

**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, February 3, 2003 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, Sandra Lockard, Mitchell D. Mogilski, Sr., William Pysher, Peter Stinson 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 Bill Pysher to approve the minutes of the January 21, 2003 meeting and seconded by Kerry Gassler. Mitch asked that a typo be corrected on page 3. Roll call vote taken. Motion carried unanimously.

On motion by Mitchell D. Mogilski, Sr. to approve the minutes of the January 25, 2003 special meeting and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

Approval of Expenditures -

On motion by Kerry Gassler to approve the expenses in the amount of \$42,980.11 and seconded by Sandra Lockard. Lewis asked what the bill submitted by Hanover Engineering is for and he asked for a copy of the bill. Ron Madison explained that the bill is associated with putting the final restroom project out to bid, including final design preparations. Mitch asked to hold off on paying the Reliable Sign and Striping bill until he has a chance to find out what signs were purchased. The Treasurer informed Council that the signs were part of a vehicle accident and would be reimbursable to the Borough. Kerry asked to hold the payment to Bangor Motor Parts with regard to repairs to the master cylinder spring brake because Kerry installed it and he understood that it should be about \$68.00. Roll call vote taken. In favor: K. Gassler, S. Lockard, W. Male, M. Mogilski, B. Pysher, P. Stinson. Opposed: L. Paulhamus. Motion carried with a vote of 6-1.

Public Comment

1. Roger Bet. Roger reported that \$5,670 has been collected for The Vogues concert in March. He thanked Kerry and Mitch for allowing John to place the sign on Third Street and Broadway announcing the concert. He thanked the generosity of the local business for their support; he has had tremendous response for advertising. He thanked Len Zito and Ron Madison for their ads in support of the concert.

Solicitor's Report

1. Len Zito reported he has no official report other than the memos and letters from the court litigation already forwarded to Council.

Engineer's Report

1. Ron Madison reported that he has spoken to John Zucal regarding the roadside swale on East West Street. Ron stated that it does not meet PennDOT warrants for guide rails. Ron suggested installing plastic reflector posts that would help illuminate it and that would assist when snow plowing also. Ron asked Council if he could meet with the Street Committee to discuss this issue.

On November 26, 2002, Hanover sent Council correspondence regarding the new DEP regulations that are going to regulate every stormwater discharge to the stream or waterways in the Commonwealth. It is known as MPDS Phase 2 and MS4. The first action Council needs to initiate is a Notice of Intent to be filed with the DEP by March 10, 2003. Ron stated that there is a qualification for waiver from the program. One of the qualifications is the Borough is less than 10,000 population and other criteria that must be met. He asked permission to proceed with the paperwork for enactment at the March 3, 2003 meeting to allow time to meet the deadline. Winton asked if it would be better to ask for the waiver since the Borough already has the study done by Hanover Engineering. Ron replied that the 1998 Borough wide study will help in the future facets of the program, but it will be a costly program over the next five years. If the Borough can get the waiver in place, it would be advantageous over time. The minimum is to get the Notice of Intent submitted whether a waiver is granted or not. DEP does not have the whole program set and they are learning their way through this, as is everyone else. **On motion** by Peter Stinson to authorize the Borough Engineer, Ron Madison, to proceed with the necessary paperwork to be in compliance with DEP's regulations and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

Ron reported that the bids for the Wind Gap Park Restroom were received and opened on Friday, January 31, 2003. He sent correspondence to Council tabulating the bids. Council received a total of six bids, with one bidder not attending the mandatory pre-bid meeting. Grace Industries of Bath, Pennsylvania is the low bidder with a bid of \$136,934.50. DCNR has been provided with all the necessary paperwork and Council does not have to wait for a formal approval from them to proceed with the project. Winton added that he distributed a memo to Council regarding the finances for the improvements at the park. He explained that monies would be available with no tax increase to the residents of Wind Gap. Kerry questioned the use of the Miga fine money for the restroom, when Council decided this money would only be used in case the money from Waste Management did not come through. Lewis added that the Park Board stated that \$137,000 is too much money for a block building. Winton said keep in mind that this project is not just building a restroom, but the entire infrastructure is included in the cost. The entire park will be hooked up to the sanitary sewer system, including the old bathroom, a whole new water line will be installed, the kitchen and small concession stand will both have 1,000 gallon grease traps. The idea for these extensive plans is to prepare the park for the future. Kerry suggested that it would be cheaper to pour a footer and cement floor and build a structure. Ron replied that construction was suggested as an option at an earlier meeting, but Council decided that a pre-cast building would be the way to go. The three low bidders all included a pre-cast building from a manufacturer in Florida as opposed to the local manufacturer because of the monetary savings. He added that fifteen (15) contractors participated in the pre-bid meeting, many of the builders and contractors combined when the actual bids were submitted. Ron feels that the Borough received very good numbers. The design of the pre-cast building allows for one restroom to be shut down if it is not operational, but the others to remain open. Kerry replied that the bathroom cost has escalated as time went on and this is too much money to spend on a restroom. Winton informed Council that only \$11,000 would be actual tax dollars carried over from last year's park budget. The cost of the restroom has increased due to the added items from the Sewer Authority requirements including another manhole and two large grease traps. The water company requires new larger capacity water lines. Bill stated that the bathroom building would be \$67,000 and may seem high, but at this point Council would not be that far ahead if they hired an architect to design a building from the ground up. Kerry questioned the use of standard toilets as opposed to low volume flush. Ron answered the fixtures are wall mounted and they only flush under pressure. There is no tank involved

so it helps make them vandal resistant. The new water system will meet the plumbing code. Winton added that a man from Labor and Industry stopped by the office today and he seemed satisfied with the plans so far. Bill emphasized that the infrastructure is the big cost at a total of \$70,000 for the water lines and sewer lines.

On motion by Bill Pysher to accept Grace Industries bid of \$136,934.50 and seconded by Sandra Lockard. Roll call vote taken. In favor: S. Lockard, W. Male, M. Mogilski, B. Pysher, P. Stinson. Opposed: K. Gassler, L. Paulhamus. Motion carried with a vote of 5-2.

Ron will provide the contracts to the Borough so they can be executed and this project can move along as soon as possible.

Old Business

1. Twins at the Gap. Jim Preston and Scott McMackin appeared before Council to answer any further questions Council may have regarding the plans for the Twins at the Gap development. Mitch asked why the Borough is looking to change it from the trailer court to industrial commercial. Winton replied that it was at the recommendation of Urban Research, but they are grand fathered so it would not make any difference. Mitch asked if there was a reason for this? Winton answered that it would seem to be appropriate because right across the street there will an industrial park along the old railroad bed. Bill asked if they met any of the conditions that the Planning Commission objected to in the letter received by Council? Jim Preston replied that they are seeking Council's approval to waive the conditions. Peter clarified by saying that the concern is have they received any of the third party approvals mentioned in the correspondence from Planning Solicitor Peter Layman? Scott replied they still need to receive a few approvals, one from the Conservation District, the highway occupancy permit from PennDOT and a review from the Fire Marshal. All have been submitted, but they are waiting on responses.

On motion by Bill Pysher to uphold Planning Commission's recommendation that this be denied and seconded by Peter Stinson. Lewis asked why deny now? Winton answered that the Planning Board has turned this down and Council is accepting their recommendation. Bill added that the Planning Commission raised good issues that they have not gone along with what the Borough's subdivision ordinance requires and the permits are not in place. If they go back to planning and meet these requirements and the Planning Commission recommends approval that's fine. Jim stated that the need for the waivers is a function of the design of the plan. The plan was designed in cooperation with the Borough's engineer. The alignment that creates the intersection was done at the request of the Borough's engineer and it requires waivers to do that alignment. If the waivers are not approved then the plan cannot accommodate the engineer's concerns.

Roll call vote taken. In favor: M. Mogilski, L. Paulhamus. Opposed: K. Gassler, S. Lockard, W. Male, B. Pysher, P. Stinson. Motion did not carry with a vote of 2-5.

Discussion about the intent of the vote and the outcome of the vote. The intent was to deny the waivers. Mr. Zito asked to clarify by re-voting. A yea vote will deny the waivers and uphold the recommendation of the Planning Commission to deny the plan. The January 3 letter recommends not granting any additional waivers and because of those items and the zoning issues they recommend that Council deny the plan. Winton asked for a clarifying motion.

On motion by Bill Pysher to uphold the Planning Commission's letter dated January 3, 2003 to deny the waivers and seconded by Peter Stinson. After further discussion Bill amended the **motion** to read to uphold the Planning Commission's letter to deny the plan and seconded by Peter Stinson. Roll call vote taken. In favor: S. Lockard, W. Male, B. Pysher, P. Stinson. Opposed: K. Gassler, M. Mogilski, L. Paulhamus. Motion carried with a vote of 4-3.

2. West Seventh Street. Winton distributed a copy of the Parkside Plan dated 1910 when West

Seventh Street was a paper street called Diamond Avenue. Since then there have been many changes, but it appears the original plan was to accommodate row homes located on small lots (20' to 40' lots). On the other side is a copy of the plan dated 1983 done by Joe Policelli. Winton again stated that according to John Molnar, Ordinance 319 was not valid because no notice was given to the adjoining property owners. There is a sanitary sewer easement under part of the paper road that is still owned by the new owner, the Candle Factory. He stated that to just ordain this road as shown on the map would not be appropriate. Kerry said that a survey done by the Borough Surveyor, Gordon Wilson was used for the ordinance and it was drawn up with Ordinance 319. The Borough receives liquid fuel money for half of the street. Winton replied that it does not mean anything. Kerry stated that Bob Boyer from PennDOT stated that fuel tax is paid for ordained streets. Winton added that a lot of people assumed that it was ordained properly when in fact it was not. The Mayor stated that if the Borough is receiving liquid fuel tax money on this street and it is incorrect, then we should correct it and take it off the books. Kerry said that this is Industrial Commercial property and how can it be developed if there is not an ordained street. The Borough would not be putting in the street, just ordaining it. Mitch added that two years ago, 20 streets were done and they are not all owned by the Borough. West Seventh Street was not on the list at that time because of the pending litigation. The Mayor added that he spoke to Joe Dell'alba, who was the property owner at the time, and Joe was not notified regarding the ordination of the street.

On motion by Lewis Paulhamus for Council to accept this street as is, then the owners along that street, The Candle Factory and Mr. Albanese if they want to do anything then it is upon them to fix the rest of the street.

Mr. Zito commented on the topic. He stated that Special Solicitor, John Molnar has corresponded to Council and rendered his opinion that Ordinance 319 which laid out and opened Diamond Avenue and renamed it as West Seventh Street was defective in its process. He stated those reasons were outlined in a memorandum forwarded to Council at the request of a Councilman prior to their January 25, 2003 special meeting. Mr. Zito advised that if Council chooses to open West Seventh Street the Borough Engineer must properly lay it out. The previous engineer did some work on West Seventh Street. It must be determined if West Seventh Street is a viable street. The Borough has the power to lay out streets, and open streets only if they choose to do so, but Council is under no obligation.

Lewis Paulhamus added to his original **motion** to include West Seventh Street be ordained as is with the exception that the Borough Engineer to lay out the street the way it should be.

Leroy Albanese asked Mr. Zito if he had given another option to Council such as ordaining it as is if they so desire. Mr. Zito replied that in October 2000, he corresponded to Council with a memo and gave them three options of which one was to lay out the street properly. They do not have the right to accept this street, as it exists today without laying it out properly. Borough Council cannot ignore the Borough Code or the advice of the Borough engineer. Ron stated that the area has pavement and gravel; he would have to stake out the surveyed boundaries of Diamond Avenue as described. Ron's concern is two (2) 90-degree turns currently exist according to the original plan. If the Borough ordains this street and if there is pavement and it is a public thoroughfare over the imaginary lines everyone will drive over the pavement as it is, then the Borough would be liable for the condition of that street. If it fails the Borough would have to reconstruct it at their cost. It has always been Ron's recommendation that if the people who have frontage on this paper street and wish it to be a public street, then they should do it as any other developer. They should prepare plans for a street and submit them to Council to be reviewed to meet the current ordinance. When there is a lay out that meets the current standards, then Council can accept those plans and the developer can enter into an improvements agreement, post bond, after he does all the improvements, it is inspected and upon all that being done, the road can be dedicated. What is being proposed is Council passing an ordinance without making any improvements and just taking the boundaries from the 1910 plan. If that should happen then Mr. Albanese is off the hook because he would never have to do any improvements in the future. Ron stated that he does not believe it is wise to ordain

streets before they are passable and are proven that they meet the current standards.

Mr. Zito said the layout must be in accordance with the Borough Code and this term has been employed for many years within the code. It means it is laid out with respect to public safety and all the conditions concerning the liability of the Borough are properly constructed as a thoroughfare. It is actual dimensional lay out for purpose of public use and the engineer is expected to do that with the safety of the public in mind. Ron stated that the Borough would have to go through condemnation or get all the owners to vacate their rights. Does the Borough wants to take on this project using tax dollars for the benefit of a few property owners or should the few owners develop the road as any other developer would have to do.

Leroy asked if it is his responsibility to build the road back to his business? Twenty years ago the Planning Commission approved this to be done and now Council is telling him that he has to start all over. Leroy asked Ron if he is wrong by saying that the Sewer Authority will not accept the sewer line. Ron replied that you could offer an easement free and clear; he can't see why they would not accept it. Ron explained that according to this map, it shows that the sanitary sewer does not line up with the street. Diamond Avenue by itself does not have meets and bounds survey description of a public street that could ever be constructed. The house on Broadway would most likely have to be torn down to avoid the 90 degree turn, but then the Borough would be developing a road for existing private owners and that is not wise use of tax dollars. Leroy asked why the street has to be in a straight line and he offered ten feet of his property so that turn becomes less than 45 degrees. Ron explained that the Borough just did a clean up when they ordained the streets two years ago, but the streets were all developed and built under SALDO at the time.

Lewis Paulhamus reworded his **motion** to read to have Borough engineer do the engineering to get the street the way it should be.

Mitch asked if the professionals working at the time would have been bonded? Mr. Zito replied that he did not know what arrangements were made and he doesn't know if there was any public bidding done which would require bonding. He does not know if the professionals would have been insured for neglect. Mitch stated that if we could find out that information they might be responsible to fix the problem. Mr. Zito answered that he would not know where to start. He questioned whether or not a defect in the ordination process would impose liability on the then engineer or solicitor. He stated that he might conclude that this is something that Council not be engaged in because the end result is that there is no liability.

On motion by Lewis Paulhamus to have the Borough Engineer bring what is called Diamond Street up to specs so it can be ordained and seconded by Kerry Gassler.

Mitch asked if this ordinance has an error, does it have any teeth to it? Mr. Zito stated that the process of enacting the ordinance may have been valid, but the content and the characteristic of the ordinance are not, so it does not have any teeth at all. If Mr. Albanese chose to, he could privately attempt to enforce the ordinance by proceeding to court, but Mr. Zito suspects that Mr. Albanese would run into all of these same issues that Attorney Molnar has already outlined for Council which he researched in connection with the representation of the Borough in North American Equity litigation.

The **motion** was amended by Lewis Paulhamus to read have the Borough Engineer prepare a sketch plan of Diamond Avenue and seconded by Kerry Gassler. Roll call vote taken. In favor: K. Gassler, L. Paulhamus. Opposed: S. Lockard, W. Male, M. Mogilski, B. Pysher, P. Stinson. Motion did not carry with a vote of 2-5.

3. Wind Gap Ambulance Lease. Mitch reported that at the last meeting Kerry stated that no one on the Board of Trustees had received a copy of the lease. Mitch contacted John Molnar to send a copy of the lease to Joe Dell'alba, Kerry Gassler, Dianne Shippers, Tom Hawkman, and Claude Lessig to their home address. Mr. Zito asked if Council has reviewed the lease that he sent over on January 13, 2003. Mitch replied that no action has been taken by Council to date.

New Business

1. Posh Properties/CVS – Petition for Re-zoning. Jim Preston introduced Project Engineer, Jeff Ott, Mr. Posh Sr., and Mr. Posh Jr. and their development planned at Broadway and Male Road for a CVS Drugstore and a Dunkin Donuts. The developer is asking for the opportunity to petition for re-zoning at this location. The property is currently split zoned as community commercial to the north, industrial shopping center to the south and residential to the east. Mr. Ott distributed a copy of the exhibit to Council with an outline of their request including a map showing the existing zoning and the proposed re-zoning. The proposal is to re-zone as community commercial. The purchase of the parcel is contingent upon the zoning changes.

Ron stated that there is a fourteen-lot subdivision known as the Raymond Cortazzo subdivision, which is currently before the Planning Commission. It is on the agenda on this Thursday's Planning agenda. His lot 13 will be merged with the CVS project.

The applicant is proposing to construct the fourth leg of the existing intersection. The plan includes a right turn in and right turn out driveway to the development. This would include a sixteen-foot widening of Broadway. Ron stated that the widening would be very advantageous for traffic navigation because of the narrowing in that area and will improve that situation. They would be meeting PennDOT requirements. Parking will be along side the CVS and in front of the Dunkin Donuts and both establishments will have drive thru windows. The Planning Commission tabled this issue and an extension was granted. They are looking for feedback on how to proceed.

Winton asked Mr. Zito to give Council some direction on this issue. Mr. Zito replied that Council would voluntarily make a change to the zoning ordinance and this is not a curative amendment. Ron added that Council must initially decide whether or not they will entertain a petition for a change and after they make the petition, a public hearing would be scheduled and then Council would vote on the change. The developer is asking Council for direction and to see if they would be willing to engage in the process to change the zoning ordinance, but it would begin with the Planning Commission.

On motion by Lewis Paulhamus to change to commercial and go back to Planning. Motion died for a lack of a second.

Bill explained that that motion would be pre-mature because Planning would have to review it. Jim Preston stated that the process would start with filing an application with the Zoning Officer, who then forwards it to the Planning Commission, goes once around the loop and comes back before Council.

Winton asked how this development would benefit the Borough? Jeff Ott replied that a CVS and a Dunkin Donuts might generate more revenue for the Borough. A CVS may employ five to eight people and Dunkin Donuts may employ five in the morning. It would be more beneficial than residential because there is no more burden on the Borough for services. There would be an increase in property tax paid to the Borough. Property tax on this property would be approximately \$40,000, but that is Borough, County and school tax. Bill asked if the adjoining property owners have been notified? Mr. Posh Sr., replied that there is no reason that they know of to contact anyone, but if they have to they will. It will be done as part of the planning process.

On motion by Kerry Gassler to start the petition for re-zoning and seconded by Sandra Lockard. Roll call vote taken. Motion carried unanimously.

2. Land Use Committee recommendation. **On motion** by Peter Stinson to authorize Urban Research and Development Corporation to prepare a draft zoning ordinance with amendments and a draft comprehensive plan and zoning update for presentation to the Wind Gap Land Use Committee and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

Kerry stated that the original agreement with URDC stated that they would attend a total of five (5) workshop meetings and so far there has only been two (2). Winton replied that there would be more. Mr.

Zito stated that they are preparing a set of documents to be back before the Land Use Committee. More discussion will occur.

3. **On motion** by Bill Pysher to accept Kathleen McFall's resignation for the Park Board and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously.

4. **On motion** by Peter Stinson to re-appoint Lewis Paulhamus to the Park Board and seconded by Kerry Gassler. Bill asked if it is a good idea to have a Council member on the Park Board because at times Lewis seems to have a conflict of interest in the past that he would rather be with the park board as opposed to Council. Mr. Zito stated that legally it is acceptable to have a Council member serve on a recreation or park board, but this is entirely up to the discretion of Council. Conflicts only arise under the law if the member would have a direct pecuniary interest involved, which would be in conflict with both positions. Winton stated that the question arose when on at least one occasion; Lewis stepped down from his position on Council. Lewis stated that it was to say something regarding the park. Roll call vote taken. In favor: K. Gassler, S. Lockard, W. Male, M. Mogilski, P. Stinson. Abstained: L. Paulhamus, B. Pysher. Motion carried with a vote of 5-0-2.

5. Ralph Stampone. Council received a letter of interest from Ralph to be appointed to the Park Board. Kerry asked if it is customary to advertise a position when someone resigns before making an appointment? Winton replied that historically the ads have been put in the paper without any response. Kerry added that the board was full until Council just accepted the resignation of Kathleen McFall. Winton said that Ralph Stampone submitted a letter of interest and Council should act on his letter. **On motion** by Kerry Gassler to appoint Ralph Stampone to the Park Board and seconded by Peter Stinson. Roll call vote taken. In favor: K. Gassler, S. Lockard, W. Male, M. Mogilski, B. Pysher, P. Stinson. Abstained: L. Paulhamus. Motion carried with a vote of 6-0-1.

6. Re-appointment of Brian Thompson to Wind Gap Municipal Authority. **On motion** by Mitchell D. Mogilski, Sr. to re-appoint Brian Thompson to the Wind Gap Municipal Authority and seconded by Sandra Lockard. Roll call vote taken. Motion carried unanimously.

7. Bill Pysher reported that the Mayor, Chief Armitage and himself interviewed four applicants for the two part-time police officer positions. They are recommending to Council two individuals to be hired who meet the needs of the Borough and are Act 120 certified and currently work in security. **On motion** by Bill Pysher to hire Christopher Stalter from East Stroudsburg and Luis Ruiz from Pocono Lake as part-time police officers and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously.

Mitch stated that Council had discussed the need for a physical agility program to be conducted each year and was Council thinking of implementing that now. Bill replied that both these gentlemen are physically fit, one is involved with martial arts and the other is a Marine Sergeant. As all newly hired officers they have to go through a physical examination and a psychological examination.

Pat Sutter stated that she thought the policy was to advertise for vacancies. No one else has the opportunity to put their name in when Council is automatically re-appointing positions. Bill replied that it has been the policy that if they are doing a good job, the Borough will stay with them. Pat asked Mr. Zito if there is a law? Mr. Zito replied that there is a sound policy that has been in borough and township news not perpetuating someone's position in these appointed borough offices and to open them up for other interested people. Bill stated that these positions have been advertised and no one shows any interest. Pat suggested making it a policy that all vacancies be advertised. Winton replied that the Borough would

spend a lot of money on advertising. Pat replied that it should not matter, but the positions should be advertised.

9. The Mayor reported that there was a robbery last week at the Fashion Bug. The Wind Gap Police did the investigation and put out a warrant for the person's arrest. He was eventually apprehended. Pat Sutter asked why nothing is ever in the paper. It appears that nothing bad ever happens in Wind Gap.

10. **On motion** by Peter Stinson to advertise the vacancies in the newsletter and seconded by Bill Pysher.

11. Carol George stated that Council made a decision to take Public Comment at the beginning of the meeting. They need to be consistent and do it at every meeting, not pick and choose at different meetings.

On motion by Kerry Gassler to adjourn the meeting of February 3, 2003 and seconded by Peter Stinson. Meeting adjourned at 9:30 p.m.

Louise Firestone
Borough Secretary