

**BOROUGH OF WIND GAP
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The Council meeting of the Borough of Wind Gap on Monday, January 5, 2004, was called to order at 7:30 p.m. by Mayor Kenneth George, at which time he reminded those present that the meeting was being recorded. In attendance were Councilmen: Winton Male, Jr., and Mitchell D. Mogilski, Sr. Also in attendance were Borough Solicitor Leonard Zito, Borough Engineer Ronald Madison and Secretary/Treasurer Louise Firestone.

Administering the Oath of Office to Council persons - At this time Mayor George administered the Oath of Office to Council persons: Kerry Gassler, George Hinton, Jr., Scott Parsons, Karen Skorochood. Council then took their seats.

Mayor George then proceeded with the order of business by seeking nominations for Council President. Council made the following: **On nomination** by Karen Skorochood for Kerry Gassler for Council President. Voting for Kerry Gassler was K. Gassler, G. Hinton, W. Male, M. Mogilski. Kerry was appointed with a majority vote of four.

The next item of business was Mayor George seeking nominations for Council Vice President. Council made the following: **On nomination** by Karen Skorochood for George Hinton, Jr. for Council Vice President. Voting for George Hinton, Jr. was G. Hinton, W. Male, M. Mogilski, S. Parsons. George was appointed with a majority vote of four. Mayor George turned the meeting over to Council President Kerry Gassler.

APPROVAL OF EXPENDITURES

On motion by Winton Male to approve the expenses with the exception of the invoice from Debra Johnson in the amount of \$11,090.12 and seconded by Karen Skorochood. Winton stated that the invoice from Debra Johnson should be discussed in Executive Session because of the potential for litigation. Roll call vote taken. Motion carried unanimously.

BOROUGH APPOINTMENTS

1. **On motion** by Mitchell D. Mogilski, Sr. to re-appoint Joan Valley to the Planning Commission and seconded by George Hinton, Jr. Scott asked if all the vacancies have been advertised? Most of the vacancies have been in the newsletter. Kerry stated that when someone wants to be re-appointed to a committee usually they are because it is difficult to fill the seats. Roll call vote taken. Motion carried unanimously.

2. The Zoning Hearing Board currently has an opening for an alternate.

3. The Park Board has two vacancies. Louise informed that the two individuals were notified and asked to respond with their desire for re-appointment, but they have not responded. Kerry stated that he was at the last Park Board meeting and Vic Zucal and Roger Bet verbally said that they would want a re-appointment, but would accept it if it was voted on.

On motion by Winton Male that both are re-appointed and seconded by Karen Skorochood. Mitch asked Len if Council appoints them, could Council remove them if they decide that they do not want to serve? Len stated that if they do not fill their terms or decline then Council still has a vacancy. Roll call vote taken. Motion carried unanimously.

4. Municipal Authority currently has two vacancies - Paul Levits and Ron DeCesare. Scott stated that these are paid positions, and as far as he knows, they have not been advertised so he suggested that these jobs be advertised. Winton added that there has been a decision by prior Council to reduce the Board to five people and this Council has to make a decision with a lot of things regarding the Authority and no decisions regarding the Authority should be made at this time. They would have their normal rights and serve until the seat is filled. Ron DeCesare stated that he has been Treasurer for ten years and took it from bankruptcy to a solvent situation, not alone. Paul stated he has served the same. **On motion** by Scott Parsons to advertise the vacant seats and vote in two weeks and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. In favor: K. Gassler, G. Hinton, M. Mogilski, S. Parsons. Opposed: K. Skorochood, W. Male. Motion carried with a vote of 4-2.

5. Attorney appointments. Two attorneys applied for Borough Solicitor, one for Planning Commission, one for Zoning Hearing Board. Winton stated that Zoning Hearing Board must appoint their own attorney, Council does not do that appointment.

On motion by Mitchell D. Mogilski, Sr. to appoint Peter Layman from McFall, Layman and Jordan for \$80.00 an hour and seconded by Karen Skorochood. Scott asked if all these positions have been advertised? Kerry replied that all professional positions have been advertised. Roll call vote taken. Motion carried unanimously.

Council received two letters, one from Len Zito and one from John Ashcraft from Allentown. Mr. Ashcraft did not supply Council with an hourly rate.

On motion by Scott Parsons to keep Mr. Zito as Borough Solicitor and seconded by Winton Male. Roll call vote taken. Motion carried unanimously.

6. Borough Engineer. Council received letters from Keller Engineering, Barry Isset, Rettew, Schoor DePalma, Hanover Engineering, FX Browne, Inc. Kerry stated that he did not have a chance to review any of this information.

On motion by Mitchell D. Mogilski, Sr. to appoint Hanover Engineering and seconded by Winton Male. Winton stated that Hanover is very competitive and they have a track record with the Borough and they do not charge for every little thing like some of the other companies. They have their heads around everything that is going on in the Borough. Kerry suggested holding this appointment until the workshop meeting. Roll call vote taken. In favor: W. Male, M. Mogilski. Opposed: S. Parson, K. Skorochood, K. Gassler, G. Hinton. Motion did not pass with a vote of 2-4.

On motion by Scott Parsons to table this until the workshop meeting and seconded by George Hinton. Roll call vote taken. In favor: S. Parsons, K. Skorochood, K. Gassler, G. Hinton. Opposed: M. Mogilski, W. Male. Motion carried with a vote of 4-2.

Public Comment

1. Bill Pyscher congratulated the new members of Council and the new officers. Bill stated that as far as he was concerned there was some unfinished business with the old Council and that is the Zoning Ordinance and the Comprehensive Plan. He stated that he feels that it is imperative that this be revisited because there are some updates that are definitely needed. One of the major issues is that 44% of the residents are apartment dwellers and that is a lot for a community the size of Wind Gap. We need single-family dwellings who pay their full share.
2. Patricia Sutter stated that she disagrees with Mr. Pyscher because she sees the tax coming in and the renters pay taxes too if they are working they are paying the 1.35% local tax and a lot of homeowners do not pay their real taxes on time. She stated that the Borough cannot count on the homeowners as bringing in a large share of the tax dollars and you have to look at the Earned Income Tax.
3. Lewis Paulhamus stated that he is against how the budget was done. The Streets and the buildings should be done this coming year. Streets were taken right off the budget.

NEW BUSINESS

1. Council Vacancy. Council has letters of intent from Lewis Paulhamus, Anthony Curcio, Jeffrey Yob, John Faust. Kerry asked if there is any interest from the audience. No one came forward at this time so he put this opening up for nominations for Council vacancy.

On motion by Karen Skorochood to nominate Jeffrey Yob and seconded by George Hinton. Roll call vote taken. In favor: K. Skorochood, K. Gassler, G. Hinton. Opposed: S. Parsons, W. Male, M. Mogilski. Vote was 3-3. The Mayor was asked to vote. He voted no. Motion did not carry with a vote of 3-4.

On motion by Karen Skorochood to nominate John Faust for Council vacancy and seconded by George Hinton. Roll call vote taken. In favor: K. Skorochood, K. Gassler, G. Hinton. Opposed: W. Male, M. Mogilski, S. Parsons. Vote was 3-3. The Mayor was asked to vote. He voted no. Motion did not carry with a vote of 3-4.

On motion by Winton Male to nominate Anthony Curcio and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. In favor: W. Male, M. Mogilski, S. Parsons. Opposed: K. Gassler, G. Hinton, K. Skorochood. Vote was 3-3. The Mayor was asked to vote. He voted yes. Motion carried with a vote of 4-3.

Mayor George administered the Oath of Office to Anthony Curcio. Tony took his seat on Council.

2. Advertise the 2004 Meeting Schedule. **On motion** by Mitchell D. Mogilski, Sr. to advertise the meetings for the first Monday of the month with the exception of September and

December which would be the first Tuesday and the workshop meetings being the third Tuesday of the month at 7:30 p.m., the Park Board will be the second Tuesday of the month, Zoning is the first Wednesday of the month, Planning is the first Thursday of the month and seconded by Karen Skorochood. Roll call vote taken. Motion carried unanimously.

Scott asked if Council has to voice vote on everything. Len replied that is the method with which there has been an adoption.

On motion by Mitchell D. Mogilski, Sr. to have all meetings concluded by 10:00 p.m. and seconded by Winton Male. Tony asked if the agenda is not finished at that time would it then be carried over? Len replied that Council could finish the agenda item that they are on and the remainder would be carried over to the next meeting. Roll call vote taken. Motion carried unanimously.

The Mayor asked if Council would be voting at the mid-month meeting because it has been restrictive in the past? Len replied that if the resolutions are administrative in effect, they continue until they are vacated or changed in some method, that would require a motion.

On motion by Karen Skorochood to vacate the previous resolution that stated that Council was not allowed to vote at the mid-month meeting and seconded by George Hinton. Winton stated that the reason it was done was because a great deal of last minute surprise things were happening at the mid-month meeting that were not agenda items. He explained that projects can be discussed at the mid-month meetings and then voted on at the regular meeting. George contended that things might be brought up at the business meeting and if everyone needs a little extra time to do research it would be a shame to have to wait a whole month. Winton replied that if it cannot be decided at the regular meeting, Council could give approval to allow voting at the mid-month meeting. Mitch added that the Borough Solicitor and Borough Engineer are not in attendance at the mid-month and sometimes their input is needed. Kerry suggested that if a topic needs to be discussed with the Solicitor or Engineer that item would be held until they are present. Roll call vote taken. In favor: S. Parsons, K. Skorochood, A. Curcio, K. Gassler, G. Hinton. Opposed: M. Mogilski, W. Male. Motion carried with a vote of 5-2. Len stated that the advertisement for the meetings would have to state that the mid-month meeting would be a general meeting for business purposes for all business that would be coming before Council, the public must have a notice that the meeting is qualified to transact Borough business.

3. Winton reported that there is a problem with the oil tank for the Borough garage. John Zucal informed him that Lessig recommended emptying the underground oil tank and installing an outside oil tank to hook up to the furnace. Lessig submitted a quote to do the work. The underground tank is a 500-gallon tank, the quote is for a 330 gallon outside tank. Unfortunately, the underground tank was just filled. The tank and pumping out of the fuel is quoted at \$700. Winton expressed his concern about a leak and that it should be pumped out as soon as possible. Kerry asked Ron if the underground tank could be filled with sand or does it have to be removed? Ron replied that he does not know the regulations, but the size may determine what steps have to be taken. He will provide Council with information as soon as possible.

On motion by Scott Parsons to approve the purchase of a new tank and pump out the old one and seconded by Tony Curcio. Roll call vote taken.

4. CDL Restrictions. Mitch reported that the driving on/off hours have changed from sixteen

hours on and eight hours off to fourteen hours on and ten hours off. John has been notified of this change.

5. Karen proposed that Council should have Borough representatives attend the mid-month meetings to report and answer any questions (Police Chief, Street Leader, Zoning Officer, Fire Company, Sewer Authority representative). Mitch stated that the employees are paid for their attendance at an hourly rate and this was included in the budget. Kerry stated that he would appoint the Council liaison at the next meeting. **On motion** by Karen Skorochood to have the representatives attend the mid-month meeting and seconded by George Hinton. Scott asked how much this would cost since no money was budgeted for their attendance? Louise to provide a cost estimate by the next meeting. Karen withdrew her motion.

OLD BUSINESS

1. Ron Madison reported that Hanover Engineering received the letters from the School District and the busing provider with their support regarding the installation of the traffic signal at the intersection of Third Street and South Broadway so the application was sent to PennDOT today with the traffic analysis. He hopes that the Borough could have the construction bid spec completed and a traffic light installed by the end of the year.

2. Ron Madison reported that he had corresponded to Council in the fall of 2002 and again in February 2003 with regard to pending DEP regulations that will permit all stormwater discharges to the waterways of the Commonwealth. In March of 2003, Hanover filed a permit on behalf of the Borough and at the same time filed an application for a waiver from the program. Ron stated that he just received a Draft Permit and will distribute a copy to Council. There will be a thirty day advertisement period in the Pennsylvania Bulletin. By issuing the permit, DEP has denied the waiver request from the program. There is an outline in the documentation of certain steps of the five-year program and these steps must be done in the first year, which include public information. This information could be provided during a regular Council meeting. The cut-off for the first year is March 2004. Ron suggested having the public meeting on Environmental Outreach be included in the regular meeting of Council scheduled for March 1, 2004. Ron to provide the correct verbage for advertising. The Borough staff can send out the mailers. Another expense would be mapping, but Ron feels that the 1998 stormwater study would be sufficient to submit to DEP to satisfy this requirement.

3. **On motion** by Scott Parsons to cease (suspend), for right now, the proceedings and come with a committee, Karen, George and himself, to give them an opportunity to sit down with the Municipal Authority and see if they can come up with some sort of agreement to stop this funnel of money that is going out and seconded by Karen Skorochood. Scott stated that maybe he does not want to use the word stop because if it can't be hashed out there is no sense starting back from scratch. Len stated that suspension of the legal proceedings at this juncture would require an application to both the Local and Federal Court Judges who are assigned to this case. He does not believe that such an application would be denied by a judge if it is explained that the purpose of the suspension to the proceedings is to explore the settlement. He

advised Council to be prepared for an order that would set time limitations for the suspension. The first application is to direct the Borough's Legal Counsel, if the motion is successful, to apply for a suspension of the proceedings for whatever purpose Council might deem appropriate. The ultimate decision will be made by the Judges assigned to the matter. Kerry suggested having dates ready so that the committees can meet, because it takes some time to get the committees together. Winton stated that he believes that the intent of the wording is to make it a temporary suspension for an opportunity to discuss. Scott and Kerry agreed of this intent. The Mayor asked if Tony would be included so he is aware of what is going on during the discussions? Question on whether a quorum would be present because of four members of Council present. Len replied that the gathering of four Councilpersons for Council business is a quorum under the Borough Code. There is a provision that these be conducted as Executive Session where no business is conducted, however, it would not be his advice to do that.

Roll call vote. Motion carried unanimously. Len to contact Borough's Special Counsel to inform him of the motion.

Paul Levits asked if tomorrow's court hearing would be delayed? There could be an expense of \$4,000 to \$6,000 incurred by both bodies just for tomorrow's hearing. Len stated that this action would have to be communicated and then a conference call may need to take place. Special Counsel will be asked to propose a suspension to the proceedings as quickly as possible to allow newly elected Councilpersons the opportunity to explore a potential settlement. Kerry asked if it possible to ask for a continuance for tomorrow? Len replied that the matter is scheduled for 9:00 a.m. tomorrow morning. Len will attempt to stop the expenditure. This is scheduled in Northampton County with nothing pending in Federal Court.

EXECUTIVE SESSION

Len Zito reported that two items will be discussed in Executive Session, the first is collateral to the litigation between the Municipal Authority and Wind Gap Borough is an outstanding court reporter's bill that poses a threat of some minor litigation, the second is an actual threatened piece litigation by the Central Pennsylvania Teamsters Pension Fund against the Borough of Wind Gap.

Pat Sutter asked what is the excavation on the east side of Roosevelt Street as far as trees coming down? Kerry replied the he harvested his trees on his property, Jaid Kerdzaliev harvested his property and Linda Perin harvested her property for the wood.

Council adjourned to Executive Session at 8:36 p.m. to discuss these two issues. Council reconvened at 8:53 p.m.

On motion by Winton Male to approve payment of \$2,336.30 to Debra Johnson in consideration of what the Northampton County rates were and seconded by George Hinton. A letter from Len Zito will be attached to the payment explaining that the bill will be considered paid in full, based on calculations by Northampton County rates. Roll call vote taken. In favor: T. Curcio, K. Gassler, G. Hinton, W. Male, S. Parsons, K. Skorochoch. Opposed: M. Mogilski. Motion carried with a vote of 6-1.

On motion by Mitchell D. Mogilski, Sr. to declare a territory judgment action in Northampton County Court to stop the exposure of \$5,380 in regard to the Central Pennsylvania Teamsters Pension Plan and seconded by Karen Skorochood. Roll call vote taken. Motion carried unanimously.

On motion by Winton Male to adjourn the meeting of January 5, 2004 and seconded by Tony Curcio. Council agreed unanimously.

The meeting of January 5, 2004 adjourned at 8:55 p.m.

Louise Firestone, Secretary / Treasurer