

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

The Council meeting of the Borough of Wind Gap on Monday, November 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 Council members: Lewis Paulhamus, Mitchell D. Mogilski, Sr., Bill Pysher, Peter Stinson and Kerry Gassler. Also in attendance were Mayor Kenneth George, Borough Engineer Ronald Madison, and Secretary/Treasurer Louise Firestone. Absent was Councilwoman Sandra Lockard

Approval of Minutes -

On motion by Mitchell D. Mogilski, Sr. to approve the minutes of October 6, 2003 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

On motion by Kerry Gassler to approve the minutes of October 13, 2003 and seconded by Peter Stinson. Mitch asked for a correction on Page 2. Correction to be made to the October 13 minutes. Roll call vote taken. Motion carried unanimously.

Approval of Expenditures -

On motion by Bill Pysher to approve the expenses in the amount of \$50,722.02 for the month of October and seconded by Mitchell D. Mogilski, Sr. Lewis stated that there was another bill to be approved that was dropped off by the Park Board today. The Park Board would like a new refrigerator and that it come out of their 2003 budget. Mitch questioned the bill from David's Electric in the amount of almost \$3,000 and Council has no idea what this bill is for at the Park. He asked about the bill from Scott Farms for 80 yards of topsoil. Lewis stated that this is being used to get this year's budget out. Mitch asked if the purchase of the refrigerator could be put on hold because there is not money there to pay for it this year. Lewis explained that David's Electric bill was to rewire the bandshell and rewire the kitchen. Mitch asked if they should have had three telephonic bids because he had to look for quotes for the sound system that cost \$1,900? The Park Board asked that the order be placed for the refrigerator at a cost of \$2,144. Roll call vote taken. Motion carried unanimously.

On motion by Lewis Paulhamus that the refrigerator purchase be held over until December when Council finds out what else is in there. Motion died for lack of a second. Kerry suggested holding it over until December, when the Park Board identifies what line item it could be purchased out of. It will not be ordered until then.

Public Comment

1. Mike Gassler stated that if Council is going to work on the ill conceived Comprehensive Plan he would like to make comment at the time.
2. Paul Levits asked to reserve the same situation at that time then also. He asked a lot of questions and he did not see anything addressed. He has questions specific to his property
Winton asked for comment from the Solicitor. Len Zito replied that public comment can be afforded at the outset of the meeting or can be afforded to citizen on each individual agenda item at the pleasure of Council.

Solicitor's Report

Len Zito reported that he received a letter dated October 30, 2003 from Special Counsel to the Borough in connection with the Wind Gap Municipal Authority litigation. It enclosed a draft affidavit for Len's review; he

sent an answer to Counsel and copied Council and the Mayor on October 31, 2003. The affidavit puts into question the intent of the motion of July 23, 2003 and the questions was whether the motion was intended to hold off proceeding with all litigation generally or to simply hold off with litigation pending a discussion of the issues between the committees of the Borough and the Municipal Authority. He believes that all the members of Council should sign this affidavit so that representations that are made to the Northampton County Court pertaining to this issue clearly reflect the position of each member of Council. Len sent a memo dated October 6, 2003 identifying ten areas of concern with the proposed zoning ordinance change.

1. Should the Commercial/Industrial zone accompany the proposed by-pass roadway routes?
2. Should the definition of "research laboratory" be refined to be more specific? This has been addressed by Urban Research & Development Corporation.
3. Should "research laboratories" be special exception uses subject to performance standards? This has been addressed by Urban Research & Development Corporation.
4. Should the "Town Center" extend northward along Route 512 (Lehigh Avenue)?
5. Should the definition of fences be further refined to include hedges or stone fences and to otherwise encompass fencing variables?
6. Should the forestry provisions be less restrictive and such as would not require forest management plans?
7. Should the sign provision language be further clarified, particularly with respects to the restoration of non-conforming signs?
8. Should the parking of commercial vehicles be restricted in residential zones?
9. Should a definition of "adult daycare centers" be more definitive?
10. Are the off-street parking provisions adequate to address the places on existing lots where such parking could occur?

Len explained as Solicitor, his concern is that the adoption of this ordinance contains minor changes to definitions, which would not affect the substance of the ordinance; the ordinance does not have to be re-advertised. Proposed amendments to the Comprehensive Plan or Zoning Ordinance, which are changed substantially, or revised to include lands not previously affected by the original notice, require another hearing/meeting before the governing body. Len stated that he would work Tom Palmer to articulate those drafting changes for ultimate submission to Council for a vote at a public meeting.

Winton stated that the Planning Commission withdrew their recommendation to extend the Town Center as noted by Planning Commission Solicitor Peter Layman in a letter addressed to Council.

Engineer's Report

Ron Madison stated that he had nothing to report. Peter asked about receiving information about the Third Street analysis? Ron replied that Jim Milot is currently working with the School District to find out how the bus traffic would be changed if a light were installed at the intersection of South Broadway and Third Street. He expects to have some information prior to Council's December meeting for review.

Winton stated that he received a call from Barbara Kuzma regarding the flooding on her yard because of the stream opening. Kerry informed Council that the Street Department only cut brush down and branches that were across the stream using hand tools. They will start down on Second Street and come up through the stream removing old tires and cans.

New Business

1. McFall Subdivision. Dave Jordan, representing Alan and Kathleen McFall, asked Council to grant final approval for the subdivision plan. Ron referred to his letter dated October 30, 2003 that stated at your August 4, 2003 meeting, Council moved to grant Final Conditional Approval of the McFall Minor Subdivision dated last revised July 11, 2003, as recommended by the Borough Planning Commission. However, since that time six

separate plan revisions have been made. In addition, we have also received a copy of the Janson Woods Major Subdivision for the portion of land in Plainfield Township. Based upon the new information provided, we have several concerns regarding stormwater drainage issues. Ron felt that because it was not the same plan, he did not feel that they were minor enough issues for him to just endorse the plan for recording. He recommended that it go back to Planning for review one more time. He explained that what has changed is the one lot in Wind Gap Borough, did not show all the storm drainage and was indicated that drainage went to Roosevelt Street. Plainfield Township asked that an easement be placed, which basically cuts the lot in half. He suggested that there be a condition that the piping be analyzed to make sure that it has sufficient capacity for the water as it stands and if not improvements be made. Dave Jordan replied that it is their contention that these are only minor changes. The plan shows more information than previously shown and they have not made any changes to the ground. The McFalls have already sold this property and they were supposed to close on Friday. Ron is concerned that the Planning Commission and Borough Council did not see this plan with the piping and the easement in this configuration. He does not believe that the stormwater report for Janson Woods has demonstrated that this piping has sufficient capacity even for the existing or proposed flows. If there weren't a house proposed right next to the easement, he would not have these concerns. If the pipe is overloaded and a house is built, will the homeowner complain to the Borough about a water problem? Kathy McFall asked Council to consider that these changes are minor and they are just being made because Plainfield Township requested they be included on the plans prior to recording the plans.

On motion by Lewis Paulhamus to grant McFall be granted final approval. Prior to the motion being concluded, Len Zito stated that the law is under Section 10508 under the MPC, this developer is entitled to final approval if he has met the conditions of the plan that was approved July 11, 2003. No municipal action needs to be taken except to approve that plan. If it is a different plan, Council may not avoid the Planning Commission review process, if that plan makes substantial changes to what was presented for Council's conditional final approval. After review by the Planning Commission, Council may ignore their recommendation, but Council cannot ignore the Planning Commission under the Municipalities Act. Mrs. McFall stated that the new owner has already seen it the property, they had their contractor on the property and they have dug. She cannot imagine the new owner coming back to the Borough because they have an issue. Bill asked Len if there would be a water problem because of the 8" pipe not being large enough, would the Borough be held liable? Len replied that there is some law that the engineer would be immune, but the answer to whether Council would be liable is not one that he has this evening. He added that once this plan is recorded, someone buying this property is buying subject to all of the details on this plan including the size of the pipe.

On motion by Kerry Gassler to call it a minor change and to pass it and seconded by Peter Stinson. Roll call vote taken. In favor: L. Paulhamus, P. Stinson, K. Gassler, W. Male, M. Mogilski. Abstained: B. Pysker. Motion carried with a vote of 5-0-1.

2. **Park Board Appointment.** Gary Golden has volunteered his services to the Park Board. Peter stated that Gary is a coach in the Wind Gap AA and he would consider him to be a nice asset to the Park Board. **On motion** by Peter Stinson to appoint Gary Golden to the Park Board to fill out the term of Christopher Bruch and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

3. **On motion** by Lewis Paulhamus to advertise for all professionals for the new year (Engineer and Solicitors) and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

Old Business

1. **Zoning Ordinance/Comprehensive Plan Enactment.** Winton stated that there are some outstanding issues to address. Kerry said that he is not comfortable that the Planning Commission voted one way and then changed their mind. Ron said that at the Planning Commission meeting they referenced the lengthy discussion at the Zoning Hearing regarding Lehigh Avenue and extending the Town Center and the answers given back by the homeowners and the cost. The businesses on North Broadway can continue to operate because they are grandfathered, but there are issues of parking and traffic related to extending the Town Center up Broadway.

Bill stated that the Town Center should be concentrated.

On motion by Kerry Gassler to take the upper side of Broadway and put that in the Town Center and seconded by Lewis Paulhamus. Roll call vote taken. In favor: K. Gassler, M. Mogilski, L. Paulhamus. Opposed: W. Male, B. Pysher, P. Stinson. The vote was a 3-3 tie. The Mayor cast of no vote. Motion did not pass with a vote of 4-3.

Mayor George took his leave from the meeting at 8:50 p.m.

In response to Len's memo, #1, should the Commercial/Industrial zone accompany the proposed by-pass roadway routes? The homeowners on Eighth Street did not want the property to be industrial and they did not want the by-pass. Peter stated that if the by-pass does not go through then the property is zoned correctly. Kerry said that if the Borough is proposing the road in the Comprehensive Plan then the property around that should be IC on both sides. How do you bring in business if you don't zone it business? That area would be more advantageous to be Commercial/Industrial because it is closer to Route 33.

On motion by Kerry Gassler to go to the original plan of February 28, 2003 proposed zoning change for the RM and change it to IC if the road is being proposed and seconded by Lewis Paulhamus.

On motion by Kerry Gassler to table this issue until there is a full Council, with the Mayor and have a special meeting if necessary.

Winton suggested passing the ordinance and then it can be revised if necessary. Kerry replied that this would not be rubber stamped, because discussion must take place. Urban Research made recommendations that are important because many issues in the current ordinance are outdated. Kerry stated that he is still concerned about the forestry issue as being way too restrictive, too costly and requiring permitting. Kerry stated that if this goes into effect, he would have his property clear cut while there is no permitting required. Ron explained that if a developer goes through a normal Subdivision Land Development process and receives an approved plan, the developer could cut for that land development. If a property owner wants to clear cut for the sake of clear cutting, the new ordinance would restrict that cutting. A forestry plan is only for timbering or harvesting the land and that is the use. The Forestry definition is "the management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.

Len Zito directed Council to section 1003 of the Borough Code, which pertains to the absence of the Mayor. The Code states "in all cases where, by reason of a tie or split vote, the council of any borough shall be unable to enact or pass any ordinance, resolution, or motion, ... or other lawful business brought before it, the mayor, if he is in attendance at the meeting, may at his option cast the deciding vote, or request that the matter be tabled until a special meeting of council to be held within not less than five days at that time cast the deciding vote. The potential exists tonight because only six members are present a tie vote could occur and since the Mayor has left, a special meeting would be necessary to decide a tie. Winton asked Kerry to make a list of his concerns to be discussed at the workshop. Ron suggested giving the list prior to the meeting so that it can be forwarded to Tom Palmer to be reviewed.

Kerry rescinded his motion regarding the RM to the IC.

On motion by Bill Pysher to table this until the workshop meeting and then Council can vote on the zoning changes and seconded by Peter Stinson. Roll call vote taken.

2. Mitch asked Len for the information regarding the curbs and sidewalks. Len will provide all ordinances that he used in composing a draft ordinance for Council's review. Copies to be distributed.

3. Mitch asked Len regarding the Wind Gap Ambulance Lease. The last discussion related to the term of the lease and the amount rent per year. Len informed that the Ambulance Corps Solicitor had spoken to Mr. Dell'alba and they were going to get back to him with regard to the issues raised. Len to check the status.

4. Mitch reported that in regard to the water problem at the intersection of Woodward and Lehigh, he spoke to Bernie Corbett, PennDOT. Bernie stated that in accordance with the Agility Program, the Borough needs a

plan from the Borough Engineer.

On motion by Mitchell D. Mogilski to authorize the Borough Engineer to do a plan for Woodward and Lehigh intersection and seconded by Kerry Gassler. Ron estimated that the design work would cost approximately \$5,000. After discussion regarding the street budget for engineer it was determined that no funds existed for a plan to be completed this year. Mitch rescinded his motion. This will be discussed in January.

Winton asked if stop signs were going to be placed at Fairview and Center? Mitch replied that something will be done. They will look at this tomorrow.

5. Third Street. Mitch reported that Kerry, Mitch, Richard Dentith and Joe Alfred meet up at Joe Alfred's property. They feel that they can resolve 99% of the water problem at the Park. They would like to run a storm drain, Third and Oak, 526' east to another storm drain, put a pipe and run it halfway and block off the one currently by the access road. The water will run back into the Rubenstein property. Kerry suggested possibly between the driveway and the big area in the Park install a big french drain. Ron stated that it does not drain now. This has not been discussed with Commonwealth Telephone. Ron explained that the water in the Park, from the large concession stand, the parking lot, near the bandshell, new restroom, maintenance building, the telephone building all drains toward that inlet towards Mr. Dentith's property. Initially it was discussed in 1998, but it was a far more expensive way and Council did not want to do it at that time. If the Borough can't go under PennDOT's road, the second suggestion was to go right inside the curb and the Borough would dig their own holes inside the utility right-of-way. There is a gas line behind the curb. Ron is unsure of what kind of right-of-way the Borough has there. The last suggestion would be running through to the Rubenstein property and not stop on the Alfred property. Kerry suggested to Mr. Alfred to give an easement either for a dollar or up to fair market value. The Alfred family gave their easement years ago for a sixty-foot trolley right-of-way, for a dollar. Bill questioned if the Street budget does not have money to do this work can money be found elsewhere. Winton added that Commonwealth Telephone had offered to go in with half of the cost when they had input. Ron asked Len if there are any issues due to the current litigation? Len stated that the litigation is before the court right now. He is not sure if a satisfactory solution is found that would dispose of the litigation as well. Council would need to know what the proposal is, whether there are easements required, whether there are easement existing that can be used, what the impact of the Alfred pipe is and the blockage and Commonwealth Telephone. He believes that Commonwealth Telephone made an appearance in that case. Len stated that Council needs approval in writing to survey across their property. Mr. Dentith will have to give approval for entry on his property through his attorney of record, who is his official representative on this issue. Discussion regarding the expiration of Commonwealth Telephone's offer by the end of this year. This issue to be checked into with regard to Commonwealth Telephone.

On motion by Mitchell D. Mogilski, Sr. to do survey, preliminary design and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

Kerry to contact Mr. Alfred and Mr. Dentith to consult with Attorney Asteak to provide the Borough with letters of permission to enter their property.

Executive Session

Council adjourned to Executive Session at 9:44 p.m. to discuss Wind Gap Municipal Authority Litigation in the Federal Court, personnel matter with the Chief of Police.

Ron Madison took his leave from the meeting at 9:45 p.m.

Louise Firestone took her leave from the meeting at 10:00 p.m.

Council adjourned the meeting of November 3, 2003 at approximately 10:20 p.m. due to the 10:00 p.m. meeting curfew.

Louise Firestone
Borough Secretary