

**BOROUGH OF WIND GAP  
29 MECHANIC STREET  
WIND GAP, PA 18091  
610-863-7288**

The Council meeting of the Borough of Wind Gap on Monday, December 2, 2002 was called to order at 7:30 p.m. by Council President Winton Male, Jr., at which time he reminded those present that the meeting was being recorded. In attendance were Councilmen: Lewis Paulhamus, Mitchell D. Mogilski, Sr., William Pysher, Richard Getz and Kerry Gassler. Also in attendance were Mayor Kenneth George, Borough Solicitor, Len Zito, Borough Engineer, Ron Madison, and Borough Secretary Louise Firestone.

### **Approval of Minutes -**

**On motion** by Kerry Gassler to approve the minutes of the meeting of November 4, 2002 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

**On motion** by Lewis Paulhamus to approve the minutes of the meeting of November 19, 2002 and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

**On motion** by Kerry Gassler to approve the minutes of the meeting of November 21, 2002 and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

**On motion** by Bill Pysher to approve the minutes of the meeting of November 27, 2002 and seconded by Kerry Gassler. Roll call vote taken. In favor: K. Gassler, R. Getz, W. Male, M. Mogilski, B. Pysher. Abstain: L. Paulhamus. Motion carried with a vote of 5-0-1.

### **Approval of Expenditures -**

**On motion** by Mitchell D. Mogilski, Sr., to approve the November 2002 expenses in the amount of \$38,503.70 and seconded by Richard Getz. Kerry stated that Council did not aware the contract to Kistler O'Brien for the installation of the fire suppression system. Council will wait for a quote from B-Safe. Roll call vote taken. Motion carried unanimously.

### **Public Comment**

1. Leroy Albanese. Leroy asked if West Seventh Street was discussed because he has not heard one way or the other. Winton stated that he recalled that Leroy asked that this be on the agenda for discussion and then Leroy did not attend the meeting. Leroy asked if it was necessary to him to attend for this topic to be discussed? Winton stated that the consensus seems to be that there is no interest on the part of Council to ordain and improve that street. Kerry suggested that this topic be placed on the workshop meeting agenda in January.

2. Rick Keenhold. Rick asked if a vacancy exists on the Park Board? The person appointed by Council does not show up to meetings.

### **Solicitor's Report**

Mr. Zito referenced his memo of November 21, 2002 regarding the Twins at the Gap. The Solicitor for the developer has written to the Zoning Officer and the Borough Zoning Officer wrote to Mr. Zito relative to the interpretation of the Zoning Ordinance. The developer's Lawyer is suggesting that a section

of the Zoning Ordinance regarding setbacks is unconstitutional. He has an option to proceed to the Zoning Hearing Board for an interpretation of the Zoning Ordinance or he can proceed directly to Council and ask Council to cure its ordinance. Council would have to find that the ordinance is unconstitutional. Mr. Zito does not know that legality of the developer's position is, but he does know the practicality of his position. A landowner can request a curative amendment and a hearing before Council. Council would sit essentially as the Zoning Hearing Board and at the conclusion of the matter, if Council found that this case has merit they could declare some part of the ordinance is unconstitutional and amend it or he could apply to the court as an appeal if he was not satisfied and he has threatened to do that at this point. Bill asked what part of the ordinance is he saying it unconstitutional? Len replied that the ordinance requires a yard and if someone wants to develop these townhouses they would not have yards. Therefore, anyone who wants to put a deck up would be in violation because they do not have a setback. They would need a variance each time they want to make improvement to their property. The question is whether that structure is unconstitutional because of its vagueness and does not provide a remedy. Ron Madison added that the Zoning Ordinance allows for single family attached dwelling units. That section of the ordinance states that every structure has a side yard setback. John Blick believes that if it is setup as condominiums where it is a single ownership it could meet the ordinance. Len stated that the developer's lawyer agrees with the Zoning Officer's interpretation. **On motion** by Kerry Gassler to allow Mr. Zito to look into this issue and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

Ordinance 431 is ready for enactment this evening.

## Engineer's Report

1. Mechanic Street Inlets project, Pay Request #1. Hanover is satisfied with the work completed to date as of November 27, 2002. **On motion** by Kerry Gassler to pay Collins and Maxwell in the amount of \$18,010.47 and seconded by Richard Getz. Roll call vote taken. Motion carried unanimously.

Mechanic Street Inlets project, Pay Request #2. The final pavement restoration will be completed next week. Additional lawn restoration will be required in the Spring of 2003. Hanover suggests the payment. Upon receipt of the distributed funds from the County, the Borough may issue payment to the Contractor if the required maintenance bond security and task are completed. **On motion** by Kerry Gassler to pay Collins and Maxwell \$10,288.23 and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

2. East West Street project, Pay Request #2. Hanover is satisfied with completed to date, including: the installation of storm sewer pipe, inlets and endwalls, the installation of curb, final grading and installation pavement. **On motion** by Mitchell D. Mogilski, Sr. to pay NAPA Development in the amount of \$97,214.43 and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

East West Street project, Pay Request #3. Some minor restoration items remain which will be completed next week. Additional lawn restoration will be required in the Spring of 2003. Upon receipt of the distributed funds from the County, the Borough may issue payment to the Contractor if the required maintenance bond security and task are completed. In both project cases regardless if they get the paving done and seed down, Hanover will have punchlists for the maintenance bond security to come back in the spring. **On motion** by Lewis Paulhamus to pay NAPA Development in the amount of \$10,307.52 and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

3. Park Restroom. Ron distributed preliminary design plans for the park restroom. He hopes to have the plans finalized and the full bid specs completed by the end of the week. He will submit the same package to DCNR for review and approval. Labor and Industry, Wind Gap Municipal Authority, Pennsylvania American Water will all have to review and approve the plans prior it going out for public bid.

## Old Business

1. 2003 Budget. **On motion** by Kerry Gassler to advertise the 2003 Budget and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.
  
2. Waste Management Letter of Intent/Neighboring Municipality Partnership. Winton explained that he sees no reason why Council would not approve this offer since it is a substantial amount of money and it is his understanding that there will be no strings attached. Mitch stated that it does not say that, it does not specify what their intentions are from us and we need to know everything. Harry Smith from Waste Management was present to answer questions from Council. It all began in regards to the DEP's Municipal Involvement Process with facilities like Grand Central. At the beginning of the budget planning process for 2003, Waste Management began looking into to this and at that point is when they sent the Borough a letter to form a committee to meet with them and discuss the Borough's needs. He has followed the budget process of the Borough and understands the shortfall faced by the Borough. This offer is to assist in completing projects that would otherwise not be completed because of lack of funds in the Borough. What is in this letter is binding and would be backed up with an agreement that the Borough would participate in forming. Winton asked if there would be any obligations on the part of the Borough next year? Harry replied that the agreement would be similar to the agreement currently in place for the free waste disposal offered to the Borough this year. Harry asked that Council pass this Letter of Intent this evening, which would be a binding commitment to move forward. Mitch asked if they could make this a letter of committee so Council has the final say so and not Waste Management. Richard asked what the heading Waste Management Letter of Intent/Neighboring Municipality Partnership means? Does it mean the Borough will be partners with Waste Management? Harry replied that they would address the Borough's needs through a form of a partnership. This will begin in the first quarter of 2003, thereafter the formal agreement will be written, and daily tonnage will accrue beginning January 1, 2003. Councilmen Mogilski and Getz would like to discuss this at the workshop meeting because this is the first they have seen the contents of a written agreement. Mitch read Grand Central Municipal Support for 2003 is as follows for 2003 contribution: Borough Park restroom \$25,000, Tennis courts re-pave \$3,500, Waste Tire Pile 1,000 tons shredded tires-load/truck/dispose \$80,000, Police SUV type police vehicle equipped with portable scales \$35,000, Utility truck donation toward purchase of a new vehicle \$16,000. Annual donations will be Volunteer Fire Company pumper truck annual debt contribution not-to-exceed \$match with Council donation and VFD fundraiser \$25,000, Free Trash/recycling collection \$185,000, Ambulance Corps donation \$6,000 or \$375,000. Starting January 1 the Borough would receive 15 cents per ton max at \$125,000 or \$500,000. Mitch understands that the additional money from tonnage would be used for an additional full-time officer at \$50,000 and a Borough Manager at \$65,000 both including benefits. Mitch does not believe that they should dictate how this should be spent. Winton explained that he set up the committee including himself, John Hannon and Bill Pysher to meet with Waste Management. The committee explained the needs of the Borough to them. They contacted the Councilmen not part of the committee for discussion. Richard stated that he was not contacted. Harry Smith acknowledged that Waste Management assisting with the health risk assessment at a cost somewhere in the six figure range. Mr. Zito stated that essentially the terms of this letter would be the agreement. Once Borough Council takes a step to approve this Letter of Intent it would be binding and Waste Management and the Borough have a contract and they must pay these amounts. They would have to pay even if the Borough never agrees to a formal contract. Richard asked if there could be additional conditions in the final agreement? Mr. Zito replied that there could be additional negotiated conditions, however, once the Borough accepts what is being proposed here Waste Management is obligated to make the payments and the Borough is obligated to accept. Richard asked if any stipulations could be put on the Borough as a partnership to reciprocate? Mr. Zito replied, No. This is an offer by Waste Management to the Borough

and the Borough is not obligated to reciprocate.

**On motion** by Kerry Gassler to resolve to accept this Letter of Intent and seconded by Lewis Paulhamus. Roll call vote taken. In favor: K. Gassler, R. Getz, W. Male, L. Paulhamus, B. Pysher. Opposed: M. Mogilski. Motion carried with a vote of 5-1.

3. Enactment of Ordinance 431 - Amendment to Police Pension. **On motion** by Kerry Gassler to enact Ordinance 431 and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

4. PennDOT Agility Program. Mitch reported that he has been in touch with PennDOT in Harrisburg. They have all the necessary paperwork and we should be hearing from them shortly.

5. Wind Gap Industrial Park and Agreement. Mitch requested that this item be placed on the agenda because he feels that Council should know what it going on with this project. He stated that he has talked to the County and they informed him that if was unable to receive information from the Borough by the end of Tuesday they would start copying the paper even though they do not wish to do that work. Mitch asked Mr. Zito if he has information on this project? Mr. Zito replied that he has been involved with the Intermunicipal Agreement driven by Plainfield Township Solicitor Mr. Backenstoe. Several drafts have been forwarded to Council as recently as November 29, 2002. Mr. Zito has seen everything on the Bond funding that he needed to see to assure that this project was properly part of the funding and that the funds have been collected by the bond underwriters. This project has been identified and approved both by Northampton County Council and the Northampton County Development Authority. Those documents are all at the courthouse. Mitch is concerned that he has received only three letters regarding this project. Winton replied that he personally distributed a memo on Sunday outlining all correspondence related to this project that goes back two years. **On motion** by Kerry Gassler to accept this agreement and seconded by Lewis Paulhamus. Roll call vote taken. In favor: K. Gassler, R. Getz, W. Male, L. Paulhamus, B. Pysher. Opposed: M. Mogilski. Motion carried with a vote of 5-1. Exhibit "A" to the agreement is the plan on the Council wall.

## New Business

1. John Hannon's resignation. **On motion** by Kerry Gassler to accept John Hannon's resignation and send a letter of thanks and seconded by Richard Getz. Roll call vote taken. Motion carried unanimously.

2. **On motion** by Bill Pysher to advertise Council vacancy, Planning Commission vacancy and Civil Service Commission vacancy and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously. Kerry asked if people who have previously applied would need to apply again. Winton replied that Council would need a new letter stating that they are still interested.

3. Ladies Room Heat. **On motion** by Kerry Gassler to award the contract to John Straub in the amount of \$140.00 and seconded by Richard Getz. Roll call vote taken. Motion carried unanimously.

4. Firehouse Roof Replacement. **On motion** by Kerry Gassler to award the contract to 3M Construction \$5,200 and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. In favor: K. Gassler, W. Male, M. Mogilski, L. Paulhamus, B. Pysher. Abstained: R. Getz. Motion carried with a vote of 5-0-1.

5. Security System for Borough Office and Police Station. Winton received a quote and distributed it to Council. Winton will contact Triple AAA Protection. Discussion merging with the same company used by the Fire Company for possible cost savings.

6. **On motion** by Kerry Gassler to accept with regrets letter of resignation from Sarah Branham from the Planning Commission and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.
7. **On motion** by Lewis Paulhamus to appoint Andrew Perrine to the Planning Commission with Secretary to designate the term from the unexpired terms and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.
8. **On motion** by Kerry Gassler to appoint Todd Beil to the Planning Commission with Secretary to designate the term from the unexpired terms and seconded by Lewis Paulhamus. Roll call vote taken. In favor: K. Gassler, R. Getz, M. Mogilski, L. Paulhamus, B. Pysher. Opposed: W. Male

Mayor Kenneth George took his leave from the meeting at 8:55 p.m.

9. Mitch asked that Council discuss the Wind Gap Ambulance Corps lease agreement. He asked Mr. Dell'alba to explain to Council what they see as being wrong with the lease agreement as it currently is written. Mr. Dell'alba stated that it is being discussed.

**On motion** by Kerry Gassler to adjourn the meeting of December 2, 2002 and seconded by Lewis Paulhamus. Meeting adjourned at 9:00 p.m.

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Louise Firestone  
Borough Secretary