

**BOROUGH OF WIND GAP  
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The Council meeting of the Borough of Wind Gap on Monday October 7, 2019, was called to order at 7:00 p.m. by Council President Dave Hess, at which time he reminded those present that the meeting was being recorded. In attendance were Council members George Hinton, Mike McNamara, David Manzo, Jeff Yob, and Kerry Gassler. Also in attendance were Mayor Mitchell D. Mogilski Sr., Borough Solicitor Ronald Karasek, Borough Engineer Brian Pysker and Borough Administrator Louise Firestone. Absent was Councilwoman Joyce McGarry.

**PUBLIC COMMENT**

1. Adrienne Fors, Waste Management, came before Council with the landfill operations neighborhood update. She also thanked everyone that came out for the tours and the Chili Cook-off this past weekend. It was a huge success with over 400 attendees, 200 chili taste testers, and 135 people that toured the landfill. Everyone had a good time.

1. The Cell 17 liner project: The team is expecting DEP certification for the cell 17 liner very soon. Once approved, GCSL can begin placing MSW in the cell.
2. Gas Collection Project: Plans for our next landfill gas drilling project is expected to begin the first week of October. The team plans to drill 10-12 wells in recent disposal areas.
3. GCSL plans to place 6.5 acres of Final cap on the landfill. This is expected to begin sometime in October on cells 15/16. (along the Pen Argyl Road side of the landfill)
4. Landfill operations: We are currently accepting an average 2300 tons per day. The landfill operations will be positioned closer to Pen Argyl Road as we prepare for Cell 17 operations.

Mark your Calendar

1. Creatures of the Night Event at The Grand Central Environmental Education Center is October 8<sup>th</sup>.

Grand Central Landfill website continues to be updated and includes the monthly landfill update notices. [www.grandcentrallandfill.com](http://www.grandcentrallandfill.com)

2. Scott DeFiore of 26 S Broadway came before Council with concerns about the alley being overgrown with trees and brush causing cars to drive on his property. The alley is supposed to be straight, but if you stand down at the corner you cannot look down the other end. Brian suggested that Council survey the alley in order to determine the property lines. Jeff Yob said that if the brush is in the Borough's right-of-way we will have to clean it and if it is on the owner's property they will be contacted to clean it. Council will follow-up this discussion at the October 22, 2019 Council meeting.

**On motion** by Jeff Yob to authorize the Borough Engineer to survey the alley behind 26 S. Broadway and seconded by Dave Manzo. Roll call vote taken. Council agreed unanimously.

3. Robert Serfass, 172 East Second St, asked for an update on the West Street project, what is he doing and when is he going to start. Brian responded by stating that the developer is installing all the curbing on West Street and Longcore, putting the road base down and putting the binder on West and Longcore. As far as the interior and construction of the apartments, there is somebody purchasing it, with a timeframe to build it out within eighteen months. It will no longer be over 55, it will be apartments and condominiums, all rental units, nothing public.

### **APPROVAL OF MINUTES**

**On motion** by Dave Manzo to approve the September 17, 2019 minutes and seconded by Mike McNamara. Roll call vote taken. In favor: D. Hess, G. Hinton, D. Manzo, M. McNamara. Abstained: J. Yob, K. Gassler. Motion carried with a vote of 4-0-2.

### **APPROVAL OF EXPENSES**

**On motion** by Jeff Yob to approve the expenses in the amount of \$191,699.80 and seconded by Kerry Gassler. Roll call vote taken. Council agreed unanimously.

1. NuCor Management Pay Request No. 1 - \$82,800

Brian Pysher reported that W2A Design, the Borough Architect, has approved payment of this request. George Hinton questioned the leakage/water problems in the Borough Administrator's office that has yet to be fixed and they are scheduled to pour the footer tomorrow. He asked if Council is comfortable making a payment when there is a water issue. Jeff said this is their first payment.

**On motion** by Kerry Gassler to approve NuCor Management Pay Request No. 1 for the Municipal Complex Façade project in the amount of \$82,800 and seconded by Jeff Yob. Roll call vote taken. In favor: D. Manzo, M. McNamara, J. Yob, K. Gassler, D. Hess. Opposed: G. Hinton. Motion carried with a vote of 5-1.

2. Wind Gap Electric Pay Request No. 1 - \$2,340 – W2A Design has approved payment of his request as it relates to the paperwork necessary to obtain the bond for the Maintenance Garage.

**On motion** by J. Yob to approve payment to Wind Gap Electrical, contractors for the maintenance garage, in the amount of \$2,340.00 and seconded by Dave Manzo. Roll call vote taken. Council agreed unanimously.

### **SOLICITOR'S REPORT**

#### **MEETINGS ATTENDED:**

September 3, 2019 - attendance at regular monthly meeting of Borough Council.

September 5, 2019 – attendance at regular monthly meeting of Borough Planning Commission.

September 17, 2019 – attendance at regular workshop meeting of Borough Council.

#### **SUBDIVISION MATTERS:**

Receipt, Review, and Administration of Borough Engineer Review Letter, Applicant Engineer Response Correspondence, SALDO Waiver and Preparation of SALDO Waiver forms with e-mail to Applicant's Attorney re JERC Partners, LII, Minor Subdivision Plan.

## **LAND DEVELOPMENT MATTERS:**

Receipt, Review and Administration of Borough Engineer Review Letter, Applicant Engineer Response Correspondence, SALDO Waiver forms with e-mail to Applicant's Attorney re JERC Partners, LII, Land Development Plan.

Receipt, Review and Administration of Request for Reduction of Performance Bond, Review of Several Easement Agreements (Grading, Utility, Land Preservation and Longcore Road ROW that Need to be Revised and Signed, Assignments Provision of Improvements Agreement Telephone Conferences with Assignee's Attorney re Water's Edge at Wind Gap, LLC-West Street Land Development Plan.

Receipt, Review and Administration of Conditional Approval form and SALDO Waiver form re T. Klump Land Development Plan.

Telephone Conference with and Receipt of e-mails from C. Miller of CenterPoint re Male Road Bridge.

## **ZONING AND OTHER LAND USE MATTERS:**

Preparation of Advertising Notice for No-Tobacco-on-Park Ordinance.

Preparation of First Drafts of Ordinance and Advertising Notice re No Commercial Truck Traffic on Alpha Road.

**DEVELOPMENTS ON OUTSTANDING LITIGATION:** None

**COURT DECISIONS ON BOROUGH CASES:** None

## **MISCELLANEOUS:**

Preparation of Borough Planning Commission Meeting Minutes.

Review of Nu Cor Contract with Borough for Municipal Building Façade Repair and Written Memo to File.

Preparation of Monthly Solicitor's Report.

## **Outstanding Items:**

Stop Sign Ordinance

Dog Park Ordinance

## **ENGINEER'S REPORT**

Brian Pysher reported that he did receive correspondence from Mr. Miller, of CenterPoint, regarding Male Road and the bridge. Mr. Miller stated that he contributed as part of an agreement with the Borough, back in 1994, when the Borough actually took Male Road from PennDOT. The Borough did not have a capital improvements plan that required improvement money for designated projects. Upgrades to the Male Road Bridge were required by the developer at that time as part of an agreement because the Borough was taking it over from PennDOT. As part of the current development, the Borough asked the developer to contribute to the repair and maintenance of the bridge, but have not gotten a definitive answer. Brian added that everybody is doing their due diligence, but the Borough does not have any mechanism in place to require a developer to contribute financially. As part of the Giant/Kmart plaza, PennDOT required that he install a turning lane and now the part of the bridge that was widened is the part that is failing. Jeff added that CenterPoint was required to put up a 20 year bond and funds from that bond were used by the Borough to make some repairs.

## **NEW BUSINESS**

### 1. Tyrone Klump Land Development

#### **SALDO Section 402/403 Preliminary Plans/Final Plans**

- These sections require both a preliminary and final plan.
- The Planning Commission recommended that the waiver be granted since this plan has been reviewed several times (including at Sketch Plan stage) and filing two plans would not provide any more information to the Borough (or its professionals) that would make any significant difference in either plan review or its approval.

**On motion** by Kerry Gassler to grant SALDO Section 402/403 and seconded by Jeff Yob. Roll call taken. Council agreed unanimously.

#### **SALDO Section 506.G.8 Design Standards – Collection and Conveyance Facilities**

- This section requires that in paved area there be a one (1) foot minimum pipe cover from the subgrade to the crown of a pipe. The Applicant is proposing fifteen (15”) inch reinforced concrete pipe with one (1) foot minimum cover from finished grade. One of the reasons for the request is that lowering the storm sewer to allow for the additional cover will prevent storm water from reaching the proposed storm water basin. Also, raising the road to provide for the additional cover will create excessive slopes between the adjoining properties and the road.
- The Planning Commission recommended that this waiver be granted.

**On motion** by Jeff Yob to grant SALDO Section 506.G.8 and seconded by Kerry Gassler. Roll call taken. Council agreed unanimously.

#### **SALDO Section 509.A.14 Classification and General Design Goals**

- This section requires that all proposed streets be offered for dedication.
- The Applicant did not know who owned the street, therefore the Planning Commission could not act upon this waiver. The Borough Solicitor recommended to the Applicant and his Planning Professional to perform a search to determine who owns the street; and, at that point, the item can be re-visited. Since that time, the Applicant filed a deed of record confirming his ownership of Third Street such that the Borough could now enter into an easement agreement upon the Klump private property to access the cul-de-sac. The Planning Commission recommends a partial waiver allowing for an easement over a portion of the proposed cul-de-sac.

**This request was withdrawn.**

#### **SALDO Section 509.E.5 Street Intersections**

- This section requires that local street intersections be arced with a twenty (20) foot curb radius. The Applicant request is that the radius be ten (10) feet in view of the cul-de-sac, this would be more consistent with the surrounding properties and a twenty (20) foot radius would require the relocation of two (2) utility poles and a fire hydrant.
- The Planning Commission recommended that this waiver be granted.

**On motion** by Kerry Gassler to grant SALDO Section 509.E.5 and seconded by Jeff Yob. Roll call taken. Council agreed unanimously.

**SALDO Section 510.C Curbs**

- This section require curbing be installed for the entire length of the street. The Applicant proposes that this curbing should no extend/continue for the entire length of the cul-de-sac. One of the reasons for the waiver is that curbing the cul-de-sac will obstruct show plowing operations. Also, such curbing will not assist in storm water capture.
- The Planning Commission recommended a partial waiver where no curbing is required around the cul-de-sac.

**On motion** by Jeff Yob to grant a partial waiver for SALDO Section 510.C of no curbing around the cul-de-sac bulb and seconded by Kerry Gassler. Roll call taken. Council agreed unanimously.

**SALDO Section 509.I.3 Driveways**

- This section prohibits common driveways for all residential uses. The Applicant is proposing common driveways since the existing site conditions do not allow for the safe design of individual driveways. Moreover, the units will all be owned by a single owner and common driveways create less impervious cover.
- The Planning Commission recommend that this waiver be granted.

**On motion** by Kerry Gassler to grant SALDO Section 509.I.3 and seconded by Dave Manzo. Roll call taken. Council agreed unanimously.

**On motion** by Kerry Gassler to grant Preliminary/Final Conditional Plan Approval and seconded by Mike McNamara. Roll call taken. Council agreed unanimously.

2. Appalachian Trail Zoning (DM) - Dave Manzo reported that Plainfield Township adopted an ordinance regarding the Appalachian Trail. Attorney Karasek provided him a copy of an ordinance that he prepared for Smithfield Township regarding the protection of the Appalachian Trail related to State Act 24 of 2008. Dave suggested that Council review these two ordinances and prepare something for Wind Gap Borough related to protecting the Appalachian Trail Corridor. Attorney Karasek hypothetically explained that the Appalachian Trail is in a residential zone, the overlay says you could put a house in a residential zone but when you put the overlay on it, it says you cannot have a house within five hundred feet of the center of the trail so you would have to come in and ask for a variance. Smithfield Township has one thousand feet from the center of the trail, which is a lot but they are way up on the mountain and half the land is owned by the US Government so who is going to complain about that and the other half is owned by one or two property owners. This will be put on the agenda for mid-month.

*Dave Manzo took his leave at 7:45 p.m. to attend a committee meeting.*

3. Alpha Rd Reconstruction Project - Bracalente Construction – Extension - Brian Pysher gave Council an update on Alpha Road as the project continues to progress. The contractor doing the pipework is almost up to the old Oaten Building at the intersection of Alpha and North Broadway. Once the bids were open and the cost of the project was known, the Borough had to seek approval from PennDOT to increase the amount of money being used from the Liquid Fuels account. The original contract date had a specified completion date of October 15, 2019. Dominic Bracalente wrote a letter requesting a completion date of November 15, 2019. Brian does not have an issue with extending the completion date.

**On motion** by Kerry Gassler to grant the extension for Bracalente Construction to November 15, 2019 seconded by Jeff Yob. Roll call taken. Council agreed unanimously.

4. Alpha Road – Weight Limit Restriction/Ordinance – Advertise Ord 504 - Brian Pysher reported that his office wrote an in-depth report detailing multiple physical constraints, site obstruction with the Oaten building, a residential neighborhood, turning radius at the southern end at the Petro-Mart that are all valid engineering reasons to restrict weight on Upper Alpha Road. Brian is confident that it is comprehensive enough report of the state of the road that the Borough can prohibit the trucks from traveling on it. Attorney Karasek said that he will attach the engineer's letter to the ordinance making it part of the ordinance. Rich Fox will order the signs needed for the road.

**On motion** by Jeff Yob to allow Attorney Karasek to advertise Ordinance 504 for the November 4<sup>th</sup> meeting and seconded by Kerry Gassler. Roll call taken. Council agreed unanimously.

5. Maintenance Garage – Alternate Concrete Pad – Brian Pysher reported that there were two alternate items that the Architects listed in their contracted bid packet. One of them being for the general contractor which was a 30' X 90 concrete pad/apron outside the garage doors similar to what is proposed for this building. That number was attached to Nu Cor Management's low bid of \$39,000 and based on the estimates received \$39,000 is a good price, in line with what was received from other contractors.

**On motion** by Jeff Yob to accept the alternate concrete pad at a cost of \$39,000 for the maintenance garage and seconded by Kerry Gassler. Roll call taken. Council agreed unanimously.

6. Maintenance Garage – Alternate Plumbing / Oil Separator – Brian Pysher reported that the other alternate that they have is on the plumbing end to install the oil separator and part of the building sewer for the maintenance garage. Initially it was discussed that this would be done by the borough street crew, we put this in there as an alternate, another means to getting it done. It was \$12,700 which included the oil grit separator. He would suggest that we add this as a change order and have the Warko Group do this with the rest of the plumbing.

**On motion** by Kerry Gassler to accept the alternate plumbing / oil separator at a cost of \$12,700 and seconded by Mike McNamara. Roll call taken. Council agreed unanimously

7. Longcore Road Paving – Muschlitz (100 tons @ \$31.50/ton) – Brian Pysher reported he has been working with Jack Muschlitz on the improvements related to the Water's Edge plan. Jack indicated that his intention is to finalize the street work this construction season. In order for him to build it the way the plan shows, he would have to mill out the center line in order to pave. In order to have a new road, he offered to put down the material at no cost if the Borough will pay for the material. The street was measured and it would take approximately 100 tons to overlay our half of Longcore from the end of his property at the south end of Longcore up to the intersection. The Borough currently pays \$61.50 per ton for 9.5MM material.

**On motion** by Kerry Gassler to accept the offer of Muschlitz Excavating to install blacktop, purchased by the Borough, on the Borough half of Longcore Road, up to 100 tons and seconded by Jeff Yob. Roll call taken. Council agreed unanimously

Dave Hess asked if they are going to stripe the road, Brian will find out.

8. Water's Edge – Interior Drive Paving Request - Brian Pysher reported that the development was originally proposed to have a homeowners' association, so the roads would be private roads that had the potential to be taken over by the Borough. The development changed and the homeowners association was eliminated. The plan indicates that the roads are required to be built up to Borough standards. Mr. Muschlitz is asking for a reduction in

paving specification down to six inches of 2A modified stone, four inches of 19 mm, and an inch and a half of 9.5 mm of wearing course. Brian indicated that his engineering firm agrees that this is acceptable. It is not a Borough road that is going to be taken over, it will remain with the property.

**On motion** by Jeff Yob to make the change for the material and seconded by Kerry Gassler. Roll call taken. Council agreed unanimously

George Hinton questioned if the Borough allows Mr. Muschlitz to reduce the paving specifications, would there be any possibility at some point in the future that the Borough would take over those streets and then find out that are not up to Borough standards. Brian said the standard is six inches of 2A modified stone, five inches of base course, two inches of binder, and one and a half inches of wearing course. George cautioned that this development could be sold and the next owner decides to come in front of Council and says that they would like to turn the roads over to the Borough so the Borough can collect liquid fuels and then the Borough is stuck with repairing the streets. There are other streets in the Borough that would not constructed to standards and now it is costly to fix those streets up to standards. Attorney Karasek said that to protect the Borough, the change on his plan would have to reflect the internal streets/passageways will remain private and never be dedicated to the Borough. Once that is on the plan sheets and it is recorded at the courthouse, other than someone trying to come in and try to make a change, it becomes difficult to do because it is something recorded at the courthouse and something that the new buyer would have to accept.

**Motion amended** by Jeff Yob that this is agreed on condition that the plan gets revised and that the plan gets refiled at the courthouse to put any new buyers on notice that this is going to be the situation with respect to the streets. Roll call taken. Council agreed unanimously

Brian Pysher reported that he is trying to set up a meeting with the gas company prior to paving Longcore because we want to install some sort of conduit under the road to run the gas main extension to the Borough property.

George Hinton asked Brian if he spoke with Jack Muschlitz regarding the handicapped ramps on the corner of Longcore. Brian said he will look back at the plans and check on it.

9. Enactment Ordinance 503 – Prohibit Use of Tobacco Products at Wind Gap Park – Attorney Karasek reported that the ordinance is in place, has been advertised, and the definition for tobacco includes the vaping pens, juul devices, electronic cigarettes, etc.

**On motion** by Jeff Yob to adopt Ordinance 503 and seconded by Mike McNamara.

Mayor Mogilski requested to add “by resolution” to the ordinance should Council so choose to change this ordinance at any time. Attorney Karasek said that you can change the administration by resolution but you cannot change the law. He can put it in, it is not a significant change.

**Motion amended** by Jeff Yob to adopt Ordinance 503 and allow any amendment to be made to the ordinance be by resolution and seconded by Mike McNamara. Roll call taken. Council agreed unanimously.

10. PA American Water Co – Fire Hydrant Request (S Broadway) – Louise Firestone reported that the new contact for PA American Water met with the Borough representatives and recommended an additional fire hydrant be installed on South Broadway. The recommendation is in the area of McDonalds, but depending on the exact location it could be in Plainfield Township. Rich Fox added that PA American Water said that are replacing the main water line down there because they had several breaks last winter.

11. F Alley / Fifth Street Curb (Picture) - Mayor Mogilski provided a picture that shows there is no curb on West Fifth Street along South Broadway. Mayor Mogilski recommends fixing it to look like Sixth Street. Brian thinks there is curbing there, it is broken off over time. Brian added that generally if a road is being constructed, an apron is not installed, just put curb returns in like East First Street where there is radius returns and macadam. Even if you make the apron 6 inches thick, continually driving on it will just deteriorate over time and the Borough has to maintain the gutter line so the water would run where the curbing is now to keep it from running down West Fifth Street.

George Hinton expressed his displeasure with the Mayor sending an e-mail threatening that he was going to get an attorney. The only way to improve West Fifth Street is to build it up to standards which includes, putting radius in and putting the road in, but the adjoining property owners will have to become involved with cost. Mayor Mogilski asked if he would feel comfortable with just pulling the concrete up and make it dirt like Sixth Street. Brian said that once the Borough starts altering something in PennDOT's right of way, we are bound by their requirements which includes installing handicap ramps. This is what they expect, the sidewalks going across the street must be accessible with handicap ramps on either end. The Borough would have to submit to PennDot for a HOP, for a low volume driveway. When you do improvements you have to live up to their standards. The cost for handicapped ramps is around \$16,000 and the PennDot permit is \$10,000 not counting the demolition cost or blacktop. It is over \$50,000 to put in a six foot piece of macadam. Jeff recommended that this street can go on the long term plan but he doesn't see it happening in the near future.

12. PLGIT Signature Cards. Dave Hess reported that the signature card for the Liquid Fuels Account needs to be updated with the President, Vice President and Borough Administrator.

**On motion** by Jeff Yob to change the PLGIT signature card and seconded by Mike McNamara. Roll call taken. Council agreed unanimously

## **OLD BUSINESS**

1. East First Street – Dedicated Borough Street (Liquid Fuels) – Metes/Bounds – Louise Firestone reported that during her research of Liquid Fuels, she provided the official Liquid Fuels Street list as approved by PennDOT. The Borough never completed the necessary paperwork that is needed to add East First Street. According to PennDOT's "How You Get the Roads on Liquid Fuels", the Borough must adopt an ordinance or resolution, send a written request and then get to reviewed prior to September 1<sup>st</sup> for the following year. The Borough will also have East West Street to add once it is completed and dedicated to the Borough. Brian doesn't know if it was part of their approval that it was offered for dedication, the recorded plans indicated that it was to be dedicated. Attorney Karasek said that the Borough can say they do not want it, the way he writes his improvements agreement is the Borough does not have to take over a road. The Borough makes a decision as to whether it wants to take over a road based on a borough engineer inspection of the road. If we are going to dedicate a street or road he needs a deed of dedication signed by the owner of the road. Brian said that the original owner went bankrupt so he is unsure who actually owns the street because Tuskes Homes bought the development from the bank, but does not know if the street was part of the purchase. Brian said that he knows the street is built to standards, they inspected it. Brian said he can research that ownership and provide it to Attorney Karasek so he can prepare a Deed of Dedication as long as he has a metes and bounds, bearing and distances etc. along with a map that can be attached then signed, filed and recorded. He will check if the Borough has a similar provision when they made their changes in 2012 to the Borough Code.

2. Brian Pyscher had questions regarding East West Street in front of Water's Edge development. Brian believes that roadway was dedicated because years ago that roadway was straightened out and a portion condemned, so the Borough has the right-of-way. How does that work with Jack Muschlitz when he builds that road since he is not actually dedicating the road right-of-way, he essentially is just building the road for the Borough as part of the sub-division. Jack Muschlitz wants to put the overlay on it and Brian explained there is an eighteen month maintenance, so there is concern that the heavy equipment using the road as they build all the structures will deteriorate the road. If the road is not built up to specifications and left partially completed, there will be about an inch and a half short in height so the manholes covers are going to stick up, the inlet grates will stick up a little bit which will expose them to damage when the Borough plows snow this winter which could cause issues as to responsibility of damage. Council discussed keeping East West Street closed for the winter which could eliminate damage potential. Jeff added that the Municipal Authority has stated that none of the manholes have been pressure tested along with the interior of the development. Brian will negotiate and report back at the next meeting.

## **ADJOURNMENT**

**On motion** by Kerry Gassler to adjourn the meeting of October 7, 2019. Council agreed unanimously. The meeting of October 7, 2019 adjourned at 8:48 p.m.

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Louise Firestone, Borough Administrator