

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

The Council meeting of the Borough of Wind Gap on Tuesday, June 17, 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., Peter Stinson, and Kerry Gassler. Also in attendance were Mayor Kenneth George, Borough Solicitor Len Zito and Secretary/Treasurer Louise Firestone. Absent Councilman Bill Pysher.

### **Approval of Minutes**

**On motion** by Kerry Gassler to approve the minutes of June 2, 2003 and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously.

### **Public Comment**

1. Rick Keenhold stated that he received a letter instructing him to cut the weeds. He turned the letter over to the Mayor and stated that the Borough condemned his property and it is the Borough's responsibility to cut the weeds. The Mayor replied that the responsibility is up to Rick until the condemnation process is final. The Mayor suggested having the Borough Solicitor respond to this issue.
2. Bob Matlock asked to follow up on his request to Council to review the inconsistency of allowing tractor and/or tractor-trailers to be parked in some residential areas and not allowing them in other areas. Winton replied that it has been discussed and members of Council are in agreement that something needs to be done. Unfortunately, it is not something that can be changed immediately. It has to be determined where they can park now and where they can park if the zoning is changed. Bob asked if anything is being done about the stop sign on Alpha Road. Ron Madison was asked by Council to look into the stop sign and Council should have a report prior to the next regular meeting.
3. Ralph Stampone read the following: "I am here at tonight's meeting to urge Council to place on hold any further efforts in Council's attempt to takeover the operations of the Wind Gap Municipal Authority. You are aware of the election results, and three of you will not be seated as Council members at the January 2004, Council meeting. These three Council members were part of the majority of five, which took the initial vote to hire an attorney and begin spending taxpayers' money for the purposes of taking over the Authority. One Council member has decided not to return in January, and two other Council members were defeated at the election. It is not prudent and completely irresponsible for a municipal official to proceed in

spending taxpayers' money on an issue in which you will not be here to finish. This fact is particularly true in light of the apparent fact that the new Council members will not follow in the direction that Mr. Male has attempted to layout for the Borough. Placing this matter on hold will have double the savings to taxpayers in that both Council and the Authority will not have to expend any unnecessary funds on this issue until new Council members take office in January of 2004.

To do otherwise, is an abuse of power and I intend to support an effort to seek a surcharge for the costs expended to further the takeover effort from today's date until new Council members take office. A surcharge action will seek personal liability on each Council member who votes in favor of any continuing efforts for the takeover. I suggest that you seriously consider this message to you. Common sense only dictates that you cease all efforts in wasting taxpayers' money, until the new Council members take office in January 2004.

Any Council member, who does otherwise, needs to be held personally liable for any continuing expenditures in furthering the takeover attempt, until the new Council members take office. I am giving each Council member a copy of this statement, so you can reflect on your personal exposure.

4. Vickie Allen, Alpha Avenue. Vickie submitted GAF's proposed sign in accordance with the Borough's other green and white signs. They intend to install the sign at the corner of Alpha and Broadway on the pole that they have already purchased.

She asked if the Borough has received complaints regarding the tire pile in a backyard on Fairview Avenue? Winton replied that a letter has been sent and appropriate action will take place if necessary. She urged residents to stay aware of the landfill issues. If they have any complaints regarding the trucks, they should call the DEP hotline.

In response to the issue of the tractor being parked on Alpha Avenue, she signed a petition a couple years ago along with other residents of the street stating that they do not have a problem with the tractor. She does not believe that it is an eyesore because she only remembers it being parked there twice in the last few months. Another neighbor was also a truck driver and he brought his vehicle home every night and she had no problem with his truck because that was his livelihood. She stated what is really an eyesore is the rear of Alpha Avenue with the wheelbarrow, wood, wire and other dangerous junk items so no one can walk through there safely. She does not believe it is a civil matter as Council as indicated. Bob Matlock replied that the petition states that Mr. McNamara is compelled to bring home his truck due to rules and regulations of the ICC (Interstate Commerce Commission). Bob stated that the ICC does not compel any driver of a commercial vehicle to bring it home and park it. He said that he does not want a truck parked on his street, but if Mrs. Allen chooses to live in a truck section then she can live in one.

## Committee Reports

1. EMS – Kerry Gassler reported that the Ambulance Board of Directors has discussed the lease between the Borough and the Ambulance Corps. They hope to set up a meeting with the Council committee sometime in July or August.

2. Police – Mayor George reported that the two part-time police officers are working shifts.

3. Streets – Winton Male reported that he spoke to Borough Engineer, Ron Madison, regarding 103 North Broadway. Ron stated that the water drainage is a planning/land development issue. Property owner, Laurie Burriesci, was in attendance and asked if she needed approval or a determination from the Engineer. The water will be re-routed and it will be entering into a culvert on a State highway. Proper steps need to be taken and the Borough Engineer will have to confirm the steps. Kerry stated that this is a seasonal occurrence because the water flows on the street in the winter and creates a sheet of ice. He explained that the water is running on her property, over blacktop, across the sidewalk and directly into the drain. They want to go underneath that and not change the structure of the land. They are not diverting the water anywhere else but into the same catch basin. The water flow is constant throughout the year.

Winton suggested getting a consensus from Council to have the engineer look at this issue. Mr. Zito asked if this is a problem that exists on her own property with water percolating seasonally because of the water table? She replied that water just started bubbling up this past winter. Mr. Zito replied that the law gives her the right to protect her own property. If the surface water is on her own property, she may manage the surface water on her property as long as she does not do so in a dangerous way and as long as she does not do so to affect any of her neighbors or the public right in any way. She may manage the water on her property in an appropriate fashion with a french drain, or pipes or with whatever may protect her property from damage. She cannot do so if she might harm her neighboring property and she cannot deal with conditions off her property. The catch basin is not on her property. Mr. Zito informed her that she would be responsible for acquiring any permits required, blacktop, etc. Kerry told Laurie that she must contact Bernie Corbett from PennDOT.

Mitch reported that one curb was poured today. Two more curbs need to be done: George Pultz on Utica Avenue and Paul Levits on West Street. George is having the Borough do the work and he will reimburse the Borough. Paul is still refusing to do the work. Mitch asked if the ordinance could be enforced. Len stated again that he has made an opinion that the curb ordinance should be strictly construed. The 1912 ordinance can be construed as being superseded by newer ordinances. He does not suggest enforcing the current ordinances until a clear concise ordinance has been enacted. If Council wants him to attempt to enforce it he will, but it only takes one to challenge the wording in the ordinance. Mitch suggested instead of starting at 512, start on the west side of Washington.

Discussion to make an enforceable ordinance prior to next year's paving projects. Winton suggested finding curb ordinances on the Internet and making them applicable to Wind Gap.

Mitch reported that during a winter storm, the Borough truck damaged a fence in the Borough. Mitch looked at the fence and instructed the property owner to get an estimate. The estimate for two sections of six foot fencing, two posts, remove it, haul it away and labor came to almost \$900.00. Mitch informed the property owner that the Borough would need to report this incident to the insurance company. She does not want this to go through the insurance. She is aware of what she needs to submit to the Borough insurance company to get it repaired. She does not want the Borough employees to install the fence because they are not professionals.

American Fence installed the fence originally. Mitch believes that her son works for American Fence. He priced the fence at Home Depot; it was \$49.60 a section. Mitch wanted this information in the minutes in case anything ever comes back on this claim.

Kerry pointed out to Council that in the Street budget, engineering is over budget by \$4,000. He will check into this item. Traffic Signs and Supplies is over by \$544. He will investigate this item with John. Overall budget is at 39% for the year.

The Mayor asked that the traffic signal at Male Road and Broadway be checked because the timing seems to be off on the turning lane heading northbound. Concern that the sensors are broken. Borough Secretary to call Traffic Solutions to investigate.

Pat Sutter asked how the Council members feel about reducing the speed limit from 35 to 25. Winton replied that the State would not allow the speed limit to be reduced. Winton explained that if no traffic count is done, lowering the speed limit may create more congestion and it may be even more dangerous. The Mayor had previously suggested lowering the speed on upper Broadway and PennDOT kept it at 35 m.p.h. Mayor George to contact PennDOT.

4. Finance and Administration – Winton Male reported that he received an e-mail from a resident complaining about the speed of the modem dial-up. He will copy all of Council and forward a copy to RCN.

Winton has had no response to his concern regarding the Wind Gap Athletic Association having insurance on their building contents in the Park. He is concerned that if they have another incident, they will not have any coverage. Peter stated that the letter from the claims adjuster indicates that they are paying for their loss. The money supposedly represents the damage to the building and the damage was considerably more because of the loss of the contents. The AA should be changing the coverage from building to contents coverage. The Park Contractor has not returned to do any repairs to the fields. John did some work on the ball fields. Discussion regarding what else can be done to help repair the fields. Lewis asked again if the Borough would be paying for the port-a-potties for the Firemen's Picnic. Peter explained that the cost would be paid for the Borough, but would use it as damages against the contractor.

5. Zoning and Planning – Sandra Lockard reported that the Planning Commission would be looking at the McFall plan. They will be subdividing their property, some of which is in Wind Gap.

6. Parks and Recreation – Ralph Stampone reported that they are having a problem with skateboarding on the bandshell. Also, he has seen five dogs in the Park the last two days. He stated that the ordinance has to be enforced. The fourteen and fifteen year olds are in the kiddies play area. There is graffiti on the slide that needs to be removed. The Police should make visits to the Park. The Mayor stated that they are working on the Park watch. Chief Armitage stated that more signs need to be installed on the lower field on West Street stating no pets.

7. Fire Company – Jeff Yob reported that the truck committee would be traveling to Nesquehoning to visit KME to lay out the specs and blueprints. Once the work is begun it is estimated to take 240 days. Jeff will bring a print to the Borough Office as soon as one is

available. Jeff suggested when the Borough uses the fire hall for a town meeting having the street workers set up the hall. He stated that the Borough could have the PA System set up at that time also.

8. Sewer Authority no representative appointed. No one from Authority made a report.

9. Insurance – Winton Male had nothing else to report.

11. Land Use Committee – Winton Male reported that in the past there was a binder with all the information in it on the filing cabinet. He has been using the binder to attend meetings and he will return it to the cabinet in case anyone wants to look at the contents.

12. Mayor's Report – Mayor George reported that contractor's license for the month of May was \$175 for a total of \$1,600 plus \$100 for a transient for a grand total of \$1,700.

Slate Belt Municipality Meeting is tomorrow night at 7:30 p.m. at Washington Township. The Police report has been distributed. They responded to 125 calls, 4 motor vehicle accidents, 53 traffic citations.

The Chief questioned the SUV that was included in the Waste Management agreement. Winton replied that Council needs to determine what will be done. The original decision was to purchase a vehicle with scales. The Mayor will check with Bill. Kerry suggested looking into the SUV purchase with or without the scales. This past winter the Chief was forced to ride in the plow to respond to a call.

The Mayor suggested looking into the state contract when an SUV is purchased.

The Mayor is currently working on the recycling grant.

## Old Business

1. Comprehensive Plan and Zoning Amendments. Winton stated that Council all received a copy of the changes that occurred from the June 12, 2003 meeting. One of the changes was the building height and that was noted by Tom Palmer. Service repair shops were added as a permitted use. Wording of the non-conforming sign was originally confusing but has been clarified. He clarified and reorganized the forestry. Kerry stated that the changes are still too restrictive with regard to the forestry issue. He does not believe that the definitions changed much. He will call Tom and discuss it himself. He questioned whether the MPC gives definitions. Len replied that there are definitions of forestry and it is must be permitted in every zoning district. The extent of the restrictions being proposed is not required but a suggestion of Urban Research. Kerry would like further time to review until the next meeting. This topic to be on the July 7, 2003 agenda.

## New Business

1. Ordinance 433 – Police Pension language requirement. **On motion** by Kerry Gassler to enact Ordinance 433 and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

2. Air Conditioning quotes. Received two quotes to replace the air conditioning in the meeting room. Council budgeted \$7,500 in the 2003 budget in anticipation of doing the work this year. Discussion to replace the wall unit that exists now or put units outside and run ductwork to two window units. This topic will be on the July 7, 2003 agenda.

Lewis suggested looking into a PA System also. Jeff Yob suggested contacting Music Scene in the Capital Plaza, Bangor. They might let the Borough try out the system prior to making the purchase.

Rick Keenhold questioned the plan for Alan McFall. Sandra explained that Mr. McFall is subdividing land, with the majority being in Plainfield Township. The subdivision will come out onto Roosevelt Street. Planning Commission to review the plan at their next meeting.

Rick asked Peter if the Borough has two attorneys for the Wind Gap Municipal Authority litigation. Peter replied that Karl Kline is special solicitor within the terms of the Wind Gap Municipal Authority litigation and Mr. Zito is the solicitor for the Borough. Mr. Zito is serving as consultant and not the direct representative on this case.

At 8:45 p.m., Council took a recess. Special Solicitor, Karl Kline, arrived at 8:54 p.m.

**Executive Session.** Council adjourned to Executive Session at 8:54 p.m. to discuss litigation with the Wind Gap Municipal Authority.

Borough Council reconvened at 9:25 p.m.

Len explained that the resolution before Council and discussed in Executive Session is specifically directing the Wind Gap Municipal Authority to take certain actions in support of its dissolution and termination.

Len stated that in Executive Session, Wind Gap Borough Council considered a resolution prepared by its appointed Special Solicitor, Karl Kline. It reads as follows:

Resolution No. 2003-03

Whereas, on April 15, 2003, the Borough of Wind Gap ("Borough") has retained counsel concerning the dissolution of the Wind Gap Municipal Authority ("Authority").

Whereas, the Wind Gap Municipal Authority was created by the Borough of Wind Gap under the Municipal Authorities Act of 1945.

Whereas, the Borough of Wind Gap desires that the Authority pay off its outstanding indebtedness, transfer the municipal sewer system, its assets, other property and records to the Borough, and dissolve the Authority for the purpose of acquiring full and complete control of the Authority.

Whereas, the Municipal Authorities Act of 1945 authorizes the Borough, as the creating municipality, to dissolve the Authority after the agreements, claims and outstanding debt obligations are discharged.

Whereas, such dissolution and termination of the Authority is clearly authorized and

permitted pursuant to 53 Pa. C.S.A. 5619, -Forward Township Sanitary Sewage Authority v. Township of Forward, 654 A.2d 170 (Pa Cmwlth. 1995), and Township of Forks v. Forks Township Municipal Sewer Authority, 759 A.2d 47 (Pa Cmwlth. 2000).

Now, Therefore be it resolved by the Wind Gap Borough Council as follows:

1. Within 30 days from the date of this resolution, the Wind Gap Municipal Authority shall provide the Borough with an accounting of its financial condition, including but not limited to all outstanding debts and assets, as well as financial documentation in the Authority's possession.
2. Wind Gap Municipal Authority shall prepare and execute an inventory of all assets of Authority and turn over control of any and all bank accounts and funds in its possession or control to Borough of Wind Gap no later than 30 days from the date of this resolution.
3. Wind Gap Municipal Authority shall then promptly convey all of its documents and records and all of its remaining assets and property to Borough by appropriate documents in form acceptable to Borough, to be accomplished no later than 30 days from the date of this resolution. Documents and records include, but are not limited to, all contracts, studies, plans, correspondence, letters of credit, financial records and drawings in Authority's possession or owned by Authority.
4. Wind Gap Municipal Authority shall immediately take all necessary action to pay off all its outstanding indebtedness, with interest due thereon, redeem all its outstanding bonds, and settle all other claims which may be outstanding against, it, all to be accomplished no later than the earlier of (a) 30 days after providing the above requested financial information to the Borough, or (b) 60 days following the date of this resolution.
5. Wind Gap Municipal Authority shall immediately take all necessary action to deposit sufficient funds with the appropriate entity (e.g., Trustee under the Trust Indenture) in order to redeem any and all outstanding bonds or indebtedness no later than the earlier of (a) 30 days after providing the above requested financial information to the Borough, or (b) 60 days following the date of this resolution.
6. Wind Gap Municipal Authority shall immediately notify the appropriate entity (e.g., Trustee under the Trust Indenture) of the Authority's intent to redeem all outstanding bonds or indebtedness, so that the appropriate entity can immediately prepare the appropriate redemption notice.
7. Wind Gap Municipal Authority shall cooperate with the Borough to the fullest extent possible, so that the transition in the ownership, control and operation of the Borough of Wind Gap sanitary sewer collection system and all other matters affected by the Authority can be expeditiously accomplished without any adverse impact to any creditors, to any bondholders, or to the citizens of the Borough of Wind Gap.
8. Wind Gap Municipal Authority is prohibited from engaging in any conduct, incurring any debt, or expending any money, directly or indirectly, for any purpose other than accomplishing the directives and objectives of the Township as set forth in these Resolutions.
9. It is the intent of Borough that Borough shall not assume any debt as a result of any of the provisions of these Resolutions.

10. The responsibility for updating and implementing any plan or project including but not limited to the Borough's Act 537 Sewage Facilities Plan shall be exclusively under the control and jurisdiction of Borough. Wind Gap Municipal Authority shall have not responsibility for updating or implementing any plan or project, effective immediately.

11. All funds and assets required by the foregoing resolutions to be turned over by Authority to Borough shall be held and utilized by Borough in connection with the operation, maintenance, improvements and future expansion of the Borough's sanitary sewer system.

Winton stated that Council is required to offer Public Comment at this point.

1. Rick Keenhold asked Peter who the engineer will be? Peter replied that the plan is to retain the current Authority engineer. Who will be the solicitor? Peter replied the current Borough Solicitor. Rick asked what if all the employees quit and walk out and there are fines are incurred. Peter replied then the Borough would be responsible. Rick stated that all plans in Wind Gap, Bushkill and Plainfield, Calantoni, McFall project, CVS are all at a standstill? Peter replied that it is his understanding that it does not preclude them from continuing projects that have already been approved and established. Rick stated that a paragraph specifically states that no project, not to engage in hookup or anything else, no indebtedness does not allow them to fix anything in the plant. Peter read number 10 of the resolution. Len stated that he saw no other such restrictive provision. Rick asked if Council has talked to Plainfield Supervisors or Bushkill Township about this take over or anyone who is directly involved? He asked about the monies owed to bondholders and debt referred to. Council wants the Authority to spend more money to supply all records that the Borough already has, but not incur any debt. Who will pay for the information that the Borough already has? Karl Kline explained that Council wants the Authority to wind down its operations and proceed with a smooth transfer of the control to the Borough. The Borough would then have the obligation to honor the contracts with the other municipalities. They should not be engaging in new activities or borrowing any significant amounts of money which could make it more difficult to wind down the operation. Rick responded by saying that the Authority has not borrowed any money since 1987. They have been paying down debt. Rick asked Karl if he has explained to the Council members that once this take over is done, since Plainfield and Bushkill are involved it becomes a PUC regulated company? Karl responded that it would be controlled by whatever regulatory bodies are involved. The point is, the Borough would have full control over what is going on in regards to the operation. Rick responded that if the PUC is involved it will cost a lot more money to run this operation than the Borough itself can. It has a franchise in Bushkill and Plainfield. Bushkill came to the Authority three weeks ago with a big project that the County wants to fund with the County government money. Nothing can be done until this gets resolved which could take two to two and a half years. Karl stated that it all depends on the Authority, whether they chose to cooperate. Rick replied that do you think the Authority is going to cooperate when I am telling you that it will take two to two and half years. The voters have already spoken and the Borough residents do not want this.

**On motion** by Lewis Paulhamus not to resolve this resolution. Motion died for lack of a second.

**On motion** by Peter Stinson to table this until the next open meeting and seconded by Kerry Gassler. Roll call vote taken. In favor: L. Paulhamus, P. Stinson, K. Gassler. Opposed: W. Male, M. Mogilski, S. Lockard. Vote was 3-3. Mayor George was asked to cast the deciding vote. Mayor George voted in opposition: Motion defeated with a vote of 3-4.

**On motion** by Mitchell D. Mogilski, Sr. to approve this resolution and seconded by Sandra Lockard. Roll call vote taken. In favor: M. Mogilski, S. Lockard, W. Male. Opposed: L. Paulhamus, P. Stinson, K. Gassler. Vote was 3-3. Mayor George was asked to cast the deciding vote. Mayor George voted in favor. Motion carried with a vote of 4-3.

**On motion** by Peter Stinson to adjourn the meeting of June 17, 2003 and seconded by Sandra Lockard. The meeting of June 17, 2003 adjourned at 9:45 p.m.

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Louise Firestone, Secretary / Treasurer