

**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, October 13, 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, James Milot from Hanover Engineering Associates and Secretary/Treasurer Louise Firestone.

Public Comment

1. Mike Gassler, 220 Constitution Avenue, Wind Gap. Mike stated that he dislikes the comprehensive plan and it should be scraped. It has too many inconsistencies, let it like it is. He believes that Council is trying to make it tough for people to do any kind of building.
2. Paul Levits stated in regards to the comprehensive plan which in the agenda, he would like to know specifically how it will impact his property? Winton replied that the comprehensive plan would be discussed at the workshop. Council has a list of things that need to be addressed prior to Council taking action on the comprehensive plan.

Bill Pysker arrived at 7:32 p.m.

3. Patricia Sutter stated that she agrees with Mike Gassler on the comprehensive plan.
4. Vickie Allen asked Mr. Male if he is attending the meeting at County Council? Winton stated that he has not been on a regular basis, but he will be. She stated the meeting tomorrow? Winton replied that it is a committee meeting and he will be attending and hopefully so will Plainfield Township.

Engineer's Report.

Jim Milot reported on the Third Street traffic signal study. Hanover Engineering has conducted the traffic study at the intersection of Third Street and South Broadway. Jim met with the Pen Argyl School District transportation department and discussed what kind of information Hanover is requesting in regard to bus routes and proposed bus routes. Hopefully Jim will have the counts by the next meeting.

Grace Industries Pay Request No. 4. Council must decide whether to access liquidated damages regarding the park restroom. Winton stated that because of all the delays and cost he is recommending the full amount of liquidated damages be accessed. Bill added that the entire project was way behind schedule and taking liquidated damages to the full amount would be a starting position. Lewis asked why this restroom was not ordered with the brick overlay? Bill replied that the brick overlay was at a substantially higher cost. Kerry asked what amount was incurred by the Borough in debt by the bathroom not be completed? There was only an inconvenience for a couple event, but basically the old restroom still did the job. Bill replied that according to the contract, the penalty was \$200 per day. The engineering costs were substantially more because of the extra work and delays. Kerry asked for a breakdown of the actual figure. Mitch asked for bills after May 20 that may not necessarily have been if the work was done. Winton stated that there were cost prior to May 20 because of all the problems. Jim reminded Council that

Borough Solicitor, Len Zito, suggested sending a copy of his letter to the contractor along with the payment.

On motion by Peter Stinson to approve payment in the amount of \$47,080.94 for work completed by Grace Industries for the work minus the penalties and seconded by Bill Pysher. 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.

Winton reported that County Councilman Nick Sabatine suggested sending a letter to County Council being specific regarding the motion that was passed regarding the County Bond Issue and the Slate Belt Industrial Park. Bill and Winton are to meet with County Council Finance Committee. Mary Ensslin and Ron Angle have been made aware of the meeting.

Winton reported that Council received a letter from Representative Craig Dally regarding the fine accessed to Waste Management. Winton will get figures from DEP on how many tires still remain and he will contact Carbon Services, Wally, to find out how much it will cost to remove these tires. He will then write a letter to Representative Dally and Senator Boscola asking for support in obtaining some of these fine monies. The remaining tires in Wind Gap are in the quarry hole. Waste Management has committed to remove the shredded tires. Bill asked if there has been any movement on placing a lien on the property for the cost of removing the tires. Winton to follow-up.

A Town Meeting is set for Tuesday, October 28, 2003 at 7:30 p.m. at the Wind Gap Fire Hall. It has been advertised in the newsletter. Winton stated that Council has two town meetings a year, one in the spring and one in the fall. The agenda will be discussed at the workshop meeting.

New Business

A. FBJ Real Estate, Inc. – Subdivision Plan – Conditional Final Approval. Letter from Planning Commission Solicitor, Pete Layman, was read that included the following conditions:

- Compliance with Engineer's review letter of September 12, 2003
- Final Record Plan to be notarized, signature of applicant is required SALDO
- Professional land surveyor's seal and certification is required prior to recording
- They are looking for a waiver of 434-7, SALDO permit to develop and show neighboring dwellings and existing utilities on his plan rather than all manmade features within 100'.

On motion by Lewis Paulhamus to grant the waivers and the conditions set forth in Attorney Layman's letter and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

B. Emergency Management Coordinator Resolution 2003-06. **On motion** by Mitchell D. Mogilski, Sr. to approve Resolution 2003-06 and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

C. Police Pension – Resolution 2003-07 – 2003 Zero member contribution. **On motion** by Lewis Paulhamus to approve Resolution 2003-07 and seconded Sandra Lockard. Roll call vote taken. Motion carried unanimously.

D. Police Pension – Resolution 2003-08 – 2004 Zero member contribution. **On motion** by Kerry Gassler to approve Resolution 2003-08 for 2004 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

E. Approval of Volunteer Fire Relief Association Funds - \$16,508.25. **On motion** by Kerry Gassler to turn the funds over to Volunteer Fire Relief Association and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

F. Approval of 2003 Contribution to Blue Mountain Community Library \$1,500. **On motion** by Mitchell D. Mogilski, Sr. to approve contribution and seconded by Sandra Lockard. Roll call vote taken. Motion carried unanimously.

G. Resolution for Master Site Plan Park Grant Application – Resolution 2003-05. Date to be corrected. **On motion** by Peter Stinson to adopt Resolution 2003-05 and seconded by Bill Pysher. Roll call vote taken. Motion carried unanimously.

H. Promote Kelly Ronalds from Alternate Zoning Hearing Member to Member. Winton explained that Kelly has been an alternate, but because of the recent vacancy, Kelly will become a full member. **On motion** by Mitchell D. Mogilski, Sr. to promote Kelly Ronalds to Zoning Hearing Board and advertise for a new alternate member and seconded by Sandra Lockard. Advertising has already been placed in the Borough newsletter. Mitch stated that the Borough has had two alternates in the past. Winton stated that John Snuggs has not responded and not shown interest. Motion was modified to promote Kelly Ronalds to member. Roll call vote taken. Motion carried unanimously.

I. Appointment of Debora A. Roseberry as Alternate to Zoning Hearing Board. Debora submitted a letter of interest to Council which expressed her desire to serve on the Zoning Hearing Board. **On motion** by Bill Pysher to appoint Debora A. Roseberry to the Zoning Hearing Board as an alternate and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

A letter to be sent to John Snuggs asking if he is still interested in remaining as an alternate on the Zoning Hearing Board.

J. 2004 Budget. This topic will be on the agenda for the workshop meeting. Bill asked if it looks like Council can do the budget without a tax increase? Winton stated that Council has to do it without an increase. Budgets should be submitted prior to the workshop. Patricia Sutter asked if Council is counting on the occupation tax? Peter replied that he is not counting on the tax because it is difficult to maintain the records as previously explained by the Tax Collector.

K. Ordinance 434 – Sidewalk Ordinance. This ordinance is actually a snow removal ordinance. Kerry stated that businesses must remove their snow within six hours after a snowstorm. If a business contracts with a snow plow there is no guarantee which businesses he does first. Question as to who the representative is from the Borough informing the residents that the snow must be removed. Winton suggested having two or more contractors be hired to remove snow instead of the Borough employees doing the work. Decision that there is enough questions to table this item. Mitch said that this ordinance also states that the Borough shall be reimbursed for cost.

Borough Solicitor, Len Zito, arrived at 8:14 p.m.

Len explained that the basis of this ordinance was taken from the Borough of Middletown, Palmyra, similar size towns to Wind Gap. An ordinance for a Borough in Chester County has been tested in the Court of Common Pleas and has withstood the test up to this point. Len stated that it would become too cumbersome to administrate the ordinance with the legal system. Len to provide a copy of the template from the Borough from Chester County.

On motion by Bill Pysher to table this topic until the workshop meeting and seconded by Sandra Lockard. Roll call vote taken.

L. Sound System Bids. Council received two bids, one from Music Scene and Law Sound and Lighting.

Music Scene	\$1,900	
Law Sound and Lighting		\$2,088

Winton stated that he went to Music Scene to ask for the cost of a wireless mic system. Council discussed the advantages of purchasing a wireless system so that it could be transported to the Fire Hall for town meetings, changing from the mini cassettes to a full sized cassette tape. **On motion** by Bill Pysher to have the two bidders for the sound system come and make a presentation at the workshop meeting or if not a written presentation and seconded by Winton Male. Bill amended his motion to just have them appear at the next meeting and seconded by Winton Male. Roll call vote taken. In favor: L. Paulhamus, B. Pysher, S. Lockard, W. Male. Opposed: P. Stinson, K. Gassler, M. Mogilski. Motion carried with a vote of 4-3. Both contractors will be invited.

M. Firefighting Equipment/Truck Purchase. Mitch explained that in the budget there is \$2,000 slated for firefighting equipment and he asked Council to have a check cut to the Fire Company in that amount to go toward the new truck because there is fire fighting equipment on the new truck. Louise explained that typically that line item is used for any truck repairs and state inspections not covered by the Fire Company. **On motion** by Mitchell D. Mogilski, Sr. to approve the line item firefighting equipment in the amount of \$2,000 and seconded by Lewis Paulhamus. Roll call vote taken. Motion carried unanimously.

N. Oaten Building. Bill expressed his concern that this building is a real eyesore of the Borough right on Broadway. Council must decide if they are going to keep the building or sell it for a profit. If the Borough is going to keep the building then some restoration must take place. Kerry suggested keeping the building because the Street Department already uses it for storages. The stone section is fine, but the wooden portion needs upgrading. The backside of the building could accommodate a garage door. The street workers could do the work during downtime. Bill stated that one of the suggestions was to move the Police Department to the building, because it would be in a highly visible area right on Broadway next to the Ambulance Building. Lewis suggested putting money aside each year to do the restoration.

On motion by Bill Pysher to keep the Oaten Building and begin to refurbish for other Borough use and seconded by Kerry Gassler. Roll call vote taken. In favor: P. Stinson, K. Gassler, S. Lockard, M. Mogilski, L. Paulhamus, B. Pysher. Opposed: W. Male. Motion carried with a vote 6-1.

On motion by Lewis Paulhamus to hire a second guy who is already on maintenance helping John to hire as a full-time man. Peter asked that this be tabled until the budget is discussed.

O. Advertising position of Borough Solicitor. Mitch asked for this item to be put on the agenda because he feels that there is a conflict between what the current Borough Solicitor is interested in and what the Borough is interested in with regard to Waste Management. Mitch stated that he would like to advertise for the remainder of this year. Bill asked if Len has given this Borough Council bad advice? Mitch asked Bill if he was at the Waste Management hearings and the way he put the people down. Len replied that he read Mitch's comment in the paper and what Mitch is referring to is his examination of a

witness as a lawyer. Len explained that his job is to represent his client zealously no matter who the client is, Waste Management or the Borough of Wind Gap. Len distributed a copy of the transcript of the meeting to Council. Len stated that he resented that comment by Mitch. Len read from the transcript. Mitch stated that Len was right in Mr. Loomis' face. Len replied that that is his job and you have to understand that his job as a lawyer is to represent the interests of his client and his method of questioning is intended to illicit information. Len suggested that Mitch's problem is that Mitch does not like his client. Mitch replied that Wind Gap and Waste Management have different interest.

Winton stated that Mr. Zito has recused himself from discussion where there may be a conflict of interest. Mr. Zito has not given Council bad advice and he is currently deeply involved in several issues with the Borough. Mr. Zito explained that in the first instance it would be the lawyer's responsibility to identify a conflict because the rules pertaining to professional responsibility involving the conflict of interest are known to lawyers, they are obligated to those rules and they are to be sensitive to those rules. There are no active litigation issues between Waste Management and the Borough of Wind Gap, were there issues, Len would suggest that Council appoint an alternate Solicitor. Len explained his relationship with Waste Management. He has represented the owners of the landfill for thirty years. He began representing the Perin family in late 1973 or 74 when the then Borough Solicitor became ill and later passed away. He is very familiar with the facility. He worked with the family up until 1996 when they sold their stock to USA Waste, he continued to work for approximately three or four months until the large firm lawyers took over. Waste Management purchased the stock of USA Waste and from 1996 to 2002 when the only interest Len had was to represent individual members of the Perin family, but not the landfill. He was officially asked to represent Waste Management in September or October of last year when Waste Management installed Scott Perin and changed the operations and brought in new people and new management. They reached back to professionals who had been familiar within the community and asked them to return to representation. Mitch asked if Wind Gap a party to that because Wind Gap is in a partnership with Waste Management. Len replied that Wind Gap is not a party to the proceedings. To become a party to the legal proceedings, there must be a direct pecuniary interest as to the outcome of the proceedings or must be affected or you are a citizen or municipality who requests party status, then you are able to do so. Wind Gap is not an automatic party. The agreement does not confer anything upon Wind Gap expect whatever the contract says. Winton stated that he had been harassing Waste Management for compensation for a long time, for months, Mr. Zito was not involved. Bill and Winton met with Waste Management before the wish list came out with input from Council. That list was presented to Waste Management and Mr. Harry Smith by Winton, Bill and Dick Getz. Council is not obligated to maintain the agreement, Council can oppose the landfill expansion, they do not have to accept the funds, they can reject them. The only stipulation is that the money that Waste Management gives to Wind Gap cannot be used to oppose the expansion.

On motion by Mitchell D. Mogilski, Sr. to advertise for a Borough Solicitor. Motion died for lack of a second.

P. West Street. Mitch mentioned that Grace Industries is working on West Street and now might be a good time to purchase a pipe and drop it in ourselves. Jim cautioned that the Borough would have to seek the permits necessary to do any type of work. Council must be aware that the Bog Turtle study might need to be completed in this area. In the MPC there is specific requirements regarding public bidding and the use of combining materials and workmanship for a project. The designing of the job could be done expeditiously, but the permitting may take some time. Mitch asked if the Water Company already had permits would that be enough. Jim replied that there is a difference between crossing and running a line along the road as opposed to placing a culvert within a new area and installing a headwall. The Borough could get temporary emergency permits. This project needs to be budgeted for and completed. Work is being done in a flood way and probable wetlands. Mitch suggested the Borough purchase the pipe so it

would remain under the \$4,000 and not be put out to bid because the only expense would be the labor. Suggestion to ask the contractor what the possible cost of the labor would be to get an idea. Len stated that the Borough can use its own equipment and manpower to improve its own property or take any action that is necessary to protect the health and safety of the citizen including installing this pipe. However, once the Borough gets beyond that, then Council must consider whether the public bidding laws take effect if the Borough does not have the sufficient manpower. Council must make a decision if this is an emergency related to public safety. Kerry stated that this road would be milled and paved in two years. Jim agreed that this will give Council ample time to do all the permitting.

OLD BUSINESS

- A. Zoning Ordinance/Comprehensive Plan. This topic to be addressed at the workshop meeting agenda.
- B. Slate Belt Municipal Association COG. The Mayor checked following the last meeting when Mr. Angle brought up about the County funding for full participation of all municipalities. The Mayor checked with Donna Taggart and she is not aware of anything requiring full participation. Whoever belongs to the COG must have their ordinance and Articles of Agreement in place, and all members must pay their dues for the first year. The Secretary explained that on April 15, 2003 the motion to advertise the ordinance carried unanimously. The question was if we could advertise in conjunction with the other municipalities to save on the advertising cost.
- On motion** by Bill Pysher to advertise a summary of the ordinance 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.

Executive Session

Council adjourned to Executive Session at 9:39 p.m. to discuss the possibility of acquiring real estate. Council reconvened at 9:54 p.m.

- C. Teamster Local 773 Pension – Part-time Workers. Len Zito issued a legal opinion dated September 5, 2003 that explains the Borough's exposure. **On motion** by Lewis Paulhamus to pay back three years and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.
- D. Rubenstein Property. This topic to be addressed at the workshop meeting.
- E. July 15, 2003 Minutes. This topic to be addressed at the workshop meeting.

Mitch asked permission to have both of these topics voted on at the workshop meeting. Council as a whole was in agreement.

Secretary explained that the tape is not audible and she cannot specifically quote the changes being requested. Mitch stated getting it as close as possible, that they can't cite unless they are ten miles over the speed limit. Len stated that he sent a letter of opinion on this topic. He said that the Secretary's notes were controlling.

- F. Lewis stated that he got something from the AA and what are we going to do about the insurance. Winton replied that he sent a reply to Tony and gave a copy to all of Council. The AA needs to have insurance coverage in the Park. Council is responsible to preserve the current assets of the Borough and one is to have current insurance coverage. Erie Insurance cancelled them for late payments and the

claim. The AA bought insurance somewhere else, they received the refund that the Borough paid on their behalf and they still have not provided a copy of their policy.

G. Lewis reported that the rewiring through parts of the Park have been done by Dave Albanese.

Council adjourned the meeting of October 13, 2003 at 10:00 p.m. due to the 10:00 p.m. curfew.

Louise Firestone
Borough Secretary