

**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, March 4, 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: Charles Sutter, Lewis Paulhamus, Mitchell D. Mogilski, William Pysher, Richard Getz and Kerry Gassler. Also in attendance were Mayor Kenneth George, Borough Solicitor Leonard Zito, Borough Engineer Ronald Madison and Borough Secretary Louise Firestone. Councilman Charles Sutter participated via telephone.

Approval of Minutes -

On motion by Kerry Gassler to approve the February 19, 2002 minutes and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried.

Approval of Expenditures -

On motion by Kerry Gassler to approve the expenditures of \$25,416.75 and seconded by Richard Getz. Mitch questioned the bill from U.S. Municipal Supply Company for last month when eight stop signs were purchased and this month nine stop signs were purchased. He stated that it is cheaper to have them re-skinned. Kerry and Richard to check why signs were purchased and not re-skinned. Roll call vote taken. Motion carried unanimously.

Public Comment -

1. Rick Keenhold. Rick stated that the Borough is looking for ways to get money into the Borough.

He said Mr. Male and Mr. Pysher were involved with the \$10,000 that was owed to the Borough and he was wondering if they were going to start paying that money. He explained that both signed a petition to stop the development on Roosevelt Street and the Borough never got paid for the legal fees it incurred because of the hearings. The Attorney at that time was Mr. McFall. Rick added that he believes the residents who signed the petition agreed to pay the Borough. Bill Pysher replied that the citizens had a private attorney and all debts were paid to Mr. McFall's office. Rick asked that the subject be investigated.

Rick's second issue was his removal from the Park Board. He referenced a Saturday morning Council meeting when three Councilmen were removed by motion of Council. The three

Councilmen who were removed filed a petition and went to court and the judge overturned and they were allowed to return to their seats. He asked Mr. Zito if the Park Board's re-appoint was illegal and how does that differ from the Councilmen being removed? Council made a motion to re-appoint Rick to the Park Board, has never made another motion and there has never been a court hearing. He feels that he is still a Park Board member. Mr. Zito stated that from a legal position concerning the term according to a case he cited in correspondence with Council. It states that a municipal body may only appoint to fill a vacancy when the vacancy actually occurs and therefore any action that might be taken to anticipate a vacancy was completely voided. That is the law in the Commonwealth and that is the case that was cited. It would not have to go back before a common pleas judge in order to be re-decided as it was already decided by an appellate court. Rick replied that his opinion differs from Mr. Zito's opinion because the County had the Glenn Riebman's November and December appointments researched and found them to be valid. Mr. Zito replied that Rick is confusing the County Code with the Borough Code in regard to municipal appointments. They are distinct areas of law and they cannot be confused. Mr. Zito again stated that the case he is citing is the law with respect to municipal appointments. It clearly reads that an appointment which is anticipatory before the term expires is void. Rick replied that he disagrees and he will go down that road later.

Rick questioned the status of the project on Seventh Street and why the road was never ordained. Mr. Male replied that the issues have to do with North American Equity wanting to open Seventh Street and litigation is still pending. Council has been advised not to do anything at this time by special Borough Solicitor John Molnar who has been handling this case for at least four years. Mr. Zito advised Rick that in most part the reports are public record and he is welcome to review the files either in Mr. Zito's office or the Borough Office. Rick continued by saying that Council has voted to ordain the street one meeting and the next meeting they vote against ordaining it. Rick asked Mitch his opinion about Seventh Street to which Mitch replied that he is against ordaining Seventh Street because of the cost. He added that between Seventh Street and East West Street the Borough could spend over \$500,000 and he feels the other streets within the Borough need attention first. Rick asked if there is a reason why Mitch thinks he received phone calls to convince you in to voting against doing West Seventh Street. Mitch replied that he never received phone calls and if anyone wants to call him to discuss anything he is open-minded, but when he votes on something it is his decision. Rick stated that he thinks someone has a personal interest in the area up there. Rick asked Mr. Male to look around the audience and then answer if he had ever sent anybody in that area up there a letter stating that you would like to have three times the market value for your house. Mr. Male answered, no he did not do that. Rick stated that we will come back next meeting.

2. Leroy Albanese asked Mitch to explain the cost involved in ordaining West Seventh Street. Mitch stated that with the roads, Council has not addressed any streets in seven years and the current streets should be brought up to speed first. Leroy questioned the \$200,000 figure to do the street. Borough Engineer, Ron Madison added that he is aware it is an issue with North

American Equity project and Planning is waiting on some decisions by that developer to either resubmit and West Seventh Street is an important part of their project to provide another means of ingress or egress. He stated that the ball is in their court. Leroy stated that other people are on that street and no one can do anything because that street is not deeded. He stated that the Borough is not being fair by not doing the street. Wind Gap Electric, American Candle, A & H Industries all are prevented from doing anything with any part of that land because there is no way to get there. Part of the problem is the private sewer line that was put in years ago. Leroy stated that he believes the Municipal Authority does not want to accept that sewer line because it is not on a deeded road. Mr. Male concluded by saying that the real reason is the cost and the litigation that is still not over. Kerry added that the Street Committee has confirmed that the Borough receives liquid fuels for half of Seventh Street. Leroy stated that in 1984 Seventh Street was ordained back to the power line. Discussion regarding the history of the street ordination and what may have been done incorrectly. Mr. Zito informed Leroy that there was a legal position taken on ordination of Seventh Street on behalf of the Borough. Leroy asked Council to please consider ordaining that street.

On motion by Kerry Gassler to authorize Borough Solicitor Leonard Zito to look into what was wrong with the ordaining of the street when it was ordained wrong and second by Mitchell D. Mogilski, Sr. Roll call vote taken. In favor: K. Gassler, R. Getz, M. Mogilski, L. Paulhamus, B. Pysher, C. Sutter. Opposed: W. Male. Motion carried with a vote of 6-1.

3. George Hinton asked how much does the Borough have invested in East West Street in the way of engineering costs. He stated that the Borough is wasting taxpayer money on that street. Kerry Gassler provided George with a printout of Hanover Engineering's bills relating to East West Street.

4. Linda Perin, owner of North American Equity. She stated that the total sum of \$200,000 for Seventh Street is an incorrect figure with regards to the completion. Borough Engineer, Ron Madison stated that the previous Borough Engineer had used that figure. Ms. Perin stated that she signed papers saying that she is paying for X amount of feet so that figure she has agreed to should be taken off the total cost. She added that Council is misleading people by saying that the Borough cannot afford \$200,000. Ron replied that is generally not the practice of municipalities to open and improve roads upon themselves for the benefit of those landowners who front that property. The opening and construction of roads is done by private developers, roads are then dedicated to the municipality and over time the municipality has to maintain the road that has been dedicated. It is not normal practice for municipalities to spend taxpayer dollars on opening up roads, improving roads and not charging or assessing landowners or have the landowners do the work themselves. Ms. Perin answered that she is not the only landowner and if she had gotten more co-operation she would have done the road.

5. John Snuggs. John asked where does the Borough stand on the police contract and how

much will it cost the taxpayers for this contract to go to arbitration. Bill Pyscher replied that he will discuss this during his report and that it is a topic for Executive Session this evening.

Committee Reports

1. **EMS - Tom Knitter, Wind Gap Ambulance, reported** the ambulance corps has purchased and will be receiving their new ambulance on Thursday. They received a good deal on a 2001 demo ambulance and through grants and generous donations they have afforded this vehicle. It will take approximately two to three weeks to have the new ambulance in service and until they will try to keep the old ambulance in service. Once the new one is painted, lettered and inspected by the state the old ambulance will then be taken out of service. He publicly thanked Council for extending no rent for this year. The saving of the rent money has gone toward the new ambulance. Mr. Male asked Tom if he had any luck finding the combination to the lock on the Oaten Building garage door. Tom said that he had not and it may be best if Hendershot Doors in Nazareth be contacted directly from the Borough Office.

2. **Police - Bill Pyscher reported** that the negotiations with the Wind Gap Police Association have broken down. The main reason as stated by the President of the Association was the belief that the Association was negotiating for both the full-time and part-time officers. Michael Gassler will represent the Borough as their arbitrator, the Police will have a representative from the state and a third arbitrator will be appointed by the two arbitrators. The Borough will be responsible for expenses related to our arbitrator and the third arbitrator to be named, plus any notes of testimony that may take place. To continue the discussion in the Executive Session.

3. **Streets - Richard Getz reported** that the Street Committee has recently asked Ron Madison to prepare ten (10) bid specs for streets in town and hopefully all ten can be done. He explained that the stop bars at the intersection of Park Avenue and Broadway will be moved back once the weather is warm enough. He is waiting for another drawing to be sent and he has contacted Tom Walters from PennDOT. The curb and sidewalk ordinance has been worked on and Council should review the rough draft. Richard stated that the Borough might want to consider using the Fountain Hill ordinance. He said that the Committee is proposing having a special Council meeting specifically for discussion of the ordinance.

Mitch asked if Council is imposing a \$1,000 restriction on the engineer with regard to streets as had been done in previous years. **On motion** by Mitchell D. Mogilski, Sr. to restrict the Street Committee to \$1,000 for the engineer as done in previous years and seconded by Lewis Paulhamus. Ron Madison stated that he had not come up with any cost estimates. The restriction last year was met by Hanover because bid specs for paving projects are not as complex as other projects. Bill stated that he would hate for Council to lose out on doing streets because of the \$1,000 limitation and if it is more this topic should be discussed further. Ron to have an answer by workshop meeting. Roll call vote taken. In favor: M. Mogilski, L. Paulhamus. Opposed: K.

Gassler, R. Getz, W. Male, B. Pyscher, C. Sutter. Motion defeated 2-5.

Mitch added that he spoke to Tom Walters and Tom indicated that the stop bars for the turning lane in front of Jimmee Zees can go back 30 foot. Richard stated that he feels documentation from PennDOT must be received by the Borough to back up any changes made to the stop bars.

4. **Finance - Winton Male reported** that because of the purchase of the Citizens Water Company the Borough received \$5,000 in real estate transfer tax.

5. **Sanitation and Recycling - Charles Sutter reported** nothing.

6. **Zoning / Planning - Richard Getz reported** nothing before Zoning Hearing Board. Planning has three items for Thursday. Ray Cortazzo subdivision, J. H. Beers development off Third and Washington, Wind Gap Townhomes, Calantoni property, across from Constitution Avenue.

7. **Parks – Rick Keenhold reported** the Park Board is waiting for any news on restroom hook-up. Mr. Male replied that hopefully the Borough will have news regarding the grant application money by the Workshop Meeting.

8. **Building / Grounds - Winton Male reported** that Borough Hall had a boiler inspection. The inspector informed the office that a variance should have been filed and therefore the boiler failed the inspection. Ron Madison stated that one of the first jobs of Hanover Engineering back in 1997 was to get the boiler through Labor and Industry and all variances were received. Ron to forward copy of his file regarding the boiler and necessary variance paperwork.

9. **Fire Company – George Hinton reported** that on March 14, KME is coming to the Fire Company to show what they have to offer. The Fire Company has formed a new committee and they are trying to get the amount for a work truck below \$200,000. George stated that they responded to a fire call on Eighth Street and 13 volunteers came out.

10. **Wind Gap Municipal Authority – Rick Keenhold reported** asked Mr. Zito if he had looked into having the sludge from the sewer authority be included in the Grand Central offer of free garbage collection to the Borough. Mr. Zito replied that the Grand Central offer to pick up and dispose of the Wind Gap trash was contingent upon the existing contract and they are not going to rewrite that contract to include sewer sludge because it was not part of the original contract. Grand Central says that they will relieve the Borough residents of their garbage bills.

Rick questioned John Blick, Borough Zoning Officer, regarding the status of Walden III. John Blick was under the impression that negotiations were going on between the Authority and Walden III. The Sewer Authority is not taking any action at this time because they do not have

a plan to know what is built on the property. Mr. Zito confirmed with John that a certificate of occupancy has not been issued to Walden III property. He asked if it would be the Zoning Officer's responsibility to issue an enforcement notice as to the absence of a certificate of occupancy. If an enforcement notice was issued, then the issues that the Sewer Authority is concerned with would be the ones that they would have to offer proof on in connection with the appeal from the enforcement notice. If an enforcement notice has already been issued and no certificate of occupancy has been issued, and no appeal has been made within the thirty day period then all the issues pertaining to the certificate of occupancy are resolved in favor of the municipality. John stated that Council should have been in receipt of a letter from Mr. Cassidy asking for a waiver from the problems with the Sewer Authority. John Blick to review the file and have a report for next month.

Paul Levits stated that because of a potential conflict of interest he is reporting on this issue. He asked for clarification of a letter addressed to the Pet Zone from the Borough Sewage Enforcement, Hanover Engineering and copied to the Sewer Authority regarding a complaint of dumping fish tank waste water. Hanover forwarded a letter to the individual. Paul asked if anyone made an inspection of the property. Ron replied that Hanover did not make an inspection. Paul stated that he believes that Council authorized Hanover Engineering to send a letter to this place of business that includes fines without having a proper inspection done, without contacting the individuals or without contacting the Municipal Authority. The Authority made a decision to have their Plant Manager, Borough Street Leader John Zucal and possibly one Councilman meet with the business owner. Paul stated that if it is water from a sump pump or if it is water collected from the roof, the Sewer Authority does not accept it. The Mayor stated that the neighbor that lives below the business contacted him to complain about the water being discharged having the odor of fish. He contacted the Zoning Officer and John Blick stated that this was not a zoning matter. He relayed this information to Ron Madison and asked him to follow up on this complaint. The Sewer Authority is concerned that the proper steps were not taken in this matter.

Kerry asked on behalf of the Sewer Authority that if there is no sewer line in front of the property, then can the property owner install a septic system and what would be the procedure. Ron replied that the first step would be to look at the Borough's 537 plan and consult with the sewer service area for the Municipal Authority to see if it is intended to be in the sewer service area of the treatment plant. Kerry stated that the Sewer Authority is still willing to meet with a committee of Councilmen to resolve the semi-annual payments. Mr. Male replied that this could be discussed in Executive Session.

11. **Insurance - Winton Male reported** there was a small claim because of a Borough tree that fell on a fence. Repairs have already been made. Received a dividend check from Professional Liability in the amount of \$212.00 which will help offset this year's premium that was a little over what was budgeted. Mr. Male checked on the insurance for the Wind Gap Athletic

Association and they have not paid their premium. Kerry suggested paying the AA's insurance premiums instead of making the budgeted contribution that is typically given to the AA in the form of a donation. To be further discussed at the Workshop Meeting.

12. **Land Use Committee – Winton Male reported** the committee now includes Councilman Bill Pysher and Bill Sisolak. The other members remain the same.

A. **Mayor's Report - Ken George reported** Contractor licenses for the month of February was \$425.00 for a total of \$1,025.00 for 2002. Police report has been distributed. In February there were five motor vehicle accidents and 63 citations written. He suggested that from the comments made at the Town Meeting, he believes that a traffic study should be done at Third Street and Broadway. If necessary, the Police will help direct traffic for the school buses. Lewis added that the study should be done before school ends so the buses can be counted. Ron Madison made Council aware that the traffic counts cannot be manipulated to increase counts. He suggested that Council have all their questions answered in regard to traffic studies prior to making the commitment to have one done. Joe Juranco from Lehigh Valley Planning Commission was one contact name he provided. Ron to discuss with a traffic engineer at Hanover and provide Council with a short memo prior to the Workshop Meeting.

B. **Solicitor's Report - Len Zito reported** all correspondence has been distributed prior to meeting.

C. **Engineer's Report - Ron Madison reported** that the Fairview and West Street project is still pending because of the wetlands and the bog turtle habitat study. He explained that the permit used for the stormwater project is no longer a valid permit. Ron informed Council that if the project does not pass approval in Phase I, DEP will not issue any permits for this project.

New Business

1. Contract Award Waste Tire Removal. **On motion** by William Pysher to approve Carbon Services

Corporation and seconded by Richard Getz.

Kerry asked why the project seemed to have had to be re-bid. Mr. Male stated that a complaint was received from another bidder that the apparent low bidder may have included shredded tires in their bid. Mr. Male corresponded with all bidders as to what they actual included in their bid. All bidders confirmed that they were bidding on whole tires. Mr. Male cleared all with the DEP prior to the meeting. Carbon Services has worked with the DEP in the past and they are aware that they can start prior to the contract being signed, but at their own risk. The certificate of insurance will be forwarded to the Borough. Mr. Zito to draft agreement holding the Borough harmless should Carbon Services start prior to the contract signature process by the state. Roll

call vote taken. Motion carried unanimously.

2. 29 West Eighth Street house fire. Council received a copy of a letter from Fire Chief Randy

George stating the condition of the house still remaining after the fire and that the house should be taken done. Mr. Zito stated that the Borough has a nuisance provision and they would be entitled to proceed should they deem the property unsafe because they have a duty to protect public safety. He suggested that the Borough Engineer and the Borough Fire Chief make an inspection to determine that the structure is dangerous as it stands. **On motion** by Bill Pysher to authorize the Engineer to proceed with an inspection and seconded by Richard Getz. Mitch suggested that the Borough work with Mrs. Smith, find out the facts about the property and not just take immediate action this early. Bill rescinded his motion. Mr. Zito continued to recommend that the Engineer inspect this property. **On motion** by Kerry to send her a letter asking her intentions and to respond as soon as possible and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

3. Unauthorized Expenses. Mitch wanted to state that he is making a formal complaint because tax

dollars are being spent without the approval of Council. He asked for an explanation of when the office copier was purchased and who gave approval for this purchase. He stated that no one should be spending on their own unless it is an emergency situation. Mr. Male replied that Council was provided with a spreadsheet of the cost of four different copiers and the money was transferred to the Capital Reserve because this copier was not purchased last year as originally budgeted for 2001. Discussions have been ongoing for a year about purchasing a new copier.

On motion by Mitchell D. Mogilski, Sr. to get an answer to the purchase of the copier tonight and seconded by Lewis Paulhamus.

Mitch stated that this was purchased without a vote of Council and that no one person should be making those decisions, but that the seven man board should make them. Mitch suggested that this expenditure did not show up on the expenses for approval and was paid from the payroll account. Secretary/Treasurer explained that the money from savings was transferred into the General Account and then the bill was paid with those funds. Mr. Zito added that if this is a question of a budgeted item and is a policy question, Council has to determine its policy and communicate so that everyone is aware of expenditures of every instance. Mitch stated that in the past the limit has been \$250, but maybe it should be \$1,000 or whatever this Council can live with now. Richard commented that last year Mitch was given \$10,000 approval to purchase a truck and instead purchased a roller. The Mayor stated that Council has to establish their policy and then stick with it. Other comments included that the dollar amount has to be thought of in general terms for purchases because every line cannot be scrutinized and certain instances of emergency, time cannot be spent waiting for Council to meet and make a decision regarding an expenditure. Mitch then suggested that expenses are being paid on weekly basis. **On motion** by

Mitchell D. Mogilski, Sr. to post the expenses every week on the board by noon on Wednesday. Mitch withdrew this motion and

A vote was taken on the original **motion** Mitchell D. Mogilski, Sr. to get an answer regarding the purchase of the copier tonight. Roll call vote taken. In favor: K. Gassler, M. Mogilski, L. Paulhamus. Opposed: R. Getz, W. Male, B. Pysher, C. Sutter. Motion defeated 3-4.

4. President's Prerogative. Mitch stated that last month when he was removed from the street committee, Mr. Male told the Express Times that this subject is not for public comment or Council debate. Mitch stated that is infringing on everybody's first amendment right. He said that Mr. Male should watch what he has to say.

Old Business

1. Zoning Fee Schedule - Ordinance 427 for Advertising. Mr. Male stated that this must be advertised. Mitch replied that a motion was made at the previous meeting to have a committee that includes Kerry, Mitch and Lewis review the fees and make recommendation and that motion was passed. Rick Keenhold asked why the Municipal Authority was included in the Land Use Committee. Mr. Male replied that it was a matter of courtesy. John Barto volunteered and the Municipal Authority appointed him. This occurred over a year ago. Rick stated that he was unaware of this action.

On motion by Lewis Paulhamus not to advertise this ordinance until this committee meets and seconded by Kerry Gassler. Richard asked what the time frame is for reporting back to Council. Mr. Male stated that the Borough is losing money in zoning because of an outdated fee schedule. The Borough Engineer, the Zoning Solicitor, the Planning Solicitor, the Borough Solicitor, the Zoning Officer all participated in the ordinance being proposed to Council and he recommends that this move forward as soon as possible. Kerry stated that he attended the Land Use Committee meetings and Mr. Male made the recommendations from his list. Mr. Male replied that the list was given to the Borough from the Borough Engineer as a compilation of other municipalities and their fees.

Bill said that Council has to follow through with the motion that was made at the last meeting. Mr. Male suggested discussing this as soon as possible. Mitch stated that they need thirty days. He said that Mr. Male is telling all you people you don't have the right to question him. Rick Keenhold yelled out that we are glad that you are listening now for a change, it took us four years of being here.

2. Curb and Sidewalk Draft Ordinance. Richard stated that the Street Committee is requesting a special meeting for this issue.

3. Archiving Software - General Code. Mr. Male has provided Council with quotes on this software

that he has been working on for four years. It was delayed because at a previous Council meeting it was stated that because of the dollar amount it had to go out for bid. General Code is a state approved contractor for this software and thus no bidding process is necessary because they are the low bidder for the state. Kerry asked if this is included in this year's budget. Mr. Male replied that it was budgeted for in 2002.

On motion by Kerry Gassler to purchase this software at a price of \$4,190.00 and seconded by Bill Pysher. Paul Levits asked if this is proprietary. Mr. Male replied that it is not. Paul cautioned that we are making an investment in software that might change in a couple years and be obsolete. Mr. Male has questioned General Code and they have stated that upgrades will be available. Roll call vote taken. In favor: K. Gassler, R. Getz, W. Male, M. Mogilski, B. Pysher, C. Sutter. Opposed: L. Paulhamus. Motion carried with a vote of 6-1.

4. Part-time Street Worker. Mitch had asked that this item be placed on the agenda. He stated that

he already had discussion on this and hopefully it is resolved. If it is not, it will be back on the agenda.

5. Committee Expense Limit. Mitch and Lewis will be on the committee to recommend to Council a

dollar amount to limit each department's spending authority. Mitch stated that a number has to be set that Council is happy with. **On motion** by Mitchell D. Mogilski, Sr. to give every committee a limit of \$500.00 for the exception of emergencies to spend without coming to Council first. Council asked Mitch to research if further before a motion is made. Motion died for lack of second. This to be placed on the item for the Workshop Meeting agenda.

Executive Session - Council adjourned to Executive Session to discuss 9:50 p.m. to discuss Police Contract. Councilmen Lewis Paulhamus left Executive Session at 10:25 p.m. Council reconvened at approximately 10:40 p.m.

Meeting adjourned at approximately 10:40 p.m.

Louise Firestone
Borough Secretary

