

July 18, 2017  
Kutztown, PA

A regular meeting of the Kutztown Borough Council was called to order at 7:30 p.m. in the Kutztown Train Station by the President, Mr. Kevin Snyder, with other members of Borough Council present: Mr. Edwin Seyler, Ms. Peggy Devlin, Mr. Richard Diehm, Mr. Scott Piscitelli, and the Mayor, Ms. Sandra Green. Mr. Derek Mace was absent. Mr. Keith Mooney, Borough Solicitor; Mr. Gabriel Khalife, Borough Manager/Treasurer; Ms. Andrea Rahn, Assistant Borough Secretary; Mr. Daniel Eslinger, Community Development Director/Zoning Officer; Mr. Craig Summers, Kutztown Borough Police Chief; Maxatawny Township representative Steve Wilson; Kutztown Area Transport Services representative Rodney Freeman; Kutztown Fire Company and Emergency Management representative Todd Evans; Kutztown Fire Company representatives Eric Diehl and Denny Battista; Borough Planning Commission representative Lisa Ladd-Kidder; Hutchinson, Gillahan and Freed representative Craig Gillahan; Rhoads and Sinon representative Jens Damgaard; RBC Capital Markets representative Scott Kramer; Friend, Inc. representative Cathy Dill; Fair Districts PA representative Deb Sieger; PA Adult and Teen Challenge representative Angie Jakubowski; residents Jim Schlegel and Allison Fuller; and Ronald Devlin, reporter for the Reading Eagle, were also present.

Jens Damgaard, from Rhoads and Sinon, and Scott Kramer, from RBC Capital Markets, presented Council with the 2011 and 2013 Bond refinancing opportunities.

A motion was made by Mr. Seyler, seconded by Ms. Devlin, Resolved, To enact and ordain the following Ordinance:

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF KUTZTOWN, IN BERKS COUNTY, PENNSYLVANIA, AUTHORIZING AND SECURING THE ISSUANCE OF ONE OR MORE GENERAL OBLIGATION NOTES OF THE BOROUGH, IN THE TOTAL PRINCIPAL AMOUNT OF \$7,850,000, PURSUANT TO THE PENNSYLVANIA LOCAL GOVERNMENT UNIT DEBT ACT, TO REFUND THE BOROUGH'S OUTSTANDING GENERAL OBLIGATION BONDS, SERIES B OF 2011 AND SERIES B OF 2013, AND TO PAY ISSUANCE COSTS; ACCEPTING A BANK LOAN PROPOSAL FOR SUCH NOTES; SETTING FORTH THE TERMS AND CONTAINING THE FORM OF THE NOTES; CREATING A SINKING FUND AND APPOINTING A PAYING AGENT AND SINKING FUND DEPOSITORY FOR THE NOTES; PLEDGING THE FULL FAITH, CREDIT, AND TAXING POWER OF THIS BOROUGH TO SECURE THE NOTES AND AUTHORIZING RELATED ACTIONS AND DOCUMENTS

Passed by unanimous vote.

Craig Gillahan, from Hutchinson, Gillahan and Freed, presented Council with the 2016 Audit Report. There were no questions or comments.

President Snyder asked if there was anyone who wished to address Council before proceeding with the agenda.

Angie Jakubowski, from PA Adult and Teen Challenge, handed out pamphlets to Council regarding awareness for the heroin epidemic in Pennsylvania and spoke about the services they provide.

Cathy Dill, from Friend, Inc., asked if Council would approve their annual bike ride event for this year.

A motion was made by Mr. Piscitelli, seconded by Mr. Seyler, Resolved, To approve the request from Friend, Inc. to authorize their annual bike ride event. Passed by unanimous vote.

# 11789

Jim Schlegel noted that Kutztown Day will be held on Sunday, August 6, 2017, in the Kutztown Park.

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

- ) Review and accept the Minutes of the June 20, 2017 Borough Council meeting.
- ) Review and accept the Borough Community Development Report for June, 2017.
- ) Ratify approval for the payment of bills and necessary transfers of funds which, have been provided to Borough Council in the Accounts Payable G/L Distribution Report, including payment dates from June 17, 2017, through July 14, 2017, as summarized below:

General Fund	\$226,186.18
Refuse and Recycling Fund	\$45,557.27
Water Fund	\$81,482.72
Electric Fund	\$309,062.09
Sewer Fund	\$113,693.78
Telecommunications Fund	\$101,213.97

Passed by unanimous vote.

Under Borough Planning Commission, Lisa Ladd-Kidder read aloud the Planning Commission's recommendation letter for the Borough to renew and remove the "sunsetting" provision from the Alternative Energy Systems Ordinance (No. 4-2011).

A motion was made by Mr. Seyler, seconded by Ms. Devlin, Resolved, To authorize the Borough Solicitor to revise the Alternative Energy Systems Ordinance, to send it through the proper channels for review, and to advertise said Ordinance. Passed by unanimous vote.

Ms. Ladd-Kidder read aloud the Zoning Hearing Board's recommendation letter approving Zoning Appeal #Z-17-01. No action was taken by Council.

Under Environmental Advisory Commission, there was nothing to report.

Under Community Development and Public Safety Committee, the Monthly Police Report for June, 2017 was submitted.

The following fines were collected:

District Justice Greth	May, 2017	\$7,575.65
Clerk of Common Pleas	May, 2017	\$720.86
Secretary's Office	May, 2017	\$1,075.00

Under Public Works Committee, a motion was made by Ms. Devlin, seconded by Mr. Seyler, Resolved, To approve the Kutztown Community Partnership's request to hold "Dinner on Main" on August 4, 2017, to waive any associated fees, and to waive the open container law for this event only. Passed by unanimous vote.

Mayor Green noted that the open container law is only being waived for the 200 block of Main Street for this event.

A motion was made by Mr. Seyler, seconded by Mr. Piscitelli, Resolved, To approve the request from the Meals family to use the Scooter Building on August 20, 2017. Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Diehm, Resolved, To approve the request from the PA Board of Probation and Parole, to use the Brick Pavilion on July 27, 2017, and to waive any associated fees. Passed by unanimous vote.

Off of the agenda, a motion was made by Ms. Devlin, seconded by Mr. Piscitelli, Resolved, To approve an art project by Rachael Akers, at the mini park located at Greenwich Street, that involves creating a mosaic on the sides of the benches and also painting the benches. Passed by unanimous vote.

Under Personnel Committee, a motion was made by Ms. Devlin, seconded by Mr. Piscitelli, Resolved, To hire Jared Babel as a Public Works Laborer I, contingent upon

# 11791

passing a physical examination. Passed by unanimous vote.

A motion was made by Ms. Devlin, seconded by Mr. Diehm, Resolved, To hire Thomas Murray as a part-time Community Service Officer II, contingent upon passing the required clearances and physical examination. Passed by unanimous vote.

A motion was made by Ms. Devlin, seconded by Mr. Diehm, Resolved, To enter into a Memorandum of Understanding (MOU), with AFSCME, to allow a Fire Chief or an Officer Volunteer Fireman to respond to fire calls as outlined in the MOU. Passed by unanimous vote.

A motion was made by Ms. Devlin, seconded by Mr. Diehm, Resolved, To enter into a Memorandum of Understanding (MOU), with AFSCME, to allow Ron Stoudt's vacation time carry-over as outlined in the MOU. Passed by unanimous vote.

A motion was made by Ms. Devlin, seconded by Mr. Diehm, Resolved, To reappoint Dorothy Fox, as a member of the Housing License Appeals Board, whose term shall expire on August 1, 2018. Passed by unanimous vote.

An Executive Session to discuss personnel and legal matters was deferred to the end of the meeting.

Under Finance and Electric Committee, a motion was made by Mr. Seyler, seconded by Ms. Devlin, Resolved, To adopt the following Resolution:

## RESOLUTION NO.7-2017

A RESOLUTION OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA, SETTING FORTH CERTAIN PROCEDURES TO BE UTILIZED IN THE SELECTION OF INDIVIDUALS FOR PROFESSIONAL SERVICE CONTRACTS PURSUANT TO ACT 44 OF 2009 (THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND RECOVERY ACT).

WHEREAS, Act 44 of 2009, the Municipal Pension Plan Funding Standard and Recovery Act provides, in part, that each municipal pension system shall develop

procedures to select the most qualified person to enter into a professional services contract; and

WHEREAS, the Borough of Kutztown, Berks County, Pennsylvania (the 'Borough') operates a municipal pension system for its employees.

NOW, THEREFORE, be it resolved and it is resolved that the following constitutes the Borough's procedures for selecting the most qualified person to enter into a professional services contract pursuant to Section 702-A of Act 44 (capitalized words shall have the meaning set forth in Act 44);

1) Request for Proposal Application(s) including disclosures;

Applications will be drafted at the time professional services are needed by the Borough. The application provisions will address the applicants' qualifications, experience, expertise and compensation to be charged. A disclosure form in accordance with the provisions of Act 44 will be included as part of the application. The selection process is not subject to a requirement that the lowest bid be accepted.

2) Advertisement;

The Borough shall advertise the availability of a proposal for a professional services contract to potential participants or candidates in a timely and efficient manner. An advertisement of such will include the following:

- (a) The services that are the subject of the proposed professional services contract;
- (b) Specifications relating to the professional services;
- (c) Procedures to compete for the professional services contract;
- (d) Required disclosures and additional information desired.

3) Review;

The evaluation process will involve several steps. The initial responses to the advertisement for proposals will be evaluated by the Borough. The Borough will determine a list of finalists, interview finalists, if applicable, and make a final decision.

The criteria to be used in the evaluation process can differ depending on the professional services requested, but all shall include at least the following:

- (a) The applicant's qualifications, experience, and expertise related to Pennsylvania Municipal Pensions;

# 11793

- (b) The applicant's approach to managing risk and research capabilities;
  - (c) The applicant's knowledge of Act 205 and Act 600;
  - (d) The quoted fee(s) associated with the desired service(s) sought;
  - (e) The applicant's availability to meet with the Borough's pension committees or governing body for periodic review; and
  - (f) The response to the references provided by the applicant.
- 4) Personnel;

Prior to entering into a professional services contract, the contractor shall disclose the names and titles of each individual who will be providing professional services to the Borough pension system, including advisors or subcontractors of the contractor. Furthermore, disclosures will include all of the following:

- (a) Whether the individual is a current or former official or employee of the Borough;
  - (b) Whether the individual is a current or former registered Federal or State lobbyist;
  - (c) A description of the responsibilities of each individual with regard to the services provisions of the professional services contract; and
  - (d) The resume of an individual listed in the aforementioned disclosure shall be provided to the Borough upon request.
- 5) Conflict of Interest;

All proposals for professional services contracts shall include a minimum restriction for any applicant of one year on:

- (a) Participation by a former employee of a proposed contractor or potential contractor in the review of a proposal or negotiation of a professional services contract with that proposed contractor;
- (b) Participation by a former employee of the Borough in the submission of a proposal or the performance of a contract by a proposed contractor.

Additionally, all proposals for performance service contracts shall include a permanent disqualification of any applicant for:

- (c) Any person or affiliated entity that currently holds a professional services

contract with the Borough and has conveyed a gift having more than a nominal value to any official or employee of the Borough; or

- (d) Any person or affiliated entity that currently holds a professional services contract responds to, applies for, or otherwise solicits a professional services contract with the Borough and, has within the past two (2) years of responding to any proposal, made a political contribution to any parties, candidates or current office holders of or for the Borough; or
- (e) Any person or affiliated entity that holds a professional services contract with the Borough and has a direct financial, commercial or business relationship with any Borough official unless the Borough consents, in writing, to the relationship after full and complete disclosure.

6) Public Information;

Following the award of a professional services contract, all applications and disclosure forms shall be made public except as may be exempted under the Right to Know Act.

7) Notification and Posting of Proceedings;

Following the decision by the Borough of the selection of any applicant for a contract, the relevant factors that resulted in the selection for award of the professional services contract must be summarized in a written statement and included or attached to the documents awarding the contract. Within ten (10) days of the selection for award of the professional services contract, the original application, the proposal and selection statement, and all disclosure forms must be transmitted to all unsuccessful applicants and posted on the Borough's Web site, at least seven (7) days prior to the execution of the professional services contract.

8) Increase:

A professional services contract shall not be amended to increase the cost of the contract by more than 10% or \$10,000, whichever is greater, unless the increase and a written justification for the increase are public and posted on the Borough's Web site, at least seven (7) days prior to the effective date of the amendment.

DULY ADOPTED AS A RESOLUTION this 18<sup>th</sup> day of July, 2017, by the Council of the Borough of Kutztown, Berks County, Pennsylvania, in a lawful session duly assembled.

Passed by unanimous vote.

A motion was made by Mr. Seyler, seconded by Mr. Piscitelli, Resolved, To approve the purchase of two 15KV ABB R-Mag circuit breakers equipped with SEL 351



# 11795

relays, from Wesco per PA Co-stars contract #008-029, in the total of \$44,140.00.

Passed by unanimous vote.

Under Telecommunications and Information Technologies Committee, off of the agenda, a motion was made by Mr. Diehm, seconded by Mr. Piscitelli, Resolved, To have UGI install a gas line at the Head End, in the amount of \$3,438.00; to purchase the conversion kit for the generator, in the amount of \$300.00; and to waive the permit fees.

Passed by unanimous vote.

Under Water and Wastewater Committee, a motion was made by Mr. Seyler, seconded by Ms. Devlin, Resolved, To adopt the following Resolution:

## RESOLUTION NO. 8-2017

A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, APPROVING AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE KUTZTOWN MUNICIPAL AUTHORITY.

WHEREAS, a Certificate of Incorporation was issued by the Commonwealth of Pennsylvania, Department of State, on August 28, 1962 declaring and certifying the creation, erection and incorporation of the Kutztown Municipal Authority (“Authority”); and

WHEREAS, the Certificate of Incorporation provides that the Authority shall have a fifty (50) year term of existence beginning on August 28, 1962; and

WHEREAS, the Municipal Authorities Act (“Act”) provides that the articles of incorporation of an authority can be amended to increase an authority’s term of existence to a date not more than fifty (50) years from the date of the approval of the amendment; and

WHEREAS, the Act further provides the procedure by which amendments to an authority’s articles of incorporation may be proposed and approved by the authority and the municipality which created the authority; and

WHEREAS, the Borough Council of the Borough of Kutztown, in order to provide assurances to those transacting business with the Authority of the Authority’s continuing existence, desires to extend the Authority’s existence; and

WHEREAS, the Board of the Authority has adopted a Resolution approving an amendment to its Articles of Incorporation extending the Authority's existence for a period of fifty (50) more years.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Kutztown hereby approves and adopts the amendment of the Articles of Incorporation of the Authority as amended by the addition of the following paragraph:

8. The term of existence of said Authority shall be fifty (50) years from the date of approval of these Articles of Amendment to the Articles of Incorporation.

DULY ADOPTED AS A RESOLUTION, this 18<sup>th</sup> day of July, 2017, 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. Piscitelli, Resolved, To reduce invoice #2495, billed to KGH Properties for water and sewer connections for Post House Apartments, by \$2,155.00, making the amount due to the Borough of Kutztown \$9,500. All in favor, except Mr. Diehm, who voted Nay. There being a majority in favor, the motion passed.

Mr. Seyler noted that the Borough of Kutztown's Water Treatment Plant has received the Area Wide Optimization Award for the eighth time.

Off of the agenda, a motion was made by Mr. Seyler, seconded by Ms. Devlin, Resolved, To adopt the following Resolution:

## RESOLUTION NO. 9-2017

A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, AUTHORIZING BARLEY SNYDER, LLP, THE BOROUGH SOLICITOR AND THE BOROUGH MANAGER, GABRIEL KHALIFE, TO TAKE ALL NECESSARY STEPS THEY DEEM APPROPRIATE FOR THE RELEASE OF THE ESCROWED DOCUMENTS TO THE TOWNSHIP AND TO FACILITATE THE SIMULTANEOUS PAYMENT OF THE ARBITRATION AWARD DAMAGES TO THE BOROUGH AND KMA.

# 11797

WHEREAS, on or about June 1, 2017, an arbitration panel rendered a decision in the dispute involving the Borough of Kutztown (the “Borough”), Maxatawny Township (the “Township”), Kutztown Municipal Authority (“KMA”) and the Maxatawny Township Municipal Authority (“MTMA”) (collectively the “Parties”) regarding an intermunicipal sanitary sewage service and treatment agreement, as amended by the first amendment to same executed on or about August 25, 2010 (the “Agreement”); and

WHEREAS, the arbitration panel ruled that the Township breached the Agreement and as a result awarded the Borough and KMA, collectively, damages in excess of Seven Hundred Thousand Dollars (\$700,000.00); and

WHEREAS, on or about July 11, 2017, the Township voted to pay the arbitration award to the Borough and KMA upon the Township’s receipt of certain documents currently being held in escrow by the Berks County Court of Common Pleas ( the “Escrowed Documents”); and

WHEREAS, the Borough desires to cooperate with the Township to have the Escrowed Documents delivered to the Township.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, that Barley Snyder, LLP, the Borough Solicitor, and the Borough Manager, Gabriel Khalife, are directed to take all necessary steps it deems appropriate to facilitate the release of the Escrowed Documents to the Township and to facilitate the simultaneous payment of the arbitration award damages to the Borough and KMA.

BE IT FURTHER RESOLVED, that Gabriel Khalife, Borough Manager, is hereby authorized and directed to execute on behalf of the Borough of Kutztown any and all pleadings and documents prepared by Barley Snyder, LLP, requiring a signature of an authorized Borough Official, in an effort to effectuate the release of the Escrowed Documents to the Township and to facilitate the simultaneous payment of the arbitration award damages to the Borough and KMA.

DULY ADOPTED as a Resolution this 18<sup>th</sup> day of July, 2017, by the Council of the Borough of Kutztown, Berks County, Pennsylvania, in lawful session duly assembled.

Passed by unanimous vote.

Under Miscellaneous, President Snyder noted the following vacancies:

Code Appeals Board:	One Member Vacancy
	One Alternate Vacancy
Planning Commission:	Two Member Vacancies
Zoning Hearing Board:	Two Alternate Vacancies

Housing License Appeals Board: One Member Vacancy  
Three Alternate Vacancies  
Telecommunications Advisory Commission: One Member Vacancy

President Snyder called for an Executive Session at 8:16 p.m. to discuss personnel and legal matters. The Executive Session ended and the meeting reconvened at 8:39 p.m. No action was taken.

A motion was made by Mr. Piscitelli, seconded by Mr. Diehm, Resolved, To adjourn the Council meeting upon vote. Passed by unanimous vote. The meeting ended at 8:40 p.m.

Prepared and Attested by: Andrea Rahn  
Assistant Borough Secretary

Kevin Snyder and Andrea Rahn hereby ordered payment of the expenditures listed in the Accounts Payable G/L Distribution Report, including payment dates from June 17, 2017, through July 14, 2017, in accordance with Section 1106 of the Borough Code, Commonwealth of Pennsylvania.

---

Kevin J. Snyder

---

Andrea Rahn