University; Mario Basile, Pennsylvania State Treasury; Camille Bartlett, Manager – Administrative Services & Food Contract Office, Kutztown University; Dave Remaley, Zoning Hearing Board member; Jim Sutherland and Bill Mioski of Kutztown University; Steven Haddad, Bieber Tourways; Robert and Joan Gangewere, Evelyn Adams, Bill and Dorothy Fox, Craig Koller, Y. Kroninger, Janice Koller, Marge Hassler, and Kevin McCloskey, all Kutztown residents; Merav Bushlin, reporter for the Reading Eagle; and Eric Veronikis, reporter for The Kutztown Area PATRIOT were also present.

Mr. Mario Basile of the Pennsylvania Department of Treasury addressed Council and the community in regard to the various programs offered by the Pennsylvania State

Treasury, including Pennsylvania's Abandoned and Unclaimed Property Program; the AgriLink program which offers low-interest loans for Pennsylvania farmers; Tap 529, a plan that offers tax advantages to save for college; Treasury Business Outlet, a program which provides services to small businesses; and the Invest Program for local governments and nonprofit organizations to help them get the best return on their money.

A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To approve and accept the Minutes of the July 15, 2003 Council Meeting. Passed by unanimous vote.

President Ely asked if there was anyone who wished to address Council before proceeding with the agenda, and there was no response.

Under Borough Planning Commission, Mr. Kern pointed out that the Commission's recommendation regarding Zoning Appeal No. Z-03-06 had already been discussed at the June 24, 2003 Council meeting.

Mr. Kern reported that the Commission recommends that the Borough accept the 90 day grant of time extension for Phase 2 of the Sacony Commons Land Development. A motion was made by Mrs. Crooker, seconded by Mr. Eidle, Resolved, To accept the 90 day grant of time beginning August 11, 2003 to render a decision on Phase 2 of the Sacony Commons Land Development. It was noted that no response has been received from PaDEP concerning the joint permit. Passed by unanimous vote.

Mr. Kern advised Council that the Commission recommends that the Borough accept the 60 day grant of time extension for the Hilltop Subdivision. A motion was made by Mrs. Crooker, seconded by Mr. Eidle, Resolved, To accept the 60 day grant of

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time beginning July 9, 2003 concerning the Hilltop Subdivision. Passed by unanimous vote.

Subsequent to the Commission's recommendation, a motion was made by Mrs. Crooker, seconded by Mr. Mantz, Resolved, To grant a modification requested by GVH & Associates, Inc., to file only a final plan for the proposed land development at East Main and North Elm Streets. Passed by unanimous vote.

Mr. Kern reviewed the Commission's following concerns regarding the proposed development in Maxatawny Township, known as University Commons Apartments: 1.) the plan denotes public water and sewage, and the Commission is unaware of the availability of water and sewage; 2.) storm water management concerns; and 3.) there is no provision for the proposed interchange of the Kutztown bypass and College Boulevard documented on the plan. A motion was made by Mrs. Crooker, seconded by Mr. Follweiler, Resolved, To send a letter to Maxatawny Township to advise them of the Commission's concerns as noted above. Passed by unanimous vote.

Mr. Kern noted that Appeal No. Z-03-07 was withdrawn by the applicant.

Under Public Relations Committee, Camille Bartlett, Manager, Administrative Services & Food Contract Office, Kutztown University, presented to Council the proposed university shuttle bus service, which will start August 25 and run continuously between 7:30 a.m. and 3:30 p.m., Monday through Friday. She reviewed both the on-campus continuous loop and the off-campus continuous loop. Initially, the service will be offered to university students only. All students will be charged a \$15 fee. Ms. Bartlett advised Council that the University is looking to partner with the Borough in the future if there is an interest and/or need. Mrs. Crooker applauded the university for

implementing the shuttle service. Councilmen Follweiler and Eidle also agreed that the shuttle service will provide a great opportunity for the community. Ms. Bartlett reported that the plan has been reviewed with Chief Cole and Mr. Vettrano. On behalf of the University, Ms. Bartlett asked Council to approve the placement of signs at the various bus stops along the route. A motion was made by Mrs. Crooker, seconded by Mr. Follweiler, Resolved, To approve the bus stops and placement of bus stop signs, with the understanding that the signs will be provided by the University and will be installed by Borough personnel. Passed by unanimous vote.

A motion was made by Mrs. Crooker, seconded by Mr. Eidle, Resolved, To hire Schnader Harrison Segal & Lewis, LLP, Philadelphia, PA, to review the Borough's proposed parade ordinance for compliance with the First Amendment (of the Bill of Rights to the United States Constitution), at a cost not to exceed \$3,500. Passed by unanimous vote.

A motion was made by Mrs. Crooker, seconded by Mr. Follweiler, Resolved, To donate an E-mail address and host a web site for the Kutztown Community Partnership; And Be It Further Resolved, To donate an individual pool pass for the Partnership's silent auction in September. Passed by unanimous vote.

Mrs. Crooker noted that the Code Office investigated and confirmed a report of building debris in Sacony Creek along Rhodes Alley, in response to a resident's allegation at the July 15, 2003 Council meeting. She further indicated that the person responsible was contacted and the debris was removed by this person.

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Mrs. Crooker noted that the Borough of Kutztown was awarded Second Place recognition in the 2003 Borough News Municipal Report contest for the preparation of an outstanding newsletter or periodic report in 2002 by the *BOROUGH NEWS*.

Mrs. Crooker announced that Hometown Utilicom will hold an open house on August 23, 2003 from 11 a.m. to 3 p.m. to celebrate its first-year anniversary. Over concern about the cost of the celebration, the Mayor wanted to know what the Borough's expectations were for the open house. Mrs. Crooker responded that the event is being held to show the residents what has been accomplished during the first year. Mr. Vettrano commented that HomeTown Utilicom's first Annual Report will be unveiled at the open house.

Under Police Committee, Chief Cole reported the following fines were collected:

District Justice Greth	June, 2003	\$8,394.82
Clerk of Common Pleas	June, 2003	\$133.75
Secretary's Office	July, 2003	\$1,550.00
Commonwealth of PA	Jan. 1 – June 30, 2003	\$1,493.69

Chief Cole read aloud the following Proclamation for a disability parking space at 129 West Walnut Street:

PROCLAMATION

TO WHOM IT MAY CONCERN:

In accordance with the authority granted me as Mayor of the Borough of Kutztown, under the provisions of § 212-7, "Powers enumerated," of Chapter 212, "Vehicles and Traffic," of the Code of the Borough of Kutztown, enacted by Ordinance No. 12-1995, which was enacted on December 26, 1995, and approved on December 30, 1995, I, Gennaro A. Marino, Mayor of the Borough of Kutztown, do hereby proclaim the following area as a disability parking zone:

- (1) One space at 129 West Walnut Street beginning at a point 24 feet west of the intersection of West Walnut Street and Greenwich Street in a westerly direction for a distance of 20 feet.

This Proclamation shall become effective on September 15, 2003 at 12:01 AM prevailing time unless rejected by resolution by the Council of the Borough of Kutztown adopted before the aforesaid effective date.

In witness whereof, I have hereunto set my hand and caused the seal of the Borough of Kutztown to be affixed hereto, this 5th day of August, 2003.

Under Streets & Refuse Committee, Mr. Follweiler reviewed the proposal and costs to open a new Rhodes Alley between Keiter Alley and Albright Alley. Great Valley Consultants, Wyomissing, PA, submitted an estimated cost of \$6,850.00 to prepare an Ordinance Plan for Rhodes Alley, including legal descriptions for acquisition of right-of-way from four property owners involved for the relocation of Rhodes Alley between Keiter and Albright Alleys and an estimated construction cost estimate of \$23,512.50. Mr. Vettrano pointed out that the proposed right-of-way descriptions would fall under this year's budget and the construction costs would be budgeted for 2004. He also noted that the legal costs would be minimal, whether they fall under the 2003 or 2004 budget.

A motion was made by Mr. Follweiler, seconded by Mr. Eidle, Resolved, To authorize the Borough Transportation Engineer (Great Valley Consultants) to survey and prepare right-of-way plans and an ordinance plan, so as to open a new Rhodes Alley between Keiter Alley and Albright Alley and to prepare an ordinance plan to open Albright Alley between the new Rhodes Alley and Greenwich Street. Passed by unanimous vote.

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A motion was made by Mr. Follweiler, seconded by Mr. Eidle, Resolved, To authorize the Borough Solicitor to prepare right-of-way agreements, which do not adversely affect the use of the properties for the new Rhodes Alley. Passed by unanimous vote.

Mr. Archie Follweiler noted that the road work on Baldy Street will tentatively begin by August 6, 2003 and will continue for approximately two weeks. Mr. Vettrano explained that this road work will probably be delayed a couple of days.

Under Personnel Committee, Mr. Dietrich presented and read aloud the caption of the proposed ordinance amending the Code of the Borough of Kutztown to add Chapter 161, entitled, "PERSONNEL POLICIES." Mayor Marino complained that he did not receive a copy of the proposed ordinance in time to review before this meeting. Mrs. Crooker responded that she was here 1 ½ hours prior to the meeting to read her mail. A motion was made by Mr. Mantz, seconded by Mr. Follweiler, Resolved, To introduce the proposed ordinance amending the Code of the Borough of Kutztown to add Chapter 161, entitled "PERSONNEL POLICIES," And Be It Further Resolved, To authorize advertisement with the intent to enact and ordain said proposed ordinance at the August 26, 2003 Council meeting. Passed by unanimous vote.

Mr. Mantz tabled the agenda item to introduce and authorize advertisement of the proposed ordinance which directs the members of the Kutztown Police Department to actively enforce the liquor laws of the Commonwealth of Pennsylvania and of the Borough.

Mr. Dietrich read aloud the caption of the proposed resolution which censures Mayor Marino for ordering the Borough police personnel to cease an investigation in

which they had knowledge of a specific crime at a specific location in the Borough of Kutztown. A motion was made by Mr. Mantz, seconded by Mr. Follweiler, Resolved, That Council consider for approval the censure resolution as presented to Council in the distributed document. Mayor Marino strongly objected to this discussion under the premise that this item was not on tonight's agenda. Referencing the Borough's Resolution No. 6-2002, which adopted rules of order for Council meetings, Mr. Dietrich pointed out that the last sentence in Section 1 permits this procedure. In accordance with the last sentence in Section 1 of Resolution No. 6-2002, a motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To hear the matter at tonight's meeting regarding the proposed resolution censuring Mayor Marino. Passed by unanimous vote. An extensive discussion ensued regarding the police raid of February, 2003, which was the impetus for Council's action tonight.

On a related matter, Mayor Marino protested Council's press release in regard to the censure of the Mayor. He argued that Council had no right to do this. He questioned the legality of presenting the press release to him and the press at the same time. Mr. Dietrich assured him that this was legal. Speaking out, Mr. McCloskey accused Council of bushwhacking the Mayor. Mr. Archie Follweiler countered that the Mayor bushwhacked the police department with regard to the February, 2003 raid.

The motion made earlier by Mr. Mantz and seconded by Mr. Follweiler was restated as follows: A motion was made by Mr. Mantz, seconded by Mr. Follweiler, Resolved, That Council consider for approval the censure resolution as presented to Council in the distributed document. The following resolution was adopted:

RESOLUTION NO.13-2003

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A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, CENSURING MAYOR GENNARO MARINO FOR ORDERING BOROUGH POLICE PERSONNEL TO CEASE AN INVESTIGATION IN WHICH THEY HAD KNOWLEDGE OF A SPECIFIC CRIME AT A SPECIFIC LOCATION IN THE BOROUGH OF KUTZTOWN.

WHEREAS, the Borough Council, in its role as the elected governing body of the Borough of Kutztown, has the duty to oversee the health and safety of the citizens of the Borough; and

WHEREAS, Borough Council recognizes certain duties and powers to supervise the Borough's Police Department are granted to the Mayor by the Pennsylvania Borough Code; and

WHEREAS, it is Borough Council's responsibility to comment when the Mayor is not acting in the best interest of the citizens of Kutztown or not upholding his oath of office; and

WHEREAS, considerable Borough time and resources were invested by the Borough Police Department in an investigation into alleged illegal activity within the Borough of Kutztown, including the preparation of a search warrant; and

WHEREAS, Borough Police personnel had knowledge of the intent of individuals to commit a specific crime in a specific location within the incorporated boundaries of the Borough of Kutztown; and

WHEREAS, after an investigation by the Personnel Committee of this Borough Council, it was found that Mayor Marino directed the Chief of Police to not follow through with enforcement of Borough and Commonwealth laws in a specific location within the incorporated boundaries of the Borough of Kutztown; and

WHEREAS, the violations of law that Mayor Marino directed the Chief of Police to not enforce were not minor in nature; and

WHEREAS, Mayor Marino's directive caused Kutztown Borough Police personnel to not arrest 112 individuals for various violations of liquor laws within the incorporated boundaries of the Borough and caused Borough Police personnel to decline to assist other law enforcement personnel in making such arrests; and

WHEREAS, the Borough Council believes that Borough Police personnel should, when they have probable cause to believe that persons are violating the law, enforce the laws of the Borough of Kutztown and the Commonwealth of Pennsylvania and the

Borough Council is confident our police officers will perform their duty unless directed to do otherwise; and

WHEREAS, Mayor Marino's directive to the Kutztown Police Department was not in the best interests of the safety of all people in the Borough of Kutztown; and

WHEREAS, Mayor Marino's directive to the Borough Police Department was contrary to his sworn duty to uphold the laws of the Borough of Kutztown and the Commonwealth of Pennsylvania.

NOW THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, based upon the background described in the recital paragraphs of this Resolution, that this Borough Council disapproves of the actions of Mayor Gennaro Marino in directing the Kutztown Borough Police Department to refrain from executing a search warrant and pursuing arrests for violations of the laws of the Borough of Kutztown and Commonwealth of Pennsylvania when having probable cause to pursue such prosecutions.

BE IT FURTHER RESOLVED, that the Borough Council of the Borough of Kutztown does hereby reprimand and censure Mayor Gennaro Marino for his conduct, as described above.

BE IT FURTHER RESOLVED, that the Borough Council of the Borough of Kutztown does hereby respectfully request Mayor Gennaro Marino to issue such directives to the Kutztown Police Department as may be necessary to assure its police officers that they are once again authorized to enforce the liquor laws of this Borough and the Commonwealth of Pennsylvania whenever they have probable cause of the commission of an offense.

DULY ADOPTED AS A RESOLUTION this 5th day of August, 2003 by the Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, in lawful session duly assembled.

Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To hire Walter Hess as the Superintendent of Water & Wastewater Utilities on probationary status at an annual salary of \$49,000.00, contingent upon successful pre-employment testing. Passed by unanimous vote. Mr. Hess's starting date will be determined at a later time.

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A motion was made by Mr. Mantz, seconded by Mr. Follweiler, Resolved, To hire Noelle R. Haring as a seasonal part-time lifeguard at an hourly wage of \$7.85, effective immediately, contingent upon the agreement of pre-employment requirements. Passed by unanimous vote.

Under Recreation Committee, Mr. Mantz had nothing to report.

Under Grounds & Buildings Committee, Mr. Mantz had nothing to report.

Under Public Works Committee/Electric Supply Engineering, Mr. Eidle had nothing to report.

Under Telecommunications, Mr. Eidle reminded everyone of the Hometown Utilicom open house scheduled for August 23, 2003.

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

Under Water Supply Engineering, Mr. Eidle had nothing to report.

Under Finance Committee, a motion was made by Mr. Eidle, seconded by Mrs. Crooker, to ratify the Finance Committee's decision to purchase property, equipment and liability insurance coverage through Essick & Barr (Scottsdale/Columbia) at an annual proposed cost of \$100,103.00. Passed by unanimous vote. Mr. Vettraino noted that the cost included a terrorism option and accident insurance for the summer recreation programs. He also pointed out that the cost is nearly the same as last year, although the Borough's deductibles have increased.

Mr. Vettraino reported that the Borough is planning to adopt the new governmental accounting standards, as specified in GASB 34, which requires municipalities to use the accrual basis of accounting rather than a cash basis. The Borough is looking to execute a consulting contract with Long, Barrell & Co., Ltd., for

the purposes of planning and implementing these regulations, at an estimated cost of \$15,000. Mr. Vettraino reported that he hopes by January, 2005, the Borough will be on an accrual basis of accounting. A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To authorize the appropriate Borough officials to draft and execute a consulting contract with Long, Barrell & Co., Ltd., for the purposes of planning and implementing regulations put forth in GASB 34. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Follweiler, Resolved, To approve the preparation of review requirements for the purpose of soliciting qualified vendors for comprehensive financial software products, including GASB 34 compliance software. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Follweiler, Resolved, To approve the scheduling and advertisement of monthly Finance Committee meetings for the remainder of 2003 to be held the second Tuesday of each month at 3:30 p.m., starting August 12, 2003. Passed by unanimous vote. Mr. Ely explained that in the past, the Finance Committee met quarterly but because of the additional work that will be necessary to meet GASB 34 requirements, the Committee needs to meet more frequently.

Mrs. Crooker noted that the Borough was recently notified of its Aaa rating by Moody's.

Under Miscellaneous, 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 August 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

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August 26, 2003 meeting; And Be It Further Resolved, To adjourn this Council meeting upon vote. Passed by unanimous vote. The Council meeting ended at 8:54 p.m.

Prepared and
Attested by: Bonnie Bray
Secretary