

**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, May 5, 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., and Peter Stinson. Also in attendance were Borough Solicitor Len Zito, Borough Engineer, Ron Madison, and Secretary/Treasurer Louise Firestone. Absent Mayor Kenneth George, Councilman William Pysher and Councilman Kerry Gassler.

Approval of Minutes -

On motion by Peter Stinson to approve the minutes of the April 15, 2003 meeting and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

Approval of Expenditures -

On motion by Mitchell D. Mogilski, Sr. to approve the transfer of funds in the amount of \$7,500 from Capital Reserve to cover the retro pay for the police officers and the arbitrator's expense and seconded by Sandra Lockard. Roll call vote taken. Motion carried unanimously.

On motion by Lewis Paulhamus to approve the transfer of funds in the amount of \$4,216.63 from Capital Reserve to cover the remaining installation of sidewalks at the park and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously.

Winton reported that Council received notification that the grant application for \$18,000 to complete a master plan at the park has been denied. He stated that Council was required to provide matching funds and \$18,000 was put into the 2003 budget. He asked Council for approval to transfer the funds in the 2003 park budget into Capital Reserve so the money will be there when the grant application is submitted this year to DCNR. **On motion** by Peter Stinson to transfer the \$18,000 to Capital Reserve and seconded by Winton Male. Lewis asked what line item that will come out of? Peter replied that line item 454.762 was specifically marked for the master plan. Lewis stated that money was knocked out the park budget and now more is being taken away. Winton explained that the only reason the \$18,000 was in the budget for this year was to cover half of the cost of the master plan, which was estimated at \$36,000. Application period opens July 14, 2003 and the Borough will reapply for another grant for a master plan. Jeff Yob asked if it wouldn't make sense to leave that money there until the end of the year and then put it in the Capital Reserve? Winton replied that if the money were in the 2003 budget, the tendency would be to spend it for something else. Roll call vote taken. In favor: S. Lockard, W. Male, M. Mogilski, P. Stinson. Opposed: L. Paulhamus. Motion carried with a vote of 4-1.

Mayor Kenneth George arrived at 7:37 p.m.

On motion by Mitchell D. Mogilski, Sr. to approve the expenses in the amount of \$37,891.20 and seconded by Sandra Lockard. Mitch asked if the contractor would reimburse the bills from Dave's Electric to repair wire that was damaged? Ron Madison replied that the contractor is not responsible for damage done to lines that were not marked. Mitch asked if the contractor was responsible for the broken gate at the Park. Lewis replied that they had to weld it back together. Discussion regarding whether the damage was done by Grace Industries. Mitch asked that the bill to SVR Welding in the amount of \$212.15 be held until confirmation is made regarding who is responsible for these repairs Roll call vote taken. Motion carried unanimously.

Public Comment

1. Bob Matlock, 346 Alpha Avenue. Bob had previously requested Council to consider the installation of a stop sign at the intersection of Alpha Avenue and Alpha Road and was following up on this subject. Winton replied that the Chief had looked at the possibility of an intersection, but he was concerned that because of the bend in Alpha Road a car might come up on a vehicle stopped at the stop sign and cause a rear end collision. Ron Madison asked if there is a site problem to the left if a vehicle is sitting on Alpha Avenue? He suggested considering making Alpha Avenue one-way westbound. Bob replied that he didn't think that would be the answer because there are two businesses across the street. His suggestion was the speed limit be lowered to 15 m.p.h.

Bob suggested that because of the great demands the police have put on the taxpayers of the Borough, they should be subject to a test devised by the state police or the FBI. The Mayor stated that every year the officers have to go to school to be certified. Bob also commented that one of the police officers is also out of the Borough taking a coffee break at the Mobil Station. The Mayor replied that it is close enough to the Borough not to be a problem. They are entitled to take a break. Bob replied that while they are taking a break speeding is going on in the Borough.

2. Pat Sutter asked if the Police Department reports to Council shows how many calls each officer makes, how many arrests, etc? The Mayor replied that the report is broken down specifically by officer, by citation, by arrest. She asked if Council looks at this to see if each officer is doing his job? The Mayor replied that the report is distributed to Council each month.

3. Rick Keenhold asked under Old Business, is the zoning issue going to be voted on tonight, or is Council going to set up another meeting that the people asked for at the public meeting? Winton replied that hopefully Council could come to some agreement to at least advertise the zoning ordinance. Rick stated that Council did not budget for the appraisal of the land they intend to take over and has it been done yet? Winton replied that Council voted to do it. Len explained that the Borough is not required to engage in the appraisal process at this juncture. There are methods by which the Borough can arrive at an apparent fair market value by using County records. The Borough would have the option of offering the condemnees a value for the property, which would co-relate to the existing assessments and translate into the fair market value. The next step, if the landowners request a board of review for the assessment of damages, it would be at that stage that both the Borough and the condemnees would have competing appraisal interests. Rick reminded Council that the last condemnation cost the Borough \$5,000 and it just sits in the files. He asked if Council knows the figures for the legal and engineering expenses so far? Winton said there was some, but he does not know the numbers right now? Rick asked where this shows in the budget? Winton replied that it was not a budgeted item.

Rick stated that at the last meeting, a motion was made and seconded to take over the Sewer Authority. He said that one of the Councilmen stated at that meeting, that Council never talked about this issue. Peter responded that it was discussed during Executive Session by members of Council.

4. Harry Smith, Waste Management. Harry thanked Council for the opportunity to speak this evening. Harry presented Mayor George with a check for tonnage for the first quarter of this year in the amount of \$27,912. Harry stated that check amount would increase for the second quarter. He stated that in accordance with the agreement, Council must start planning for other items. The quarterly payments will come after Waste Management does their report for DEP because that is where the amount is generated. Typically the money will be distributed the middle of the month following the month ending the quarter. Winton thanked him on behalf of everyone.

5. George Hinton, Wind Gap Fire Company. The Fire Company has approached Lafayette Bank for a loan. George reported that they received conditional approval. Regular interest is a little over 6%. George suggested as was previously done, a letter be written by the Borough Solicitor addressed to the bank stating that the Fire Company is a non-profit organization. The letter would state that they are the only fire company in the Borough, there are no plans to have another fire company within the Borough and that they are non-profit. The

interest rate would be a little over 4%. George received a copy of the approved minutes for the April 15, 2003 meeting when Council agreed to commit \$15,000 in funds for ten years to be included in the paperwork.

6. Jeff Yob asked that since Council approved the transfer of funds for the police backpay and the arbitrator, he questioned how much was for the arbitrator? The arbitrator's bill was \$2,250 or 3 days at \$750 per day. He commented that this body is the entrusted power to make sure that funding and finances are held to a minimum of expenditures. It was his understanding without seeing the full police agreement that in essence the agreement that was signed was basically the same one that was brought to Council prior to going to arbitration. He suggested that more due diligence be taken when the contracts are being negotiated. Jeff stated that the only reason that it went to arbitration was that Mr. Pysher went on vacation and didn't appoint anyone else to negotiate and then the deadlines were missed. The Mayor replied that Bill and himself were faithfully meeting with the police on a regular basis. At one meeting, when they went to sit down with the police, the police decided at that point, for whatever reason, this was going to arbitration.

7. Richard Dentith, 204 East Third Street. He stated that he would like to lodge a complaint against the Zoning Officer. Richard believes what the Zoning Officer did was wrong. He stated that a handicap man wanted to put stone in his driveway; he did so and then was notified by the office that he needed a permit to do this work. Richard believes that this according to the zoning ordinance is just maintenance. He went on to say that this man's neighbor then put up an 8 x 8 landscape timbers, which the Zoning Officer stated, was just a buffer. This issue has turned into a dispute of the property line. The handicap man does not have use of his driveway. Mr. Zito stated that the Zoning Officer could only act in issuing a permit. The Zoning Officer could construe what is being installed as a barrier or fence if he chose to do so and cite the property owner. In this case, the neighbor who had the driveway can make application to the Zoning Hearing Board as a neighboring affected property owner by some event. Ultimately, a survey will have to be done to determine the property line, but in the meantime he has the option to appear before the Zoning Hearing Board. Bob Matlock suggested an amendment to the Zoning Ordinance stating that no permit be issued until verification that a survey has been completed.

8. Bob Hahn, Wind Gap Municipal Authority. Bob asked if Mr. Zito and Council had received a letter from Municipal Authority Attorney, John Molnar? Bob distributed a copy of the letter at this point. He explained that the letter has to do with ongoing litigation between the Sewer Authority and the Borough. He stated that this Council has been unable, unwilling to sit down to meet with the Authority to discuss any issues and he asked why? Lewis said you couldn't say Council, maybe some members. Winton added that this has all been discussed before and a decision has been made. Bob said based on what evidence? Winton stated that it will not be discussed again and there is nothing more to say. There have been attempts at meetings that never materialized, the Borough has asked for information that was never received and it is just a long string of a lack of co-operation. The decision has been made. Rick Keenhold asked how much for the taxpayer's purposes has been allocated for the attorney. Peter stated that it was not in the budget. This was discussed at the last meeting. Mitch replied that it would be \$20,000 to \$30,000. Rick said that the Sewer Authority will probably spend \$30,000 to \$50,000 and Council will spend \$30,000 to \$50,000 so it will cost over \$100,000.

8. Pat Sutter suggested that Council have all members present to vote on the zoning issue. Lewis added that he feels it should be put out on a referendum and let the public vote on it.

Bill Pysher arrived at 8:24 p.m.

Solicitor's Report

Len Zito stated that he has nothing to report except for his Executive Session report. Everything else has been by way of communication to the Mayor and Council.

Engineer's Report

Ron referenced his correspondence May 2, 2003 relating to Park pay request #2. The project is behind the schedule prepared by the contractor dated February 24, 2003. Per this schedule, the sanitary system, the water system, and the foundation preparation would have been completed by April 18, 2003. The precast restroom was to be installed by today, May 2, 2003. Hanover has reviewed submitted shop drawings for the precast concrete restroom building and provided comments within our April 18, 2003 correspondence. Hanover has requested that the Contractor provide a revised Construction Schedule based upon a confirmed delivery date by the restroom-building supplier. The Contract period will end on May 20, 2003.

Payment Request No. 2, as submitted, is for work completed to date for a total of \$34,911.60 (26%) of the contract amount of \$134,684.50. Hanover recommends that the Borough approve payment of this work, less the ten (10%) retainage and less previous payments, in the amount of \$13,181.40.

On motion by Peter Stinson to pay Grace Industries \$13,181.40 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

Ron reported that there was a change order #1 at the request of John Zucal. It is for the material cost of three (3) drain style shut off valves (3/4") and the labor to make the piping change. Ron will schedule a walk through on Monday, May 20, 2003, which is the last day of the contract period to make note of what is completed in the contract period as opposed to what is not completed. Members of the park board asked to be included in this walk through. Ron suggested 3:00 p.m. or 4:00 p.m. or whatever is convenient. Ron will be requesting final restoration on Lehigh Avenue. The sanitary sewer has been tested. The water system has been pressured tested, with results expected this week. The existing bathroom, the large concession and small concession should have water service. Ron will request a partial walk through on Friday, May 16, 2003 because of the Wind Gap Athletic Association Car Show on Sunday, May 18, 2003. Ron stated that the concrete building will be late and that Council should expect to access liquidated damages.

Third Street Traffic Study. He had discussion with Kerry regarding prior traffic studies done at Male Road and Broadway and Park and Broadway. Kerry authorized Ron and/or Hanover to contact PennDOT so the traffic studies can be compared and a report can be provided to Council. When PennDOT does a study, they do a count only and do not consider surrounding traffic activity. If Council had authorized Hanover to do the traffic study, they could look at making the surrounding neighborhoods one way to make the traffic utilize that intersection.

Kerry asked Ron to set up a meeting with Bernie Corbett from PennDOT to discuss a collapsed inlet at the intersection of Center and Roosevelt. This will be a good test to see how the agility program will work.

The contractor for East West Street indicated that they would finish the restoration work for that project sometime this week.

Bob Matlock asked Ron who pays for any damage done at the park by the contractor? Ron replied that any underground utility which is marked on the plans that is disturbed the contractor pays to repair. Any underground utility, which are not marked, that are disturbed are not the responsibility of the contractor because there is no way to know to avoid them. The majority of the utility lines that have been installed over the years in the park have not been properly documented.

New Business

1. May 20 Workshop meeting. Winton asked Council if they desire to still hold the workshop meeting on Tuesday, May 20, 2003 because it is the same day as the primary. Council agreed to leave the meeting as scheduled.
2. Wind Gap Athletic Association Car Show Banner Approval. **On motion** by Mitchell D. Mogilski, Sr. to approve the Car Show Banner and the Firemen's Picnic Banner when the time comes and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously.
3. Lewis Paulhamus read the cost of the vandalism at the Park provided to him by the Wind Gap Athletic

Association. The contents damaged include candy, condiments, internal soda refrigerator, etc. Discussion regarding if the contents are covered and if they are, the insurance check will not arrive prior to the Car Show to purchase replacement concessions. Peter asked if there is a way to provide a zero interest loan until they receive their money? Winton stated that at this point, he is not sure if they are properly covered. The WGAA is responsible for the contents of their building. Mr. Zito clarified that one of the functions of the Borough is not to loan money to organizations for interest rates. This donation should be from the General Fund recognizing that there has been an event, which precipitates the motion to replace the concessions lost. Winton said that he would review the insurance and report back to Council.

On motion by Lewis Paulhamus to donate \$500.00 to the Wind Gap Athletic Association to replace the concessions lost and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously.

Executive Session. Council adjourned to Executive Session at 8:46 p.m. Mr. Zito to report to Council on the litigation between Council and the Municipal Authority. Council reconvened at 8:59 p.m.

Winton reported that Council received a proposal from Attorney Karl Kline to handle the procedure. The fee would be \$105.00 per hour plus expenses. **On motion** by Bill Pysher to approve Karl Kline and seconded Sandra Lockard. Lewis asked what line item this would be coming out. Winton replied that this would be taken out of the General Fund. Roll call vote taken. In favor: S. Lockard, W. Male, M. Mogilski, B. Pysher, P. Stinson. Opposed: L. Paulhamus. Motion carried with a vote of 5-1.

Old Business

1. Zoning. Winton stated that the next step regarding the zoning ordinance is to approve it for advertisement. Council decided not to change the property north of Eighth Street to IC. George Hinton's property is not shown properly, but will be reflected on the revised map to be made by Urban Research. Minor changes will be made to the verbage suggested by Tom Palmer. The fifty-foot height will be changed back down to 35 feet.

On motion by Lewis Paulhamus to advertise this for a referendum on the November ballot and seconded by Mitchell D. Mogilski, Sr. Bill asked why put this on a referendum? Lewis replied that Council should let the town people vote. Bill replied that more meetings would be held for the public to comment. Roll call vote taken. In favor: M. Mogilski, L. Paulhamus. Opposed: S. Lockard, W. Male, B. Pysher, P. Stinson. Motion defeated with a vote of 2-4. Lewis stated that he called the County to ask if this could be put on as a referendum vote. Mitch added that the County informed him that Council would have to authorize Mr. Zito to do the legal research to verify that this issue could be put on as a referendum. Mr. Zito stated that he was not sure that a decision to change a zoning ordinance is a proper subject matter. The political subdivision of Wind Gap is governed by Borough Council not by the County.

Vickie Allen stated that at the public meeting, the public requested more public meetings and Council should not rush into passing this ordinance. Winton replied the changes to the zoning ordinances has taken over two years to complete, has been professionally done, and Urban Research was hired to assist in the preparation of the ordinance. Vickie feels that there are not a lot of people in Wind Gap in favor of these changes. Council is in favor of public meetings, but the process has to start with advertising. She asked why the other members of Council don't feel this should be opened for public input. Bill responded that he feels that Council has already listened to some of the comments by changing the area north of Eighth Street. Most of the comments heard the public meeting had to do with the by-pass road not the zoning. These are two separate issues. Rick asked if any one on Council received a copy of the comment sheets from the public meeting. Council stated that had not. Winton stated that he had seen the eight comment sheets that were turned in, mostly complaining about the police. There was virtually no input regarding the zoning issue on the sheets.

Bill added that when the Planning Commission met in 1978 to draft the original zoning along with the Lehigh Valley Planning Commission, there was a lot less public interest and input. The first time around was much more dramatic in comparison to these zoning changes. He understands that people want to keep their property interest the same, but sometimes that is not always possible.

If Council wishes to move forward with the zoning ordinance and comprehensive plan advertisement, Council already has the opinions of the solicitors. A resolution is required authorizing the process to begin to change the zoning ordinance. The first step would be to advertise that Council intends to change the ordinance. The Planning Commission would meet and conduct a public hearing on the comprehensive plan. They are required to send out notice that the comprehensive plan is proposed to be changed. The changes would be sent to the Joint Lehigh Valley Planning Commission with the entire process taking a minimum of 45 days. After that, Council would be required to hold an additional public hearing to provide opportunity for further comments from the public before proceeding.

Peter asked that because Council does not have a copy of the changes, is it proper to advertise a document that at this time does not exist? Mr. Zito replied that Urban Research would have to be notified to include the changes prior to sending the draft to the Wind Gap Planning Commission and the Lehigh Valley Planning Commission. He would not see advertising this until the changes have been made known to Urban Research.

Mr. Zito outlined the wording for the motion necessary for Council to move forward. The resolution before Council is to begin the public hearing process by having Urban Research and Development incorporate the recommended changes that occurred out of the public meeting of April 24, 2003 comments into its draft document for submission to the Planning Commission and the Lehigh Valley Planning Commission. After further discussion the following motion was made.

On motion by Bill Pysher to table this process until June 2, 2003 and seconded by Peter Stinson. Roll call vote taken. Motion carried unanimously. Discussion regarding inviting Tom Palmer to the May 20, 2003 workshop meeting.

2. Mitch and Kerry interviewed applicants to mow the Park property. Randolph Bogart would start at \$8.50 an hour. The second guy would be John Graft at \$8.50 an hour and the third would be Matt Dotta at \$8.00 an hour. The reason they are recommending three, if for some reason the first guy would not be available then they have someone in line to call to work. The applicants were asked if they would be available if extra workers are needed on the streets. The first two applicants are capable of working loaders, big tractors, and backhoes. Mitch stated that the part-time street worker budget is available to work from because Woody never uses all of the budget. All three applicants are willing to consider acquiring a Commercial Driver License.

On motion by Mitchell D. Mogilski, Sr. to hire Randolph Bogart at \$8.50 an hour to start, if he is unavailable then John Graft at \$8.50 an hour, and if he is unavailable Matt Dotta at \$8.00 an hour and seconded by Bill Pysher.

Winton asked if their references have been checked? Mitch responded they checked them. Jeff Yob asked if hiring another part-time worker has been verified with the union as allowable? Winton said that is has been discussed with John and he is aware of it. Jeff asked if Council has received approval from the Local that this is allowable because the contract with the street worker does not allow for part-time help. He cautioned Council that based on grievances that the Borough has paid in the past, it would be wise to clarify this prior to hiring. Winton said that he sat with the union representative when the contract was renewed with John and extra help was discussed. The Mayor clarified stating that the concern is when more than one part-time employee is working, the hours would accumulate and that may justify having another full-time worker instead of the two part-time workers. Jeff said he would suggest having Council request the local union's president's provide the Borough with approval on a piece of paper, allowing an additional part-time worker at this number of hours per week. The Mayor suggested calling the union and asking them to put something in writing.

After discussion, Mitchell D. Mogilski, Sr. amended his motion to include pending approval from the union and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

3. Winton reported that during the last snowstorm, there was a minor incident with one of the Borough trucks. A volunteer who was not properly licensed was allowed to drive the truck.

On motion by Peter Stinson that Council approve anyone who uses the Borough equipment, be properly licensed and the Borough must have a copy of their driver's license and seconded by Sandra Lockard. Roll call vote taken. Motion carried unanimously.

4. **On motion** by Mitchell D. Mogilski, Sr. to change the roll call, remaining alphabetically but rotating the first person called every time and seconded by Lewis Paulhamus. In favor: S. Lockard, M. Mogilski, L. Paulhamus, B. Pysher, P. Stinson. Opposed: W. Male. Motion carried with a vote of 5-1.

On motion by Peter Stinson to adjourn the meeting of May 5, 2003 and seconded by Sandra Lockard. Meeting adjourned at 9:50 p.m.

Louise Firestone
Borough Secretary