

**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, November 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: 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 Ronald Madison and Borough Secretary Louise Firestone. Absent was Councilman John Hannon.

Approval of Minutes -

On motion by Bill Pysher to approve the minutes of the meeting of October 15, 2002 and seconded by Kerry Gassler. Lewis stated that page 2, number 4 – correction to be made on roll call vote. Roll call vote taken. Motion carried unanimously.

Approval of Expenditures -

On motion by Bill Pysher to approve October expenses in the amount of \$28,825.79 and seconded by Lewis Paulhamus. Mitch asked that the bill to O'Brien Kistler be held until the Fire Company receives another quote for the installation of the ansul system. This down payment will be held until a quote is received from B-Safe. Roll call vote taken. Motion carried unanimously.

Public Comment

1. Russell Dieter, Chairman Wind Gap Municipal Authority. Russell stated that they have reviewed the Judge's court order. Russell asked Council if they have any intention of honoring or ignoring the judge's order? Winton replied that the Borough Solicitor is going to advise Council in Executive Session tonight. He asked if Council could adjourn to Executive Session at this point? Winton replied that he has already moved Executive Session to earlier in the meeting. Russell stated that the Authority has been trying to meet with Council in the past. Two meetings were scheduled in 1999, but nothing really came of those meetings. Mitch stated that he was part of the committee and the Authority did not want to budge in anyway. Paul Levits stated that it was his position not to budge, but he was only speaking for himself. Ron DeCesare stated that two members of the Council committee are no longer on Council, Mr. Weber and Mr. Laubach. He does not believe there was a stalemate, there was not a compromise, it never got that point, and they have always been willing to compromise. He said that it is poor for everyone to be paying for this to go to court. He asked if Council would be willing to have a committee of Councilmen with open minds sit down and discuss the issues.

Winton stated that it would be discussed in Executive Session one more time. Russell asked which Council meeting was Mr. Zito directed to take action to speed this to trial because he has no record in the Borough minutes. Mr. Zito replied that it occurred after an Executive Session, possibly last month. Mr. Zito wrote a letter to Mr. Molnar and the letter would have been sent the day after the meeting.

Russell asked why Council insists on sending all correspondence through their attorney. He said that the Authority does not receive any correspondence from the Borough directly to their office. They try to rectify situations without always going through their attorney. He believes that the Borough and the

Authority should be on direct terms. Winton replied that he is not aware of any information the Borough sends to the attorney that is not sent to the Authority. If Mr. Dieter has a specific instance where the Borough has not informed the Authority directly, Winton stated that he would be happy to check into that item. Winton stated that the Authority receives all information regarding zoning issues almost on a daily basis. The Borough has turned the defense of this case over to the Borough Solicitor and he is handling the necessary paperwork.

Russell asked why Mr. Zito sent a copy of the letter to Representative Dally. Winton replied that the original letter from the Authority was copied to Mr. Dally and Mr. Zito just sent a copy of his reply to Mr. Dally. Mr. Zito replied that with respect to this litigation that everyone who is getting information from one side should be receiving information from the other side.

Russell asked if there would be a roll call vote after Executive Session on whether to negotiate or not on this issue? Winton replied that a roll call vote is always taken on issues. Russell asked if they would take action. Mr. Zito replied that Council is not required to take any municipal action on a matter where there is litigation pending, you are required to adhere to the terms of the court order. That can be discussed in Executive Session.

2. Carol George reported to Council that the tree lighting ceremony would be spearheaded by Faith Alive Ministries. The Pastor has sent a letter to all the churches asking for their participation. The ceremony will take place on Sunday, December 1, 2002 from 4:30 p.m. – 5:15 p.m. The ceremony will take place at the monument on Lehigh Avenue. Christmas carols will be sung, reading of the Christmas Story, remarks by the Mayor and turning on of the tree lights. The ceremony will conclude with fellowship including coffee, hot chocolate and cookies. Mayor asked that Kerry have the street blocked off for this ceremony.

3. Ralph Stampone asked if West Third Street could be cleaned up? The road was paved, but the backfill from the construction of the duplex has been piled on the street and has turned to mud. Can this be cleaned with a street sweeper? Mayor George will advise the Police about this situation and it will be handled.

Solicitor's Report

1. Council will be receiving a comprehensive memo on the Police Pension Plan, there are some amendments required as a result of changes in law. He asked that this be discussed at the workshop meeting.

2. RCN Franchise Agreement. Mr. Zito sent a memo on October 16, 2002. If this has been reviewed by Council then it is ready for municipal action. **On motion** by Mitchell D. Mogilski, Sr. to approve the RCN Franchise Agreement and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

Engineer's Report

1. Pay Request #1 for NAPA Development on East West Street stormwater project in the amount of \$54,928.35. Ron reported that all the piping is in as of today. This money is paid from the Landfill Postclosure Fund and a copy of the pay request has been forward to Northampton County for disbursement. **On motion** by Kerry Gassler to approve payment to NAPA Development in the amount of \$54,928.35 and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

Also related to East West Street, Mr. and Mrs. Stametz have appealed a letter sent by the Borough requiring them to move their fence and all the trees. The contractor believes that NAPA can complete the

work without moving these items. Mr. and Mrs. Stametz recognize that a hold harmless may be required to satisfy the Borough liability. Winton asked if a hold harmless agreement would follow the property? Mr. Zito replied that Council would be making a waiver of a condition that is unique to this one property to accommodate this one property owner; do you want this to be a covenant that runs with this land? Mr. Zito believes that if his fence is in the right of way this should be done by resolution and for him to agree to bear any liability should there be one. If Council wants to be a covenant then there needs to be a document which is recorded. This fence is allowed to reach a condition and be an existing structure in a public right of way, then subsequent owners would take those rights or Council can limit the waiver to a personal covenant only. Ron added that Mr. and Mrs. Stametz have been very accommodating during this project.

On motion by Bill Pysher to accommodate Mr. and Mrs. Stametz personally, but if the fence ever has to be removed or if the Borough needs the land in the future, then the fence would be replaced outside the right of way and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously. Bill amended his motion to include Mr. Zito suggestion that Council resolve that the fence can remain in the right of way provided that it without a waiver to the Borough's rights in future to take action. It should in the form of a resolution and Mr. and Mrs. Stametz should sign this resolution. Mr. Zito to draw up the resolution once Ron provides him with tax identification numbers.

2. Mechanic Street Inlets. Ron gave a project status update. The information provided by the gas and water companies was incorrect so both the lines had to be moved. Collins and Maxwell provided an updated schedule projecting completion by the end of this month. Ron will provide an update at next month's meeting.

3. Park Restroom. Ron reported that he sent correspondence to the previous Borough Engineer Bob Collura asking him to provide a survey of the Wind Gap Borough Park that was completed in 1991. A Title Search must be completed by the Borough Solicitor to prove clear title to the land. Ron met with Modern Pre-Cast Concrete to review the options of the restroom building and the estimate for the bathroom is \$59,750 and does not include the crane, the foundations, the sanitary sewer service, the water line and this project could cost in excess of \$100,000. The majority of that money will be spent in the first quarter of next year. Ron will be meeting with Guy Findon of Pennsylvania American Water to discuss the pressure needed for the new restroom.

New Business

1. Bill Sisolak Planning Commission Resignation. On motion by Kerry Gassler to accept the resignation of Bill Sisolak from the Wind Gap Planning Commission and send him a letter of thanks and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

Richard asked if Council should address the fact that Planning only has two members. On motion by Richard Getz to advertise in the Express Times and Morning Call. He stated that obviously the Borough newsletter is not doing the job. There is not much interest. Discussion regarding putting an advertisement in the local papers, Blue Valley Times, US, The Key. Ron stated that there are four projects before Planning. Bill asked if in an emergency, can Council appoint a Councilmember to the position? Mr. Zito to research and advise Council. The Mayor asked if the surrounding communities pay their Planning Commission? Richard replied that he read that they can be paid.

On motion by Richard Getz to advertise in the small "free" papers for Planning Commission members and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. In favor: K. Gassler, R. Getz, W. Male, M. Mogilski, B. Pysher. Opposed: L. Paulhamus. Motion carried with a vote of 5-1.

2. Resolution 2002-7 – Grant Application for a Master Plan at the Park. It requires a resolution that authorizes Council President to be the authorized signature on the application. **On motion** by Lewis

Paulhamus to pass Resolution 2002-7 and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

Executive Session Council adjourned to Executive Session at 8:20 p.m. to discuss Wind Gap Municipality Authority litigation, Police contract and Street Leader contract.

Engineer Ron Madison took his leave from the meeting at 8:20 p.m.
Mayor Ken George took his leave from the meeting at 8:57 p.m.

Council reconvened from Executive Session at 9:06 p.m.

1. **On motion** by Richard Getz to hold any negotiations until after discovery is completed and reviewed and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. In favor: R. Getz, W. Male, M. Mogilski, B. Pysher. Opposed: K. Gassler, L. Paulhamus. Motion carried with a vote of 4-2.

Tom Knitter requested that "discovery" be explained. Winton replied that there is a suit in progress that was brought against the Borough by the Authority and Council felt that in order to defend the Borough, the Borough Solicitor asked for discovery. The Authority Solicitor has been notified. Mr. Zito added that the Borough is requesting the exchange of information. The court has ordered this to be completed by April 15, 2003. This should be done a lot earlier than that date. Discovery is the legal term which is technically used for both sides to request and exchange information.

2. **On motion** by Kerry Gassler to approve the Teamsters contract for John Zucal for the period January 1, 2003 to December 31, 2005 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

3. Bill Pysher reported on the Police contract discussion held during Executive Session. Essentially the Borough arbitrator and the Police arbitrator are at an impasse. Wages and medical benefits are the two major issues that cannot be resolved. The neutral arbitrator will probably have to make a determination to settle these issues.

4. **On motion** by Bill Pysher to increase Millie Del Negro's hourly rate by .50 cents and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

5. **On motion** by Lewis Paulhamus to reimburse Millie Del Negro and Louise Firestone for mileage per IRS guideline rate to and from evening meetings of the Borough and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

Old Business

1. Winton reported that he distributed a copy of the letter from Waste Management requesting a committee from the Borough be formed to meet with them related to Act 90. Act 90 is a Harm / Benefit relationship with adjoining municipalities. Harry Smith wanted to sit down and get a feel for what the harm is to Wind Gap and what needs Wind Gap has that they might consider in benefits. Winton appointed Bill Pysher, Jack Hannon and himself to the committee. They met with Harry Smith and discussed what was included in the Needs Assessment and what was discussed at the Land Use Committee meeting. The suggestions made had to do with, number one traffic, number two was the need for a Borough Manager. Also discussed was a Police problem and other needs. A meeting was held this morning with Harry and he will be taking this back to management. Waste Management will be making a proposal to Borough Council in the way of what they can and can't do for the Borough at this time. The

Community and Economic Development from the County had asked the Borough for a needs assessment some time ago. Winton asked for input and Richard Getz was the only one who gave input. Winton made it up and distributed it to Council. Council has already discussed the majority of the Borough's needs. Waste Management is going to do a facelift on their property, they will be doing landscape work. Mitch brought in an article from the paper which states that the landfill owes state money. Harry mentioned that nobody asked them to respond for this article. Harry explained to the committee that Waste Management was ordered to pick up \$4.00/ton from their customers, but all their customers did not pay them and one was a state agency. Winton stated that everyone was advised and nothing was secretive about the deal.

Richard commented that he was informed a meeting would take place with Waste Management, and a committee was appointed, but not formally at a meeting. Richard stated that Kerry, Mitch, Lewis and himself were unaware of the meetings. The letter came between meetings. Richard stated that Council should have had some input on these issues and he might have suggested was them assisting us in increasing the hours of our Zoning Officer. Three hours a week is not enough and we do not have enforcement. Richard added that Mitch might have wish to propose having assistance with a truck for the Street Department. He feels that Waste Management is dictating to the Borough. He takes offense to this whole thing. Winton should have waited to a Council meeting. Last week, Richard received an e-mail that stated according to Jaymes Vettraino that Harry Smith had told him that Waste Management was going to assist Wind Gap in getting a Borough Manager. That is not the correct way for Wind Gap Borough Council to find out information. Winton understands that Harry did stop by Pen Argyl and discuss this with Jaymes. Richard said that Harry has not right to discuss Wind Gap Borough business with them before letting Wind Gap know the same information. That is not fair to the taxpayers of this Borough. Lewis added that any other time, Winton calls an emergency meeting. Winton asked Mr. Zito if he has the authority to form a committee. Mr. Zito replied that the Borough Code authorized the President of Council to form committees. Bill asked if he can do this with or without permission of the other members? Mr. Zito stated that yes he can. Winton stated that a message what put in everyone's box. Richard added that it may not be illegal, but has the appearance of impropriety.

Mitch brought up that it is in the Borough Code that Councilmen should have 24 hour notice for a meeting and that didn't happen. Mr. Zito replied that it did not happen. Mitch replied that he overstepped his bounds there. Mr. Zito answered that we have already been through that at the last meeting. Mitch said that just because it is in the Borough Code doesn't necessarily mean it is true. The Borough Code authorizes the President of Borough Council to form committees without the approval of the whole Council and the answer is yes. Winton added that when the form came in from the County only one guy on Council responded. Winton read the memo he put in all the mailboxes on May 28, 2002 that said, "I met with John Kingsley and Michele Sparich from the County Department of Community of Economic Development regarding their request for a Needs Assessment from the Borough. The attached was put together without input from anyone except Dick Getz." At that time no one made any comment about the needs submitted to the County. Richard stated that Winton told him that he did not submit his suggestions, but submitted his own after the fact. Kerry said that last year when Joe Dell'Alba approached Waste Management to solicit funds for the new ambulance he was informed that this is their budget time. That may be the reason for these quick meetings to include in their budget for next year.

Len Zito took his leave from this meeting at 9:30 p.m.

Bob Hahn asked why he did not invite Mr. Getz to be included in that committee since he was the only one to make suggestions in May. Winton replied no comment.

2. 2003 Budget. The 2003 Street budget was discussed first. The budget was submitted by Kerry and Mitch. The salary has been set by the contract. Street sweeping has been increase slightly because

this year not all streets were done and Kerry anticipates that the price will go up. The overtime has not changed from 2002 to 2003 and Kerry is comfortable with the current number. The medical insurance is set by the contract. Mitch explained that the part-time worker item line includes the street part-time worker and a part-time worker in the Park. If a part-time worker is hired in the Park this will be put in the Park budget along with the specific hours charged by John Zucal and Woody while they are working in the Park. This item was reduced to only include Woody's hours charged to the streets.

Secretary / Treasurer Louise Firestone took her leave from the meeting at 9:40 p.m.

Minor equipment purchases includes a tamper instead of continually renting them. The cost would be \$2,800. It is used every time that a street is dug up. Propane and oxygen would be \$150. The telephone line has been increased by of the use of the cell phone. Discussion regarding the use of the pager and this should be disconnected instead of paying over \$200 a year. The Borough needs to get on a plan with the office, the police and the streets then all can get minutes. Borough's get discounts. Mitch stated that the pager for the Police Chief is at no cost. *(Treasurer note: The Borough pays a quarterly fee for a pager for the Police Chief and the Street Leader. The approximate cost per month is \$9.00 for each or \$220 total for the year).* A cell phone plan will be looked into to reduce costs. Kerry uses AT&T which enables him to have 450 minutes for \$50 a month and 2,000 unlimited weekends and nights. Kerry will try to check out the plans with AT&T and Nextel. Repair and maintenance on the building is at \$2,000. The sidewalks need to be done. Mitch would still like to have the entire drive to the street done with macadam. Fire Company roof needs to be looked at for immediate repair. Richard added that the Oaten Building is a sad looking building. He suggested doing something cosmetic to the building because it is a real eyesore. Kerry said maybe new windows could be installed. Jack Hannon is in charge of buildings and grounds, but has to have clearance from his doctor prior to returning to Council meetings. Kerry suggested appointing another Councilman to the Waste Management committee. Winton replied that he does not think any more meetings will be necessary. Kerry to call and get an estimate for repairs to the Oaten Building. Kerry explained that the Street committee is looking to purchase a hook loader truck. They have \$10,000 in reserve and possibly transfer over another \$2,000 from this year. A hook loader would be a bucket truck and a utility bed in the beginning with the new truck and hook loader equipment it would be approximately \$75,000. Richard suggested asking Waste Management to purchase this truck. It can be utilized for several different jobs at one time and be very versatile. The Borough relies on RCN to change traffic lights, put up and take down Christmas lights and do both sets of banners. Salt and calcium has not been changed because we have so much stockpiled. Repairs to Equipment, Equipment Rental for Repairs, Street Materials all remain the same as 2003. Street Paving was included because the Borough has to start budgeting money and not relying on Liquid Fuels to do the streets all the time. Engineering increased to \$5,000 from \$4,000. Stormwater engineering was not budgeted for because the Borough does not have any money for stormwater projects in 2003. Another budget meeting will be scheduled for Thursday, November 7, 2002 and will be advertised with the Town Meeting to be held on Thursday, November 21, 2002 at the Wind Gap Fire Hall.

Meeting Adjourned at 10:00 p.m. due to the curfew.

Louise Firestone
Borough Secretary