

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

The Council meeting of the Borough of Wind Gap on Tuesday, December 17, 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, and Kerry Gassler. Also in attendance, Mayor Kenneth George, Borough Solicitor Len Zito and Secretary/Treasurer Louise Firestone.

Approval of Minutes

On motion by Kerry Gassler to approve the minutes of December 2, 2002 and seconded by Bill Pysher. Mitch asked that on the last page, #9, when he asked Joe Dell'alba where we are with the Wind Gap Ambulance lease agreement, his statement was that the ambulance has no obligation to this Borough and Mitch would like this included in the minutes. Winton, Bill, Lewis did not hear this statement. Bill added that he does recall that they are going to review the lease and get back to the Borough. Secretary to review the tape. Mitch would like to table the minutes so that it is not overlooked. Bill reminded the President that there is a motion on the floor. Roll call vote taken. In favor: K. Gassler, W. Male, L. Paulhamus, B. Pysher. Opposed: M. Mogilski. Motion carried with a vote of 4-1.

Approval of Expenses

On motion by Kerry Gassler to approve the expenses in the amount of \$146,664.15 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

Old Business

1. Enactment of Ordinance 432 which sets the tax rate for year 2003. **On motion** by Kerry Gassler to enact Ordinance 432 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

2. Waste Management Neighboring Municipalities Agreement. Council has already approved the Letter of Intent. Winton had requested that a few words be changed in the agreement. There were a few word changes made on page 2 and page 4 of the Agreement. Mitch asked the Borough Solicitor for some clarification as to whether he is employed by Waste Management or has he taken them on as a client? Mr. Zito replied that he has taken them on as a client. Mitch asked him if he would consider this a conflict of interest? Mr. Zito stated no it is not a conflict that he represents both the Borough and Waste Management. Unless there is a legal review of any agreements that would have to be done by another attorney. Mitch asked if it would bother him if one of his other partners handles anything having to do with Waste

Management? Mr. Zito replied that it would not bother him and it could be done. Mr. Zito's stance is that there is no conflict unless a conflict arises. For example, with respect to the Waste Management agreement, if there would be a provision that Council would not understand or wish legal counsel he would refer it to a special solicitor. In matters of a conflict, Mr. Zito would not be able to represent either the Borough or Waste Management. He would be conflicted out on both sides. If a conflict should arise, Mr. Zito would advise Council that they would need to pass a resolution to appoint a special solicitor. Mitch stated that Waste Management is not living up to this wording now. It states that they will protect the environment, the public health, safety, and welfare of the citizens of Wind Gap. The landfill is detrimental in itself. Mitch referenced the health study that includes birth anomalies from 1991 to 2000 – almost 300% above the norm. Winton replied that it is their intent to mitigate these issues and not the intent to resolve them tonight. Mitch asked why they were not resolved in the past now that they want a partnership? Winton answered that it has nothing to do with this particular agreement. Kerry added that they are willing to offer the Borough contributions as long as they are allowed to have a solid waste facility. Winton stated that the Borough has no say as to whether they are allowed to operate or not. Mitch said Waste Management is telling the Borough how they can spend the money and this does not include legal, engineering, professional or political services directed against the interests of Waste Management. Mitch believes they are trying to buy the votes.

Pat Sutter stated that all of Council should have studied that paperwork and not quickly voted on it at the last meeting. She believes that Council is obligated to make sure the agreement is not detrimental to the people of Wind Gap. What does Wind Gap have to do? They are not going to just give the money to Wind Gap. Are Borough residents just suppose to look the other way when the garbage trucks leak on the streets of Wind Gap. Winton replied that there are no strings attached to this agreement, none whatsoever. The only one is that the Borough cannot use the money for engineering or legal or professional services. You won't give money to someone so they can sue you. Pat is very suspicious of a very, very large company coming to Wind Gap and offering them money. Winton stated that the decision has been made. Mitch said this Council did not make a decision, was it Winton's decision. Winton answered that Council voted to approve the Letter of Intent and this is a formal acknowledgement, which will be signed by all parties and become an official document. Mitch asked if this issue could be tabled temporarily? Pat asked why Winton is in such a big hurry for this? Mitch added that there is something in here for him; we just don't know what it is. Three different words in three different paragraphs can totally change the meaning and Mitch would like to review this further. Mitch does not think the Borough should get involved with a partnership with Waste Management even if it is a half million dollars for the Borough. He takes it as a bribe. Bill added that by entering into this agreement the Borough is not supporting or encouraging the expansion of this landfill. Mitch interprets that the agreement to read that the Borough would not interfere with any interests of the Waste Management. He believes that to mean the landfill expansion. Winton stated that the meaning in the agreement is the Borough would not use the money given from Waste Management for legal or professional fees in opposition of the landfill expansion.

On motion by Kerry Gassler to accept the Municipal Agreement and seconded by Winton Male. Roll call vote taken. In favor: K. Gassler, W. Male, L. Paulhamus, B. Pysher. Opposed: M. Mogilski. Motion carried with a vote of 4-1.

3. Wind Gap Ambulance. Winton spoke to Joe Dell'alba regarding the lease agreement. Joe informed Winton that the lease agreement is in their attorney's office, John Molnar. Once Mr. Molnar reviews the agreement he will contact Mr. Zito with any changes. Mr. Zito asked if there is any time frame? Winton replied none that he is aware of at this time.

New Business

1. Richard Getz resignation. **On motion** by Lewis Paulhamus to accept Richard Getz's resignation and send him a letter of appreciation for his time on Council and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

2. Special meeting for Council Vacancies. December 23 is the last day for submissions. Bill suggested holding the special meeting on Thursday, December 26, 2002 at 7:30 p.m. and invite the applicants to attend the meeting. Winton asked Mr. Zito to prepare a memo outlining the proper procedure for filling the Council vacancies.

3. Resolution 2002-9. **On motion** by Mitchell D. Mogilski to adopt Resolution 2002-9 regarding the Weeast payment and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

4. 2003 Council Meeting Schedule. **On motion** by Bill Pysher to advertise the 2003 Council Meeting Schedule to be the first Monday of the month and the third Tuesday at 7:30 p. m. with the exception of the first Monday in September (Labor Day) and the first Monday after Thanksgiving, both being moved to the next day (Tuesday) and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

5. Proposed Zoning Change. Mr. Zito referenced his correspondence of December 12, 2002. The law with respect to the pending ordinance rule does not apply to plans that have been submitted in other than sketch form, they are preliminary plans to the Planning Commission. All other zoning changes except Land Development and Subdivision plans can be the subject of the pending ordinance rule. That would require an advertisement that the Borough intends to change certain zones with required specificity in the notice coupled with the planning process having begun by the planner. Winton asked if in the advertisement the Borough has to indicate what is being changed at that point in time, but is there time to make that decision? Mr. Zito stated that there is time, but the specificity requirement must be met of identifying the zones in which there are going to be changes and some brief description of the changes. These descriptions do not have to be specific, but the Borough has to be general to advise the public that changes will be made to certain zones with regard to uses. For example, if the Borough plans on making changes in the residential zone and those are density changes, you would advertise that the Borough is in the process of planning residential changes, which would affect density, which will affect setback. Winton stated that this would require another meeting to identify. Mr. Zito recommended that Council identify all the prospective changes that are being considered at one time.

On motion by Lewis Paulhamus to hold this until another Land Use Committee has been

held and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

6. Nextel/AT&T. Kerry reported that currently the Borough is on the Nextel 550 Plus plan which means there are no cell minutes, but each phone has 50 minutes of direct connect, but anything over the 50 minutes there is a charge. Last month the cell phone bill was \$111.00 for all three phones. Kerry gave Council literature from both Nextel and AT&T. The plans are outlined in spreadsheet form. Kerry provided this information to be reviewed and discussed at a future meeting. Chief Armitage asked Council to consider that the surrounding municipalities all have Nextel and they have direct connection to the police officers if they remain with Nextel.

7. Secretary/Treasurer review. **On motion** by Bill Pysher to increase the Secretary / Treasurer hourly rate to \$14.00 and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

8. Mitch stated that Bob Boyer suggested having the Borough Engineer review the list of streets to be worked on in 2003 so that he is familiar with the work. He asked Council permission to forward this to the Borough Engineer. Lewis asked why it should be turned over to the engineer when Council could just look it over first? Kerry replied that if the State engineer is suggesting that it be done, Council should do that.

9. Mitch reported that John Zucal updated the list for the equipment auction list and everything is down at the garage. The doors will be open on Saturday morning, December 21 from 10:00 a.m. to 3:00 p.m. All equipment will be sold "As Is".

Public Comment

1. Vickie Allen, 311 Alpha Avenue, Wind Gap. Vickie asked if any follow up information could be provided regarding the truck that dumped macadam in the GAF parking lot? Chief Armitage stated that the security tape is being reviewed. The vehicle is not a commercial vehicle, but has dumped in the Giant and Kmart parking lots also.

She asked who takes care of the Christmas lights replacing the bulbs, because they look pretty bad. The Street Department is responsible for the lights.

Vickie expressed her disappointment in Council for approving the agreement with Waste Management. She feels that a disservice is being done for the residents of the Borough.

She asked why this evening public comment is at the end of the meeting instead of the beginning? Winton replied that it is permissible to move public comment.

Mitch asked Mr. Zito even though Council has already accepted this agreement could it be put on as a referendum? Mr. Zito replied that a referendum is a unique, political device that requires a preliminary of filing of the questions to be placed on the ballot. He is not prepared to completely answer this question right now because of its unique technical nature, not every question can be a referendum. It is not a simple procedure. **On motion** by Mitchell D. Mogilski, Sr. to have Mr. Zito look into the steps necessary to have this as a referendum. Motion died for lack of a second.

Winton stated that this issue has no real exposure for the Borough. There is no special treatment and nothing is expected to be given to Waste Management. It is unfortunate that there is so much emotion with Waste Management. The Borough will co-operate and participate in the health survey. There is nothing in this agreement that is going to compromise the Borough.

Pat Sutter asked if down the road, if Waste Management is going after an expansion of the landfill can Borough Council oppose this expansion? Winton replied that there is nothing in the agreement that states the Borough cannot oppose an expansion as long as they do not use the money received Waste Management in opposing the expansion.

2. Rick Keenhold stated that he against spending the money from Waste Management on a Borough Manager. Rick stated that this agreement states there is a partnership and down the road if anything happens, the Borough will not do anything because of this partnership.

Rick stated that Mr. Pysher was instrumental in removing him from the Park Board and last meeting Rick asked Council to look into the appointee to Park Board missing meetings and wondered where this stands? Bill replied that Council appointed the Park Board member not just him. Winton replied that it would be looked into as soon as possible. Rick gave Mitch a copy of a letter Mitch wrote in 1998 stating that if any Park Board member misses more than three meetings they will be removed. Mitch replied that the Park Board directed him to write the letter and yes he did sign it. Winton replied that this is under consideration.

On motion by Mitchell D. Mogilski, Sr. to disband the entire Park Board for new appointments at the January business meeting. Motion died for lack of a second.

On motion by Bill Pysher to adjourn the meeting of December 17, 2002 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

Meeting of December 17, 2002 adjourned at 8:21 p.m.

Louise Firestone, Secretary / Treasurer