

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

The Special Council meeting of the Borough of Wind Gap on Wednesday, July 23, 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 Council members: Lewis Paulhamus, Sandra Lockard, Mitchell D. Mogilski, Sr., William Pysher, Peter Stinson, and Kerry Gassler. Also in attendance were Mayor Kenneth George and Borough Solicitor Len Zito.

The purpose of the meeting was to discuss the Municipal Authority Litigation and take action that may be necessary.

Winton stated that the intent is to address the Authority's refusal to release information; issue permits or cooperate in servicing Borough residents and neighboring townships. We all have responsibility to serve the public in our respective capacities and refusing service to residents and neighboring townships in an attempt to compromise Borough Council is simply not acceptable. Council received a fax from John Molnar, Municipal Authority Solicitor, that reads: "The Authority committee looks forward to meeting with the Council committee at the Municipal Building on Friday, July 25, 2003 at 9:00, (has been changed to 10:00). One of the issues that we can discuss is in regard to the issuance of permits, review of the plans and applications before the Authority. My advice to the Authority and certainly it is the Authority's position to continue conducting the reviews and the application process, so that all citizens and property owners within the Borough and surrounding Townships are not in anyway harmed, notwithstanding the issues between Borough Council and the Authority. We look forward to discussing this matter as well as other matters on Friday. Hopefully, we can begin arriving at a solution, which will be in the best interests of our community. The time period in arriving at a solution should no way delay the application review process". Winton suggested that if the Authority does not respond in a responsible manner, then the Borough Solicitor should be authorized to proceed with the legal action necessary to resolve the problem as soon as possible.

Lewis stated that when Council took action against the Authority, Council said that they could not grant any more permits and that is Council's fault. Bill replied that the agreement had nothing to do with issuing permits or anything. It did say about not expanding contracts or incurring debt. It said nothing about the day-to-day operations of the Sewer Authority and they interpreted this on their own. Lewis stated that Bushkill wants to expand and they can't until this is done. Peter replied that the information that Bushkill is looking for is not necessarily directly related to a commitment from the Wind Gap Municipal Authority to expand the sewer system. They are looking for information that has not been provided to them.

Winton asked Mr. Zito if he feels that there is confusion regarding the wording in the resolution and does it require clarification? Mr. Zito replied that his first knowledge of the

problem was when Mr. Pysher contacted him and explained that local citizens who were looking to acquire a sewerage permit had contacted Bill. The Municipal Authority had taken a position with these citizens that it was prohibited by Borough Council issuing an ordinary sewerage permit. Mr. Zito received a letter from the Borough, from the Administrator of the Municipal Authority communicating to the Zoning Officer, which took a position of interpreting the resolution that Borough Council had entered into. The Administrator interpreted it as prohibiting the Municipal Authority from taking any action with respect to a plan or project. Mr. Zito stated that through media and members of Council he has become aware of the issue with the Bushkill Township Supervisors. They are in the process of amending their Act 537 Plan. Mr. Zito spoke to the Bushkill Township Solicitor and they were looking for routine information that they could use in connection with their application, which was not forthcoming from the Authority. Mr. Zito interprets the resolution as not prohibiting, restricting, or impeding any of the ordinary functions of the Municipal Authority in providing services to the citizens. This afternoon, Mr. Zito spoke to the Authority's Solicitor and clarified that the Municipal Authority understands that its functions are not being impeded. John Molnar advised the Authority to provide information and issue permits where appropriate applications have been filed. Mr. Zito advised Council that it is his opinion that no action should be taken at this point of time and take Mr. Molnar's letter at face value. Should citizens approach any council members and complain because they are not able to conduct ordinary business with the Authority, there is a procedure that would alleviate that situation. It is a relatively short procedure and does not entail a lengthy lawsuit. It is designed to handle municipal situations. If Council must proceed with legal action, a decision would cover all common complaints. Council can proceed on behalf of the citizens.

Peter questioned Mr. Zito if during his conversations with Mr. Molnar; John had indicated that he had given this same advice to the Authority? Mr. Zito replied that this had not come up in conversation. Paul Levits from the Municipal Authority was in attendance and Peter directed this same question to him. Mr. Zito clarified in asking if Mr. Molnar advised the Municipal Authority since the resolution was adopted for the Authority to continue to conduct reviews and the application process? Paul responded that yes it was. Paul added that according to the resolution, paragraph 10, it was quite clear that they could not enter into contracts and that is their position. John told them outright that they could not do anything with 537s nor enter into in any contract. Paul suggested rescinding paragraph 10 of the resolution. Mr. Zito replied that it is his legal opinion, that there is no part of paragraph 10 that addresses collateral contracts of citizens to build homes. Mr. Hahn's letter to Mr. Blick refers to paragraph 10 as the reason for not being able to implement plans pertaining to the implementation of plans or projects that are all relative to capacity and all is an attribute of Act 537. This has nothing to do with private contracts for citizens building homes.

On motion by Bill Pysher to put a hold on the legal action against the Municipal Authority with this regard pending the outcome of the meeting on July 25, 2003 and subsequent business of the Authority of issuing permits to property owners in Wind Gap and surrounding areas and seconded by Peter Stinson.

Discussion regarding the permits that are question. The Dutts have not submitted plans, but were looking for some preliminary information regarding the construction of a house. The other application is for a family day care center. Discussion regarding that Bushkill Township did

attend a Municipal Authority meeting, but a feasibility plan was never done and they never submitted any money. Winton stated that they were looking for information to apply for a grant. Paul replied that the Municipal Authority had a meeting in May of 2002 with Bushkill. After the meeting, the Authority followed up with a letter outlining what needed to be done. The first thing was to submit a feasibility deposit. A year later, Aaron Hook, came to an Authority meeting asking for some information. Because no money had been submitted for the feasibility study, Mr. Hook stated that he would return to the next meeting. Winton stated that the Authority gave their engineer, Doug Hunsinger, approval to give Bob Collura the information and then subsequently, the Authority called Doug Hunsinger and instructed him not to give the information because they changed their minds. Paul answered that the Authority was not informed that there was a flaw in the application.

Mr. Zito read from an article in The Morning Call. Bushkill has been waiting for Wind Gap to provide statistics needed to complete a planning module for the Department of Environmental Protection. Wind Gap Municipal Authority authorized its engineer to give the information, but to date, the Township has not received it. Hook said that the delay could be because of discussions that are ongoing between Wind Gap and the Municipal Authority. The engineer says that all he needs is plant capacity and a serial number for the permit. It appears to be routine information and not a feasibility study. Paul said that in part it is correct. Although the article is not a full reporting of everything, because they did not research everything back. To put it plain and simple, the application is open for review. The application states that the applicant is Bushkill Township, but the applicants name is not a Bushkill Township representative. The Authority was not informed of this. Paul stated that the fee for a plant of that magnitude and scope it is around \$2,400. Mr. Zito stated that according to the paper, Mr. Collura stated that the data he needs is simple, but it would cost him about \$400 under the Open Records Act to gather it. Paul stated that Council's actions have moved the Authority into an additional phase. If Bushkill had acted a year ago, that contract would have been signed and executed. Winton stated that the information that Bushkill is requesting is public information and should be available to anybody whether they have an application or not. Paul replied that whether it is public or not, he does not think that the Authority is going to sign off on an application. Paul stated that the application is about ten or fifteen pages and it is not as simple as it appears. He offered to meet with Peter to go over the application and explain it in detail. Mr. Zito asked if the Authority is taking the position that it will not provide any information in the absence of a fee and a feasibility study. Paul responded that there is a lot of consideration because they have not submitted a feasibility account. Mr. Zito asked Council for the authority to contact Mr. Asteak, the Bushkill Township Solicitor, to compose a letter for review by the committee for Friday's meeting from his understanding of this issue with Bushkill. Mr. Molnar will also be contacted to find out his point of view regarding the Bushkill request for information and application.

The proposed Day Care Center house already has service, there would just be an increase in EDUs. A contract would have to be written and signed. Kerry suggested this topic be discussed on Friday.

Roll call vote taken on the motion made by Bill Pysher. In favor: K. Gassler, P. Stinson, B. Pysher, M. Mogilski, W. Male, S. Lockard, L. Paulhamus. Motion carried unanimously. Bill asked about the pending deposition and the mention of Winton Male and et al. Bill

requested adjourning to Executive Session to talk about what et al means and will all of council be involved?

Council adjourned to Executive Session.

Upon return from Executive Session, **on motion** by Peter Stinson to adjourn the special meeting of July 23, 2003 and seconded by Bill Pyshe. Motion carried unanimously.

Minutes transcribed by:

Louise Firestone, Secretary/Treasurer