

August 17, 2010  
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 President Malcolm A. Eidle, with other members present: Mr. Edwin Seyler, Mr. Derek Mace, Mr. James Schlegel, Mr. Mark Gangewere, and Mr. Kevin Snyder. Mayor Sandy Green was absent. Messrs. Keith Mooney and Timothy Dietrich, representing the Borough Solicitor; Mr. Gabriel Khalife, Borough Manager/Treasurer; Mr. Ted Stevenson, representing the Borough's planning and water/wastewater engineering firm of Spotts, Stevens, & McCoy, Inc.; Mr. Craig M. Summers, Chief of Police; Ms. Rachael Birckbichler, Community Development Director; Walter Hess, Water and Wastewater Superintendent; Mr. David Horvath, Information Technologies Coordinator; Bonnie Bray, Borough Secretary/Human Resources Director; Richard Warmkessel and Erica Franklin, Student Ambassadors; Robert Toth, Jr., KU student; Jill Remick, Don Sechler, Timothy Vanek, Lee Erb, Sheila Fulton, and William Fox, all representing Kutztown Municipal Authority; Erica Hesselson, Friend, Inc.; Kap Stauffer, Maxatawny Township Manager; Carl Lobb, Kutztown resident; Jeri Colicchio, EAC member; Julie Nolan of KU; Jack Long, the Borough auditor; and Ron Devlin, reporter for the Reading Eagle were also present.

A motion was made by Mr. Seyler, seconded by Mr. Snyder, Resolved, To appoint Erica Franklin as a student ambassador to the Council. Passed by unanimous vote. Mrs. Bray administered the Loyalty Oath to Ms. Franklin.

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A motion was made by Mr. Seyler, seconded by Mr. Schlegel, Resolved, To appoint Richard Warmkessel as a student ambassador to the Mayor. Passed by unanimous vote. Mrs. Bray administered the Loyalty Oath to Mr. Warmkessel.

President Eidle recessed the Council meeting at 7:40 p.m. in order for the Kutztown Municipal Authority to open its meeting at 7:40 p.m. The Authority conducted its business and ended its meeting at 8:10 p.m.

President Eidle resumed the Council meeting at 8:10 p.m. He publicly thanked all of the Kutztown Municipal Authority members for their service to the community.

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

## RESOLUTION NO. 17-2010

A RESOLUTION OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, APPROVING AND AUTHORIZING THE EXECUTION OF CERTAIN FINAL DOCUMENTS PERTAINING TO A REGIONAL SEWAGE TREATMENT PLANT PROJECT AND THE FORMATION OF THE PROPOSED SAUCONY CREEK REGIONAL AUTHORITY AND AUTHORIZING THE OFFICERS OF THE BOROUGH OF KUTZTOWN TO NEGOTIATE ADDITIONAL CHANGES TO SUCH DOCUMENTS AND TO EXECUTE AND DELIVER SUCH DOCUMENTS.

WHEREAS, the Borough of Kutztown (õBoroughö), the Kutztown Municipal Authority, the Township of Maxatawny and the Maxatawny Township Municipal Authority (the Borough, Kutztown Municipal Authority, Township of Maxatawny and Maxatawny Township Municipal Authority, collectively, the õMunicipalitiesö) entered into a certain õIntermunicipal Sanitary Sewage Service and Treatment Agreementö (õIntermunicipal Agreementö) on May 5, 2006, for the purpose of creating an intermunicipal sewage treatment authority to be called the õSaucony Creek Regional Authorityö under the provisions of the Municipalities Authorities Act of 1945, as amended, and for the purpose of providing for the construction, ownership and operation of a proposed regional sanitary sewage treatment plant; and

WHEREAS, the Intermunicipal Agreement contemplated that certain additional agreements would be entered into by the Municipalities, which were to be appended as exhibits to the Intermunicipal Agreement; and

WHEREAS, the Municipalities have been negotiating the terms of such additional agreements, and representatives of the Borough and Kutztown Municipal Authority have reviewed the terms of such proposed agreements in the form most recently presented to them on August 17, 2010; and

WHEREAS, it is the understanding of the Borough that the Township of Maxatawny and the Maxatawny Township Municipal Authority have requested that the additional agreements be finalized and, where appropriate, executed and delivered in order that copies of all of the final documents may be submitted to the appropriate agencies of the Commonwealth of Pennsylvania for purposes of obtaining financing to proceed with the construction of the proposed regional sewage treatment plant; and

WHEREAS, the Borough wishes to accommodate the time concerns of the Township of Maxatawny and Maxatawny Township Municipal Authority and to finalize the arrangements contemplated by the Intermunicipal Agreement by authorizing its appropriate officers to negotiate such further changes to the proposed additional agreements as they deem necessary or appropriate and to further authorize the execution and delivery of those of the additional agreements which require the approval of the Borough.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Borough Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania as follows:

The Borough Council of the Borough does hereby specifically approve the agreements and instruments listed below, in the form in which they have been presented to the Borough Council this date:

- First Amendment to Intermunicipal Sanitary Sewage Service and Treatment Agreement
- Agreement for Use and Maintenance of 20 Inch Main
- Grant of Right-of-Way and Easement of Force Main
- Grant of Roadway Right-of-Way and Access Easement for the SCRA Site
- Flow Splitter Site Lease Agreement
- Grant of Right-of-Way and Easement for Outfall Pipe
- Deed (for 5 acre SCRA site)
- Grant of Roadway Right-of-Way and Access Easement through Sewage Treatment Facilities Site

The President or Vice-President and Secretary or Assistant Secretary of the Borough be, and they are hereby, authorized and directed to execute and deliver to the

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other Municipalities the documents set forth in Paragraph 1 hereinabove, in such form as is authorized by the terms of this Resolution.

Any one of the President and Vice-President of the Borough be, and they are hereby, authorized to negotiate and agree to such changes to the terms and form of the additional agreements described in Paragraph 1 of this Resolution prior to their execution and delivery, as any one or more of them shall deem necessary or desirable, or to take or cause to be taken any such actions as any such officer or officers deems necessary or advisable to carry out, perform and effectuate the terms, provisions and intentions of this Resolution.

The Borough Council of the Borough hereby approves, ratifies and confirms all actions heretofore taken by any officers, appointees, employees, legal counsel, engineers, agents and representatives of the Borough in connection with the undertakings contemplated herein.

The Secretary or any Assistant Secretary of the Borough is hereby authorized and directed to certify a copy of this Resolution to such persons as the aforesaid officers of the Borough deem necessary in order to effectuate the purposes of this Resolution, and such certified copy shall be conclusive evidence of the aforesaid authorizations.

DULY ADOPTED as a Resolution of the Borough Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, in lawful session duly assembled, this 17th day of August, 2010.

Passed by unanimous vote.

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

## RESOLUTION NO. 18-2010

A RESOLUTION OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, ACKNOWLEDGING A PROPOSED WATER CAPACITY RESERVATION AGREEMENT BY AND BETWEEN THE KUTZTOWN MUNICIPAL AUTHORITY AND KUTZTOWN UNIVERSITY INTENDED TO PROVIDE SERVICE FOR PROPERTY TO BE KNOWN AS THE KU MAINTENANCE COMPLEX IN THE TOWNSHIP OF MAXATAWNY AND RESERVING CERTAIN WATER CAPACITY FOR THE BENEFIT OF THE KUTZTOWN MUNICIPAL AUTHORITY IN FURTHERANCE OF SUCH AGREEMENTS.

WHEREAS, by the Kutztown Municipal Authority has presented to this Borough

Council at its regular meeting this date a certain proposed Water Capacity Reservation Agreement, each made effective as of August 17, 2010 by and between the Kutztown Municipal Authority and Kutztown University for a certain project to be known as the KU Maintenance Complex to be located adjacent to the Borough of Kutztown in the Township of Maxatawny; and

WHEREAS, the aforesaid Capacity Reservation Agreement provides for the reservation of eight hundred and thirty (830) gallons per day of capacity on account of four and eighty-four hundredths (4.84) Equivalent Dwelling Units (EDU) of treatment and conveyance capacity, each such EDU to be equal to one seventy-one and six tenths (171.6) gallons per day of capacity; and

WHEREAS, the Kutztown Municipal Authority has requested the Borough of Kutztown to reserve the capacity described above for the benefit of the Kutztown Municipal Authority for the purpose of performing its obligations under the aforesaid Capacity Reservation Agreement, subject to the immediate revocation of the availability of any unused portion of the reserved water capacity upon the default by the developers under the terms of the such Capacity Reservation Agreement; and

WHEREAS, the Borough of Kutztown and Kutztown Municipal Authority previously entered into a certain Intermunicipal Wastewater Capacity and Treatment Master Agreement and Intermunicipal Water Supply Master Agreement, each dated March 10, 1999 (as amended by Supplements (as defined therein) the Master Agreements) which set forth the relationship between the parties relative to sewer and water capacity and service issues and the Borough of Kutztown and Kutztown Municipal Authority desire to address the KU Maintenance Complex request within the framework of the Master Agreements.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, that the Borough of Kutztown does hereby reserve, for the benefit of the Kutztown Municipal Authority, 830 gallons per day of capacity in the Borough's water system and potable water treatment plant, subject to immediate revocation of the availability of any unpurchased portion thereof upon the occurrence of a default by the developers, Kutztown University, under the terms of the aforesaid Capacity Reservation Agreement.

BE IT FURTHER RESOLVED, that the Kutztown Municipal Authority shall pay to the Borough of Kutztown, on account of any sewer or water capacity to be made available and subsequently acquired under the terms of this reservation, as and when payment is made to the Kutztown Municipal Authority under the terms of the aforesaid Capacity Reservation Agreement, a sum on account of each EDU of water capacity in the amount of Eleven Hundred Forty-Three Dollars (\$1,143.00), plus a water facilities fee/deposit in the amount of Two Hundred Dollars (\$200.00) per water capacity EDU.

BE IT FURTHER RESOLVED, that the officers, employees and agents of the Borough of Kutztown be, and they are hereby, authorized and directed to take such action

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as may be necessary to effectuate the terms of this Resolution, including but not limited to the execution and delivery of "Supplements" (as defined in the Master Agreements) as and when the Kutztown Municipal Authority actually acquires capacity and the actions heretofore taken by such officers, employees and agents regarding the matters addressed herein are ratified and confirmed.

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 17<sup>th</sup> day of August, 2010 by the Council of the Borough of Kutztown, Berks County, Pennsylvania in lawful session duly assembled.

Passed by unanimous vote.

Mr. Dietrich excused himself from the meeting at approximately 8:15 p.m.

A motion was made by Mr. Schlegel, seconded by Mr. Mace, Resolved, To approve the water capacity needed for the Kutztown Municipal Authority to serve the potential water customers on the Noble Street water line. Passed by unanimous vote.

Mr. Eidle noted that an Executive Session of Council was held on Saturday, August 7, 2010, at 9:00 a.m. to discuss personnel matters. No action was taken.

Mr. Jack Long reviewed the 2009 audited financial statements with Council.

Mr. Khalife presented his view of the 2009 and 2010 financial condition of the Borough with Council, as well as his 2011 recommendations and operational concerns.

President Eidle asked if there was anyone who wished to address Council before proceeding with the agenda. Erica Hesselton of Friend, Inc., reported on the Brake the Cycle of Poverty event held on August 8, 2010. There were 183 riders, about 50 volunteers, with a total profit of \$8,591.89. She thanked Bill Fox for the use of his school house for a rest stop.

A motion was made by Mr. Gangewere, seconded by Mr. Mace, Resolved, To approve the Consent Agenda, consisting of the following items:

- Review and accept the Minutes of the July 20, 2010, Council Meeting.
- Review and accept the Borough Community Development Report for July, 2010.
- Ratify the request of Gary Gibbons of McConway and Torley Group to use of the Train Station on August 12, 2010 from 10 a.m. to 5:00 p.m. and to waive associated fees.
- Approve the request of the Kutztown Community Partnership to hold its 4<sup>th</sup> Annual Trailwaggers Dog Walk in the park on October 17, 2010, to use the Brick Pavilion and to waive any associated fees.
- Approve the refund of \$35.00 to St. John's Lutheran Church for the rental fee for the Skooter Building which ultimately was not used.
- Ratify approval for the payment of bills and necessary transfers of funds which have been provided to Borough Council in the Accounts Payable /L Distribution Report, including payment dates from July 17, 2010, to August 13, 2010, as summarized below:

General Fund	\$195,265.23
Refuse and Recycling Fund	54,865.93
Fire Protection Tax Fund	17.40
Recreation Tax Fund	69.60
Road Tax Fund	69.60
Water Fund	108,368.53
Electric Fund	519,656.49
Sewer Fund	119,778.72
Telecommunications Fund	70,553.31
Unemployment Comp Escrow Fund	302.52

Passed by unanimous vote.

Under Borough Planning Commission, a motion was made by Mr. Seyler, seconded by Mr. Schlegel, Resolved, To accept, with regret, the resignation of Borough Planning Commission member Shannon Crooker, whose four-year term shall expire in October, 2011. Passed by unanimous vote.

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Mr. Eidle noted that Karen R. Feridun's four-year term on the Borough Planning Commission expires in September, 2010.

Under Environmental Advisory Commission, Ms. Colicchio had nothing to report.

Under Community Development and Public Safety Committee, Mr. Mace submitted the Police Report for the month of July, 2010, copies of which were given to Council. He reported the following fines were collected:

District Justice Greth	June, 2010	\$7,589.46
Clerk of Common Pleas	June, 2010	\$437.70
Secretary's Office	July, 2010	\$825.00

A motion was made by Mr. Mace, seconded by Mr. Snyder, Resolved, To enact the following Ordinance:

## ORDINANCE NO. 5-2010

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA AMENDING CHAPTER 189 OF THE CODE OF THE BOROUGH OF KUTZTOWN, WHICH CHAPTER IS ENTITLED "STORMWATER MANAGEMENT" SO AS TO AMEND AND RESTATE CERTAIN SECTIONS THEREOF.

Passed by unanimous vote.

A motion was made by Mr. Mace, seconded by Mr. Snyder, Resolved, To waive the fees totaling approximately \$700.00 associated with a Zoning appeal for 253 E. Main Street, whose owners are requesting that dimensional variances be granted to allow the placement of an above-ground swimming pool for therapeutic and medical purposes contingent upon the following conditions being included in any decision of the Zoning Hearing Board should it grant the requested variances: 1.) any variances granted for the placement of a pool on the property are allowed only while the current property owners



retain control of the property, and said variances shall not transfer with the property to a new owner(s), heir(s), or assign(s); 2.) clear demarcation of the side property lines shall be made so as to protect adjoining property owners from any direct or indirect encroachment onto their property as a result of the placement of the pool allowed by such variances; and 3.) the property owner must comply with all other Borough requirements, laws, and codes, including, but not limited to, the installation of an AMR wire on the utility meter for use by the Borough in generating monthly utility billing. Passed by unanimous vote.

A motion was made by Mr. Mace, seconded by Mr. Snyder, Resolved, To waive associated fees to hang Rodale's Organic Apple Festival banner across West Main Street for the period from September 3-10, 2010. Passed by unanimous vote.

A motion was made by Mr. Mace, seconded by Mr. Snyder, Resolved, To reappoint Craig Koller as a member of the Housing License Appeals Board for a successive one-year term, expiring July, 2011. Passed by unanimous vote.

Under Public Works Committee, a motion was made by Mr. Snyder, seconded by Mr. Schlegel, Resolved, To authorize the appropriate Borough officials to execute the five-year winter maintenance contract with PennDOT for state roads within the Borough, i.e. Willow Street, SR 737 or Greenwich Street, Noble Street and Main Street from Noble Street to Willow Street. Passed by unanimous vote.

A motion was made by Mr. Snyder, seconded by Mr. Gangewere, Resolved, To authorize the appropriate Borough officials to execute the three-year Customer Service Agreement with UniFirst Corporation for uniform rental services. Passed by unanimous vote.

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Off agenda, a motion was made by Mr. Snyder, seconded by Mr. Schlegel, Resolved, To waive the parade permit fees associated with the OCAC Paint the Town Gold event on October 2, 2010 and with the OCAC Pep Rally on Thursday, September 30, 2010. Passed by unanimous vote.

Under Personnel Committee, a motion was made by Mr. Seyler, seconded by Mr. Snyder, Resolved, To ratify the request to authorize unpaid leave for Jase Smolnik from August 2, 2010 through August 6, 2010. Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Snyder, Resolved, To accord regular part-time employment to Joanne Englehart, part-time library clerk, effective retroactively to July 19, 2010. Passed by unanimous vote.

Under Finance and Electric Committee, a motion was made by Mr. Seyler, seconded by Mr. Gangewere, Resolved, To approve the request for Jase Smolnik and Evan Muller to attend the Basic 2 Linemen Training Session at the AMP Training Center in Columbus, Ohio, from September 13-17, 2010, at a total estimated cost of \$3,180.00. Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Schlegel, Resolved, To approve the request to prepare specifications and to advertise for bids for materials to replace the underground cables and equipment located on the south side of the Route 222 bypass and continuing under Route 737 to the Wastewater Treatment Plant. Passed by unanimous vote.

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

## RESOLUTION NO. 19-2010

A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA, EXONERATING THE BOROUGH TAX COLLECTOR FROM COLLECTING REAL ESTATE TAXES ON CERTAIN TAX-EXEMPT BOROUGH PROPERTIES, AS LISTED HEREWITH.

WHEREAS, The Borough of Kutztown has received a Notice of Public Tax Sale from the Berks County Tax Claim Bureau for the Borough properties located at North Laurel Street, OpenSpace 1; North Laurel Street, OpenSpace 2; 135 North Kemp Road; and Alex Court, Annex A; and

WHEREAS, the above-stated properties are owned by the Borough of Kutztown and are designated as tax-exempt properties; and

WHEREAS, the Borough of Kutztown is exonerating the Borough tax collector for the collection of the real estate taxes on the above-stated properties as listed herewith.

NOW THEREFORE, Be It Resolved that the Borough tax collector is hereby exonerated from collecting the following municipal real estate taxes:

YEAR	NO. LAUREL ST OPENSOURCE2	135 NO. KEMP RD	NO. LAUREL ST OPENSOURCE1	ALEX COURT
2006	\$11.76		\$15.35	
2007	\$17.37		\$22.63	\$4.84
2008	\$23.02	\$3.22	\$30.21	
<b>TOTAL</b>	<b>\$52.15</b>	<b>\$3.22</b>	<b>\$68.19</b>	<b>\$4.84</b>

DULY ADOPTED AS A RESOLUTION this 17<sup>th</sup> day of August, 2010, 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. Seyler, seconded by Mr. Mace, Resolved, To authorize the appropriate Borough officials to execute the Low-Income Home Energy Assistance Program Vendor Agreement with the Pennsylvania Department of Public Welfare. Passed by unanimous vote.

Under Telecommunications and Information Technologies Committee, a motion was made by Mr. Gangewere, seconded by Mr. Seyler, Resolved, To authorize the

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Borough staff to coordinate a Hometown Utilicom Customer Appreciation Festival, to be held in October, as proposed by the Telecommunications Advisory Commission. Mr. Gangewere commented that the festival will be modeled after the initial HU launch event with possibly even more features. Passed by unanimous vote.

A motion was made by Mr. Gangewere, seconded by Mr. Schlegel, Resolved, To adopt the Acceptable Use Policy for Hometown Utilicom Customers. Passed by unanimous vote.

Mr. Gangewere noted that the Telecom Advisory Commission would like to invite Council to attend its October 25, 2010 meeting at 7:30 p.m.

Off agenda, Mr. Gangewere extended his thanks to Frank Caruso and Mark Arnold for expeditiously installing a dedicated line for the Friend, Inc. bicycle event in the Kutztown park to facilitate a radio broadcast from the event site.

Under Water and Wastewater Committee, a motion was made by Mr. Schlegel, seconded by Mr. Seyler, Resolved, To award the bid for Contract No. 1, Noble Street Water Line Replacement Project to Livengood Excavators, Inc., in the total bid amount of \$336,011.05. Passed by unanimous vote.

A motion was made by Mr. Schlegel, seconded by Mr. Mace, Resolved, To reject all bids received for Contract No. 2, East Main Street Water Line Replacement Project. Passed by unanimous vote.

A motion was made by Mr. Schlegel, seconded by Mr. Seyler, Resolved, To accept the Memorandum of Understanding from Spotts, Stevens & McCoy, Inc., for the GIS pilot program, estimated to cost between \$19,000.00 and \$24,000.00, based on professional hours required. Passed by unanimous vote.

A motion was made by Mr. Schlegel, seconded by Mr. Mace, Resolved, To approve the purchase and installation of a variable frequency drive (VFD) at the Water Well Pump Stations 1 and 2 for a total cost of \$7,600.00 from Keystone Engineering Group, Frazer, Pennsylvania. Passed by unanimous vote.

A motion was made by Mr. Schlegel, seconded by Mr. Mace, Resolved, To authorize Spotts, Stevens & McCoy, Inc., to prepare the bid specifications and to advertise for an emergency generator to be installed at the Wastewater Treatment Plant. Passed by unanimous vote.

Under Miscellaneous, Mr. Eidle announced that a blood drive will be held on Wednesday, September 15, 2010, from 8 a.m. to 11:30 a.m. at the Kutztown Public Works Building, 105 Railroad Street and to call Cathy Runkle at 610 683-3202 for more information.

Mr. Schlegel thanked the employees who worked at the park on Kutztown Day.

A motion was made by Mr. Mace, seconded by Mr. Seyler, Resolved, To adjourn the meeting at 9:20 p.m. Passed by unanimous vote.

Prepared and  
Attested by: Bonnie Bray  
Secretary

Malcolm Eidle and Bonnie Bray hereby ordered payment of the expenditures listed in the Accounts Payable G/L Distribution Report, including payment dates from July 17, 2010, to August 13, 2010, in accordance with Section 1106 of the Borough Code, Commonwealth of Pennsylvania.

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Malcolm A. Eidle

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Bonnie Bray