



December 1, 2004  
Kutztown, PA

A special meeting of the Kutztown Borough Council was called to order at 7:30 p.m. in the Kutztown Municipal Building by the President, Mrs. Jan M. Crooker, with other members of Borough Council present: Mr. Malcolm A. Eidle, Mr. Carl W. Mantz, Mr. Archie L. Follweiler, Jr., Mr. Edwin K. Seyler, and the Mayor, Mr. Gennaro A. Marino. Councilman James W. Schwoyer was absent. Mr. Timothy G. Dietrich, Borough Solicitor; Mr. Jaymes Vettraino, Borough Manager/Treasurer; Mr. Bruce D. Follweiler, Superintendent of Electric and Telecom; Mr. Theodore R. Cole, Chief of Police; Mr. Frank P. Caruso, Director of Information Technology; Mrs. Gina M. Wiand, Director of Public Relations/Assistant Borough Secretary; Mr. Russell Samilo, Director of Finance/Assistant Treasurer; Residents Dave Remaley, Jay Druckenmiller, Jeff DeTurk, Mark Gangewere, Bob and Joan Gangewere, Brendan Strasser and; Mr. Mike Trask, reporter for the Reading Eagle/Reading Times were also present.

President Crooker asked if there was anyone who wished to address Council before proceeding with the agenda. There were no public comments.

Under Public Relations Committee, a motion was made by Mr. Seyler, seconded by Mr. Follweiler, Resolved, To approve the Corrado Annexation Plan, 426 and 440 Highland Avenue. Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Follweiler, Resolved to enact and ordain the following Ordinance:

#### ORDINANCE NO. 24-2004

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY,  
PENNSYLVANIA, AMENDING PORTIONS OF CHAPTER 75 OF THE



CODE OF THE BOROUGH OF KUTZTOWN, ENTITLED "CONSTRUCTION CODE," TO PROVIDE FOR AMENDING THE PENNSYLVANIA UNIFORM CONSTRUCTION CODE (UCC).

Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Mantz, Resolved to authorize the appropriate Borough officials to execute the Maintenance Agreement with Konica Minolta Business Solutions U.S.A., Inc., Horsham, Pennsylvania, for the annual service supply contract for the D1351 Copier in the Code Office, at an annual cost of \$396.00. Passed by unanimous vote.

President Crooker noted that Mr. Vettraino and Mrs. Fox were interviewed by a National Public Radio reporter about Internet access in rural communities. She said that the interview recently aired and was very good.

Mayor Marino stated that he received an advertisement in the mail from Service Electric claiming that their Internet service is faster than the Borough's Internet service. Mr. Vettraino stated that he would like to see the advertisement because that is an inaccurate statement. Mayor Marino made copies of the advertisement for Mr. Vettraino and Council members. Mr. Vettraino thanked the mayor and said he would look into it.

Under Personnel Committee, President Crooker called for an Executive Session at 8:06 p.m. for the purpose of reviewing proposed wages and benefit changes for designated employees, to discuss a non-uniformed hourly employee personnel matter and to discuss the Keith A. Hill litigation matter.

The Executive Session ended and the Council meeting reconvened at 8:25p.m.

Defer action on the proposed wages and benefit changes for designated employees until a future Council meeting.



A motion was made by Mr. Mantz, seconded by Mr. Seyler, Resolved, To accept the recommendation to uphold the Borough Manager's suspension of the Information Technologies Coordinator on November 19, 2004 with pay and from November 22, 2004 through December 1, 2004 without pay and to consider the recommendation of the Personnel Committee to extend the suspension through December 5, 2004, without pay, to place the Information Technologies Coordinator on probation upon return to work on December 6, 2004, for a period of 1,040 hours and to freeze wages for 2005. Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Seyler, Resolved, To adopt the Borough of Kutztown Policy for the Use of Any and All Borough Police Department Vehicles by the Chief of Police. Mayor Marino voiced his objections to the policy and said that it violates state codes. President Crooker asked Mr. Dietrich if the policy violates any state codes. He responded that it does not violate any state codes. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Seyler, Resolved, To accept the following changes to the Borough of Kutztown Policy for the Use of Any and All Borough Police Department Vehicles by the Chief of Police (under the "Policy" section): No hitchhikers, family members, relatives or friends are permitted, unless on official business; While a Borough Police Department vehicle is in the possession of the Chief of Police, the Chief of Police is fully responsible for the safety and maintenance needs with the Borough Garage when appropriate and for the safety of all passengers; and The Chief of Police's



personal insurance would be held responsible for any injuries or damages that would occur as a result of unauthorized personal use. Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Follweiler, Resolved, To accept the recommendation of the Personnel Committee to hire Janet E. Yost, Kutztown, Pennsylvania, as a Part-Time Library Clerk for the Louisa Gonser Community Library, at an hourly rate of \$8.42, effective December 2, 2004. Passed by unanimous vote

A motion was made by Mr. Mantz, seconded by Mr. Seyler, Resolved, To accept the request from the Borough Planning Commission to increase the hourly rate paid to Sandy Green, the Planning Commission Recording Secretary, from \$13.00 to \$14.00 for work performed outside of the Commission meetings. (This is in addition to the \$50 appearance fee she receives to take minutes at meetings.) Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Seyler, Resolved, To accept the request to award the bid for the supply of employee uniforms and floor mats to UniFirst Corporation, Hummelstown, Pennsylvania. Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Seyler, Resolved, To accept receipt of the requests from Jan M. Crooker, Malcolm A. Eidle, Carl W. Mantz, Archie L. Follweiler, Jr., James W. Schwoyer, Edwin Seyler and Gennaro Marino to defend them in the Keith A. Hill litigation matter and indemnify them from and against the costs of defense and the amount of any judgment entered regarding said litigation. Passed by unanimous vote.



A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To adopt the following Resolution:

RESOLUTION NO. 42-2004

A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA, APPROVING AND AUTHORIZING THE INDEMNIFICATION OF CERTAIN OFFICIALS OF THE BOROUGH OF KUTZTOWN WITH RESPECT TO THE COSTS OF DEFENSE AND ANY JUDGMENTS WHICH MAY ARISE FROM CERTAIN PENDING LITIGATION, AS SET FORTH IN THE COMPLAINT FILED ON JULY 19, 2004, IN THE U. S. DISTRICT COURT FOR EASTERN DISTRICT OF PA, CIVIL ACTION NO. 04-CV-0339.

WHEREAS, certain provisions of the Pennsylvania Political Subdivision Tort Claim Act (the "Act") address official immunity and indemnification; and

WHEREAS, the Act, as codified at 42 Pa. C.S.A. Section 8547, requires a local agency, such as the Borough of Kutztown, to provide indemnification through legal assistance to its officials and employees and defense of an action where it is alleged that the acts of officials or employees which gave rise to the claim were within the scope of the office or duties of such employees or officials and permits such indemnification where no such allegation is made; and

WHEREAS, the Act, as codified at 42 Pa. C.S.A. Section 8548, states that a local agency, such as the Borough of Kutztown, shall provide indemnification for the payment of judgments under certain circumstances when an action is brought against an employee of a local agency for damages on account of an injury to persons or property.

WHEREAS, the Council of the Borough of Kutztown, pursuant to Resolution No. 21-1992 and in accordance with the authority granted by 42 Pa. C.S.A. Section 8563, established certain policies and guidelines pertaining to the indemnification of officials and employees of the Borough of Kutztown with respect to potential punitive damage claims arising against such officials and employees in the course of the performance of their duties on behalf of the Borough of Kutztown; and

WHEREAS, there is currently pending an action, captioned "Keith A. Hill vs. Borough of Kutztown and Gennaro Marino, Mayor of Kutztown, in his individual and official capacity, Civil Action No. 04-cv-0339, in the U. S. District Court for Eastern District of PA," filed on July 19, 2004 (the "Litigation"); and

WHEREAS, in the Litigation, the Plaintiff therein asserts claims against certain persons who are officials of the Borough of Kutztown; and

WHEREAS, such officials of the Borough of Kutztown have, in writing,



requested that the Borough of Kutztown indemnify such officials for any defense costs, liability and judgments arising out of the Litigation; and

WHEREAS, the Council of the Borough of Kutztown desires to provide, under certain circumstances, indemnification to said officials for any such judgment, as is further set forth hereinbelow, in accordance with applicable statutes of the Commonwealth of Pennsylvania and applicable decisions of the courts of the Commonwealth of Pennsylvania.

WHEREAS, the Council of the Borough of Kutztown desires to provide such indemnification to such officials as is further set forth hereinbelow.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Kutztown, Berks County, Pennsylvania and it is hereby RESOLVED AND ADOPTED by the authority of the same, as follows:

1. Pursuant to the authority of the Act and Resolution No. 21-1992 of the Council of the Borough of Kutztown, the Borough of Kutztown shall, and it hereby does, indemnify each of the following named individuals, each constituting an "employee" as defined in 42 Pa. C.S.A. Section 8501, from and against the costs of defense of the Litigation and the claims described in the aforesaid Litigation, unless and until there is a judicial determination that the acts of any such employee giving rise to the claim were not within the scope of the office or duties of such employee:

- (a) Jan M. Crooker
- (b) Malcolm A. Eidle
- (c) Carl W. Mantz
- (d) Archie L. Follweiler, Jr.
- (e) James W. Schwoyer
- (f) Edwin Seyler
- (g) Gennaro Marino

2. The aforesaid defense indemnification shall be subject to the provisions of 42 Pa. C.S.A. Section 8547(c), regarding the control of litigation and employee cooperation in the defense of the Litigation.

3. Pursuant to the authority of the Act and Resolution No. 21-1992 of the Council of the Borough of Kutztown, the Borough of Kutztown shall, and it hereby does, agree to indemnify each of the following named individuals, each constituting an "employee" as defined in 42 Pa. C.S.A. Section 8501, from and against the amount of any judgment entered in the Litigation, against any such individual, but only to the extent such indemnification may be permitted by applicable Pennsylvania statutes and decisions of the courts of the Commonwealth of Pennsylvania:

- (a) Jan M. Crooker
- (b) Malcolm A. Eidle



- (c) Carl W. Mantz
- (d) Archie L. Follweiler, Jr.
- (e) James W. Schwoyer
- (f) Edwin Seyler
- (g) Gennaro Marino

4. The aforesaid indemnification shall be subject to the provisions of 42 Pa. C.S.A. Section 8548(c), regarding cooperation of the employees in the defense of the Litigation; and shall be subject to the provisions of 42 Pa. C.S.A. Section 8550, regarding willful misconduct and other acts.

5. Nothing contained in this Resolution shall be deemed an agreement or undertaking by the Borough of Kutztown to indemnify the individuals identified in paragraph 1 and paragraph 3 above with respect to any matter other than the Litigation.

6. Nothing contained herein shall be deemed an admission of law and/or fact on the part of the Borough of Kutztown for any purpose or in any proceeding.

BE IT FURTHER RESOLVED, that any and all resolutions and parts of resolutions inconsistent with this Resolution are hereby superseded and this Resolution shall remain in effect until superseded by a duly adopted Resolution of the Council of the Borough of Kutztown.

DULY ADOPTED AS A RESOLUTION this 1<sup>st</sup> day of December, 2004 by the Council of the Borough of Kutztown, Berks County, Pennsylvania, in lawful session duly assembled.

Passed by unanimous vote.

Under Finance and Technology Committee, Mr. Vettraino gave a presentation of the proposed 2005 budget, including revenues totaling \$14,365,726.00 and expenditures totaling \$15,414,195.00. He further outlined the following:

- Major Issues for 2005 Budget
- Major Operational and Capital Projects
- Major Capital Items Included
- Major Capital Items Removed
- Taxes and General Fund
- General Fund Expense Allocation
- General Fund Revenue Sources
- Water Fund
- Electric Fund



- Sewer Fund
- Telecom Fund
- Establishment of “Main Street Improvement Fund”
- From Now until December 21<sup>st</sup>

Mr. Vettraino noted that the proposed 2005 budget will be adopted at the December 21, 2004 Council Meeting.

Following the proposed budget presentation, Mr. Vettraino presented a telecom budget report, which outlined the following:

- Overview of the Project
- Investments Made
- Customer Growth
- Operational Revenue/Expense
- Challenges and Accomplishments

A motion was made by Mr. Eidle, seconded by Mr. Seyler, Resolved, To approve the advertisement that the proposed budget for 2005 is available for public inspection. Passed by unanimous vote.

A motion was made by Mr. Mantz, seconded by Mr. Eidle, Resolved, To introduce and authorize advertisement of the proposed Ordinance levying a tax on real estate for 2005 with the intent to enact and ordain the proposed ordinance at the December 21, 2004 Council meeting. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Mantz, Resolved, To ratify the transfer of \$105,000 from the Telecommunications Capital Outlay Fund (48) to the Telecommunications Fund (09), for the purposes of covering current expenses. Passed by unanimous vote.

Precipitated by questions about the cost of the Long & Barrell Annual Audit at the November 16, 2004 Council meeting, Mr. Vettraino confirmed that





that the cost of the audit report has been consistent over the past couple of years, but it is higher this year because of GASB 34.

Under Miscellaneous, a motion was made by Mr. Eidle, seconded by Mr. Seyler, Resolved, To authorize advertisement of the proposed 2005 Council meeting schedule for authorization to advertise at the December 21, 2004 meeting. Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Eidle, Resolved, To authorize advertisement of the proposed 2005 Committee meeting schedule for authorization to advertise at the December 21, 2004 meeting. Passed by unanimous vote.

A motion was made by Mr. Eidle, seconded by Mr. Seyler, Resolved, To schedule a special Council meeting for Tuesday, December 7, 2004, and a special Council meeting on Wednesday, December 15, 2004. Both meetings will be held at the Kutztown Municipal Building at 7:30 p.m. Passed by unanimous vote.

Mayor Marino asked President Crooker who authorized to have the Borough's locks changed. President Crooker said that she did because he did not follow the order to turn in his key.

A motion was made by Mr. Eidle, seconded by Mr. Seyler, Resolved, To adjourn the Council Meeting upon vote. Passed by unanimous vote. The meeting ended at 9:31 p.m.

Prepared and Attested by: Gina M. Wiand  
Assistant Borough Secretary