

**BOROUGH OF WIND GAP  
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The Council meeting of the Borough of Wind Gap on Monday, October 5, 2020 was called to order at 7:00 p.m. by Council President Dave Hess, through Zoom Video Conferencing. Louise Firestone informed everyone that the meeting was being recorded.

A verbal roll call was taken by Borough Manager Louise Firestone – participating via Zoom computer link or Zoom phone link were Council members George Hinton, Joyce McGarry, Mike McNamara, David Manzo, Jeff Yob, and Steve Bender. Also participating were Borough Solicitor Ronald Karasek, Borough Engineer Brian Pysker, and Borough Manager Louise Firestone. Absent was Mayor Mitchell D. Mogilski Sr.

**PUBLIC COMMENT**

No public comments were heard at this time.

**APPROVAL OF MINUTES**

**On motion** by Dave Manzo to approve the September 22, 2020 minutes and seconded by George Hinton. Roll call vote taken. Council agreed unanimously.

**APPROVAL OF EXPENSES**

**On motion** by Jeff Yob to approve the expenses in the amount of \$165,707.64 and seconded by George Hinton. Roll call vote taken. Council agreed unanimously.

**On motion** by George Hinton to hold payment for the Nu Cor Management pay request 19300.8 for the Maintenance Garage in the amount of \$42,300.00 until the drywall is completed and seconded by Jeff Yob. Roll call vote taken. Council agreed unanimously.

**On motion** by George Hinton to approve Wind Gap Electric pay request Application No. 2 for the Maintenance Garage in the amount of \$10,575.00 for the electrical work and seconded by Dave Manzo. Roll call vote taken. Council agreed unanimously.

**On motion** by George Hinton to approve Wind Gap Electric pay request Application No. 3 for the Maintenance Garage in the amount of \$22,050.00 for the electrical work and seconded by Mike McNamara. Roll call vote taken. Council agreed unanimously.

**On motion** by George Hinton to hold A. Scott pay request Application No. 2 for the sewer line, oil separator, and water line for the Maintenance Garage in the amount of \$19,529.85 due to the job not being complete and seconded by Jeff Yob. Roll call vote taken. Council agreed unanimously.

Brian Pysker reported that he spoke with Terry Miklas, Wind Gap Municipal Authority, and he acknowledged that he inspected the sewer line that was installed and we are missing one mushroom cap for a vent line. Once a vent cap is installed and A. Scott has everything backfilled, Brian will notify Terry for his sign offs for our sewer line installation associated with the Municipal Building and the Maintenance Garage.

## **SOLICITOR'S REPORT**

### **MEETINGS ATTENDED:**

September 8, 2020 – Attendance at regular monthly meeting of Borough Council via ZOOM.

September 17, 2020 – Attendance at regular monthly meeting of Borough Planning Commission via ZOOM.

September 22, 2020 - Attendance at special mid-month meeting of Borough Council via ZOOM.

### **SUBDIVISION MATTERS:**

Receipt, Review and Administration of Revised Plan, Borough Engineer (Second) Review Letter, LVPC Review Letter, Review of Bearings/Distances Description for Lots and Remaining Land and Preparation of Agreement for conditional Approval For re Detzi Preliminary/Final Minor Subdivision.

### **LAND DEVELOPMENT MATTERS:**

Receipt, Review and Administration of Conceptual Drawing with Request for SALDO Waiver and Zoning Officer Review Correspondence re ScoreCard Bar and Grill-Patio-Deck.

Receipt, Review and Administration of Option 8-Access/Emergency Drive and Phone Conference with Applicant's Attorney re JERC Partners LII, LLC LD Plan.

Phone conversation with Applicant's Attorney regarding Revisions to Easement Agreement for Access Drive to Borough Park/Trail.

Receipt, Review and Administration of e-mail from Applicant's Representative, Telephone conversation with Applicant's Attorney with Forwarding Extension of Time form and Receipt, Review and Administration of Zoning Officer Review re BioSpectra/RX Holdings L.D. Plan.

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

Receipt. Review and Administration of Correspondence from Applicant's Attorney re Keenhold Real Estate Tax Assessment for Three Properties.

Legal Research under Borough Zoning Ordinance and Zoning Law re: Keeping of Animals (Goats).

### **MISCELLANEOUS:**

Receipt, Review and Administration of Right-to-Know Request re McNally – 195 East West Street.

Receipt, Review and Administration of CMR Contract for Park Walking Trail and Preparation of Discussion Memorandum.

Preparation of Planning Commission Meeting Agenda of September 17, 2020.

Preparation of Borough Planning Commission Meeting Minutes of September 17, 2020.  
Preparation of Monthly Solicitor's Report.

### **OUTSTANDING ITEMS:**

Stop Sign Ordinance and Dog Park Ordinance

## **ENGINEER'S REPORT**

Brian Pysker reported the Maintenance Garage is progressing, they framed out the office area, hung the sheetrock, spackled and started painting. The electricians have been running conduit and pulling wires. We are scheduled to dig for the propane tank this week with delivery and testing of the tank will be Thursday. The water line has been installed. He contacted RCN, but has not heard back so he will follow up. Met Ed called last week and advised that the Borough did not have adequate voltage at the building. Met Ed checked at the pole and determined that there was voltage at the pole, but there was an issue with service to the municipal building, so Brian contacted A. Scott. He got them back on-site and exposed the electric service in the area where the water line was installed and when they excavated it, it turned out that the service shorted out. Met Ed disconnected it and Wind Gap Electric was on site at the maintenance garage so they worked along with Met Ed to reconnect it. The municipal building was running on generator for the weekend. Some of the wires had to be switched around and by lunch time power had been restored back to the building.

Regarding the concrete aprons, Brian sent the contract to MSG last week, but has not heard back from them regarding their bond and/or insurance.

Jeff Yob asked if we were going to look to recoup the cost for the damage that was done to the electrical line and the use of propane. Brian said that he is not sure if we could prove that it was done by A. Scott. He was there when they installed the water line and they had the electric line exposed. The electric line is about 36 inches down and the water line is four foot down so they had exposed it. The original electrical service was direct burial. When he witnessed it, about a week prior, when A. Scott ran the wire, there was no obvious damage to it. Met Ed seemed to think that the rain last week made the ground wet and it was enough to get it to ground out. When he was on site on Friday, when they had it exposed, all the wires were so burnt up that there was no evidence to show that it was hit or damaged by anyone in particular. Jeff said that the propane cost alone and labor by three companies to make the repair and possibly Met Ed invoicing for their time should be recouped. Brian said that the propane was at 60% and the tank was topped off on Friday and about 20% was used for Saturday, Sunday, and part of today. We did minimize the amount of load in the Municipal Building before we left on Friday. They turned the air conditioners and the recovery heater off to minimize draw on the generator and propane usage. Attorney Karasek said that there is a principle of law that says that if it appears the incident was caused by someone's negligence and you excluded all the other negligence than it basically goes to the facts speak for themselves. As a matter of evidence, you can show that they were the ones that caused the problem. In order to do that you have to exclude and prove all other sources of problems by any other source. If that is the case, make a claim. You want to make sure that you are being wise with tax payers funds.

Jeff Yob asked for an update on the gas line to the municipal complex. Brian met with UGI last year and again early this year and at that point the line for Dream Lehigh Valley had not been run. Now that UGI has run those lines to the east side of Longcore, it is much closer than it was when we originally discussed this with UGI. He will contact UGI again and see if we can get a price from them for installation up to our property. He did discuss this with Louise and this would be something to budget for 2021.

## **NEW BUSINESS**

1. Detzi's Tavern – Minor Subdivision Plan – Attorney Karasek reported that this matter was reviewed by the Planning Commission and the Borough Engineer review letter was in pretty much or all in compliance with one or two things still out there. The Planning Commission is recommending approval of this plan. The applicants planning professional, Mr. Swallow, has

signed the agreement for Conditional Plan Approval Form. The only conditions are compliance with any outstanding conditions of the Borough Engineer Review Letter item 6, dated September 16, 2020. Plainfield Township approved this plan since some of the property is in Plainfield Township. The applicant has entered into a written agreement for Conditional Plan Approval of this project.

**On motion** by George Hinton to approve the Conditional Plan Approval for the Minor Subdivision Plan for Detzi Property and seconded by Jeff Yob. Roll call vote taken. Council agreed unanimously.

2. Zoning Ordinance – No-Fee Permits – Interior Upgrades – Louise Firestone reported that the Northampton County Tax Assessor informed the Zoning Department that they cannot go out and re-access properties without permits being submitted to the county. When someone does upgrades inside their house, they are not getting re-assessed for things like additional bathrooms, central air, etc. This is important because the reassessment is not happening which means that our tax base is not increasing. Currently, Wind Gap Borough is worth 61 million dollars and has been since 2006. Without these reassessments getting recorded at the county, the people that are improving their property are not paying anymore taxes or their fair share. Brian Pysher said that he and the Zoning Officers prior to him also issued permits for any kind of residential renovations, alterations, and additions. In the Zoning Ordinance, Section 802 A 1A, no person shall erect, alter or convert a structure or building until the Zoning Officer issues a zoning permit. Any kind of residential or commercial renovations, interior or exterior, we always required permits. Permits are not required for normal repairs. Brian said that reputable contractors know to come to the Borough for permits.

3. 29 Mechanic St / 125 Water Street – Real Estate Sale Requirements – Dave Hess said that the time to put the properties on the market to sell is getting closer, do we want to have the properties re-appraised, put up for sale, or schedule an auction. Attorney Karasek said that if the Borough sells real estate it has to be by a Resolution and can only sell the real estate to the highest bidder if at an auction. It has to be advertised in the newspaper not less than ten days prior to the date of open bids or auction. Council does have the authority to reject all bids if the bid is less than fair market value. If it is an auction process, Council can also establish a minimum bid that reflects fair market value. Dave Hess said this is something to think about because we are looking at possibly January to move on with these properties. Louise will get the last appraisal that we had done and let everyone know what it is.

## **OLD BUSINESS**

1. ScoreCard Sports Bar and Grill – Roshawn Kerdzaliev – Sketch Drawing – Attorney Karasek reported that at the Planning Commission meeting of September 17<sup>th</sup>, the Planning Commission said that the request for the waiver of the SALDO should be heard by Council until such time that there has been a review by the Zoning Officer to determine the nature and extent of what Zoning Variances they might need based upon the percentage of people or the number of people in the establishment pre and post COVID, the number of parking spaces etc. A letter came in from the Zoning Officer on Friday. If Council has read it and is ready to act upon this, they can. You might want to consider giving some time to review the letter and give the applicant and/or their planning professional the option to be present to further discuss this matter. Dave Manzo asked Brian if this should go back to Planning regarding parking and fire sprinkler system. Attorney Karasek said there is not time frame for this request, it is up to Council if they want this plan to go back to the Planning Commission. Brian said that in the past, Planning has always taken the position that if there are any zoning requirements, that all zoning issues should be resolved prior to Planning acting on the plan. If the Zoning Officer has

determined that they are short on parking, he would inquire with the applicant if they are intending on making an application to the Zoning Hearing Board to apply for any variances that the Zoning Officer determined that they need. The application needs to provide clarification on how they plan to proceed.

**On motion** by Dave Manzo to not act on the waiver for ScoreCard until further information is provided so that clarification of these zoning issues can be made and seconded by Jeff Yob. Roll call vote taken. Council agreed unanimously.

2. BioSpectra – Land Development Plan Update – Attorney Karasek forwarded to Louise a copy of the review letters from the Borough Engineer dated August 2,2020 and Zoning Officer dated September 16, 2020. He recommends that Council consider denying this plan based on the review letters. The deadline for Council to act on plan is November 4, 2020 so the applicant could be contacted to see if they are willing to do something with this and then a vote can be taken at the mid-month meeting. An extension letter was sent to they Attorney and he has not heard or received anything back.

**On motion** by George Hinton to deny BioSpectra’s Land Development Plan and seconded by Joyce McGarry. Roll call vote taken. Council agreed unanimously.

**Motion amended** by George Hinton to deny BioSpectra’s Land Development Plan based upon the two review letters from the Borough Engineer dated August 2,2020 and Zoning Officer dated September 16, 2020 and seconded by Joyce McGarry. Roll call vote taken. Council agreed unanimously.

3. Third Street Traffic Light - Brian Pysker reported that the traffic light on Third Street had a bad control module so a new module has been ordered and will be installed once it is received.

4. Fieldhouse Update - Louise Firestone reported that a letter was sent to the Wind Gap Area Athletic Association, they were aware that yesterday was the thirty-day cutoff. In speaking with Rich, it does not appear that anyone has made an effort to go to the fieldhouse. Tomorrow she will be requesting a roll off dumpster from Waste Management. The Fire Company plans on doing a drill with the building that is going to come down. We did apply to DEP for a permit to take some samples to make sure there is no asbestos in that building so we took a sample of insulation of the roof, some of the paint and some of the electrical wiring. We hope to have that back this week. One of the reasons the fieldhouse is being taken down is it was built in the low-lying area where there is water run-off that occasionally floods the building. The proposed location of the trail will come down off the hill, by the old batting cage so the ground has to be slightly elevated to eliminate the water issues. The fieldhouse was shutdown two years ago because it was housing mice, which have contaminated the building and the contents of the building. Because of previous water damage, mold has grown throughout the building specifically in the exposed insulation. We have a tentative meeting set up for this Thursday at noon at the park with the contractor for the Park Trail. If anyone on the committee is available, they are welcome to attend.

5. Budget – Louise Firestone reported that she has been working on the 2021 budget and she hopes to have a tentative budget out to everyone shortly. There is a Police meeting tomorrow night and hopefully that budget number is more defined so she can put it in our budget and forward to Council.

6. Maintenance Garage – Louise Firestone reported that she did a spreadsheet on the cost of the new maintenance garage. The spreadsheet breakouts out the individual contractors and what their original bid price was, how much has been paid to date, balance remaining and retainage amount. There were no questions.

#### **QUESTIONS AND ANSWERS**

None

#### **ADJOURNMENT**

**On motion** by Dave Manzo to adjourn the meeting of October 5, 2020. Council agreed unanimously. The meeting of October 5, 2020 adjourned at 8:03 p.m.

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Louise Firestone, Borough Manager