

**BOROUGH OF WIND GAP
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The Special Council meeting of the Borough of Wind Gap on Thursday, January 15, 2004, was called to order at 7:00 p.m. by Council President, Kerry Gassler, at which time he reminded those present that the meeting was being recorded. In attendance were Councilpersons: Winton Male, Jr., Karen Skorochood, Mitchell D. Mogilski, Sr., Scott Parsons, and Anthony Curcio. Also in attendance were Borough Solicitor, Len Zito, Special Counsel, Steve Goudzousian and Secretary/Treasurer Louise Firestone. Absent were Mayor Kenneth George, Councilman George Hinton.

*Councilman George Hinton arrived at 7:05 p.m.
Mayor Kenneth George arrived at 7:30 p.m.*

The purpose of this meeting is to discuss the Wind Gap Municipal Authority Litigation, take any necessary action and for other general business purposes. Kerry stated that Council has just received a list of items from the committee. Council will adjourn to Executive Session to discuss item eight which was just added to the list.

EXECUTIVE SESSION

Council adjourned to Executive Session at 7:03 p.m. to discuss the litigation of Wind Gap Municipal Authority, et al vs. Male and the Borough, Federal litigation 03-3120. Len added other outstanding litigation, Northampton County litigation as well as the communication concerning payments by the Borough to the Municipal Authority. Council reconvened at 7:26 p.m.

Kerry opened the floor for any discussion regarding the list of items recommended by the committees. Prior to comments, the Authority called their meeting to order.

The Wind Gap Municipal Authority called their meeting to order at 7:28 p.m. John Molnar called the roll. Present were: Russell Dieter, Paul Levits, Ron DeCesare, Tom Knitter, John Barto, Jr., Richard Keenhold. Member Brian Thompson and Administrator Bob Hahn were absent.

The Wind Gap Borough committee and the Wind Gap Municipal Authority committees have met and submitted the following items as recommendations in regard to the litigation between the two entities:

1. All litigation terminates.
2. Takeover resolution is rescinded

3. Authority will move forward with all projects and applications.
4. Both Borough and Municipal Authority agree that each organization will have a liaison present at the meeting of the other. The Council liaison is to attend the Municipal Authority monthly business meeting, and the Authority liaison is to attend the mid-month Borough Council meeting.
5. All major projects involving the streets are to be mutually communicated as soon as proposed.
6. Committee will suggest to Council to make a complete Borough organizational chart which the Authority will be part of.
7. Authority will advise Council at the first December meeting of impending vacancies so advertisement for the open positions may commence.
8. There will be no future litigation between any present member of the municipal authority or present or past Borough council members in any regard to this current litigation.

Kerry stated that this current Council wants to stand united and would hope that the Authority would stand united on no litigation pending after this.

Steve Goudsouzian asked for an explanation of number eight. Scott replied that the idea of the proposal is to get the bleeding stopped with all litigation between the two organizations. The fighting needs to stop in regard to these issues. It is intended for the municipal bodies and the individual members themselves. The committee feels there needs to be some guarantee that the two are not back in litigation in the future on these matters. Scott stated that this proposal is all or nothing, it is not pick and choose. Steve explained that what is being suggested is binding as far as the authorities are concerned, for number eight to take place and become effective the individual members would have to sign on also. There is a distinction between signing and agreeing on behalf of a body and signing individually in your own capacity.

John Barto stated that Steve is twisting the words around and the committee did not talk about individuals signing off. John asked how could the individuals be made to sign off if the vote is not unanimous? Steve replied that you could not make someone sign off, but if there is an agreement to sign off that ends all litigation that is what that would accomplish. Council does not want to be here three months from now, where some individual member is suing Council and this will all start over again. John Molnar commended the committees and Mr. Parsons on getting this done and stated that he believes that paragraph eight is clear in stating the this will stop the litigation. John added that the bodies cannot bind individuals. Scott replied by stating that the committee was forced to work fast and had a curveball thrown at them at the last minutes. The concern of Council is this cannot resurface in any way, shape, or form. If it is going to come down to an individual suing someone on Council in regard to his actions while serving on Council, Council would still have to defend the Councilperson so we should just continue on with this litigation. George added that he felt everyone was on the same page when number eight was added. This got out of hand because of personalities so the committee wants to get this done.

Mr. Zito suggested that it should be determined which members of both of the municipal bodies are willing to sign a release and which are not. John Molnar stated that the vote would

not be binding until everybody agrees to it. Mitch asked if someone signed and then a week from now they would sue someone on the opposite side, the Courts would throw out the lawsuit? Mr. Zito stated that would a release properly prepared would address those issues and would be a bar against such litigation. Steve stated that even through the agreement would be reached today, there would be subsequent paperwork, the cases would have to be withdrawn in Federal Court and State Court and once that has been done, the release would serve as a bar. If a majority of each organization agrees to this, it only accomplishes and binds the respective body. It does not get to the true issue of number eight, it requires true unanimity, it requires everyone to sign off on it. Scott asked about the other names on the lawsuit and if they need to sign off. Steve replied that with the withdrawal of the litigation on behalf of the Authority, their claim would be settled.

Paul stated that to sign off individually on number eight, but he has a problem with someone stepping on his personal rights and forcing him into something that he has no intention of doing, but don't think should be taken away from him. If it is a personality issue, instead of forcing potential people to sign off of their individual rights, each body should identify the personality problems, and then the bodies could move ahead and have them removed.

Wind Gap Municipal Authority went into an Executive Session at 7:55 p.m.

Council took a vote on who would sign off on if they sign individually and as a member of Council to end all litigation and to comply with the committee recommendations. Reply was as follows: Tony Curcio – yes, Kerry Gassler – yes, George Hinton – yes, Winton Male – yes, Mitchell D. Mogilski, Sr. – yes, Scott Parsons – yes, Karen Skorochood – yes, Mayor Kenneth George – yes.

Len suggested pooling Council in regard to support of the statements made by Scott and George related to if there is unanimity that unless there are mutual releases signed individually and by the municipal bodies that Council will not proceed forward with the settlement. Reply was as follows: Kerry Gassler – yes, George Hinton – yes, Winton Male – yes, Mitchell D. Mogilski, Sr. – yes, Scott Parsons – yes, Karen Skorochood – yes, Tony Curcio – yes, Mayor Kenneth George – yes. Len stated that if some members are not willing to sign personally, and those members' terms are up are subject to replacement, Council still has the opportunity to continue with settlement because inherent to Council's power is the power to replace these people on the Municipal Authority, who may be obstruction and do not agree to what the committees are agreeing to with regard to the settlement.

Bill Pysher commented that he was being sued in Federal Court both as a member of Council and personally and Council should have unanimity from them that they agreed to do this. He asked if as a past member of Council, is the Borough obligated to provide legal counsel for this since they were acting as member of Council. Len replied that members who act in their official capacity, are immune, either absolutely or they have a qualifier which protects them. It is only when there are allegations that they acted personally with a specific purpose of violating a person's Civil Rights. That would have to be decided by the Borough's liability carrier as to whether or not they want to defend that action. Historically when those allegations are made

and there is obviously no merits to it, the municipality is obligated to come to the defense of that individual. Anyone can start a frivolous lawsuit, it takes some procedure to get to the point where it is determined to be frivolous.

Mayor George stated that everybody is accountable to a higher authority. Council is accountable to the voters of the town, they put us in office and they take us out of office. The Sewer Authority is put in position by Council and they are accountable to Council. Scott read from the Municipalities Act. The need for cooperation among officials of the municipality and the authority board along with the officers, agents, and consultants of both entities is absolutely necessary. On one hand, the municipality must remember the board is composed of qualified and competent citizens, giving of their time, effort, interest and talents toward accomplishing the Authority's goals to serve the community. On the other hand, the authority board must realize that it is not an entity unto itself. It was created by the municipality to provide a public service. The cost of that service is paid for by the property owners within the authority's service area and the property owners elected the officials who appoint the members of the authority board. Neither the municipality nor the authority can operate effectively within a vacuum. Open communication or willing cooperation between them is necessary to maintain the viability of the public services for the community.

Pat Sutter said that she was bothered that when anyone has asked them for any information, it was not received. Kerry stated that the Authority has provided the Borough with a financial annual audit. The Borough receives their monthly bills, their minutes and everything they approve every month. Pat asked if Council could get a list of all the bills and everybody who has paid because it is public information just like the tax records. Tom Knitter asked what would be the purpose? John Barto stated that on their reports they will come up with a format and they would provide that information on a quarterly basis.

John Molnar stated that the Authority committee of Mr. Dieter, Mr. Barto and Mr. Knitter is requesting a recess from this meeting to meet with the Council committee for a few minutes. The committee requests that Attorney Molnar and Attorney Zito be involved in this meeting to discuss a clarification of point eight. Recess taken from 8:12 p.m. to 8:20 p.m.

EXECUTIVE SESSION

Council adjourned to Executive Session at 8:20 p.m. and reconvened at 8:48 p.m.

Kerry informed the Authority that while the Authority meet in their Executive Session, Council did take a poll vote on number eight and it was unanimously, including the Mayor. They also polled on personally signing the agreement and that was unanimously, including the Mayor. Kerry asked the Authority to take a poll vote. John Molnar stated that he believes that there would be an unanimous vote to sign releases for the three pieces of litigation that are currently pending: Wind Gap Municipal Authority vs. Wind Gap Borough in County Court Action, semi-annual payments litigation, Federal Court litigation, and the Mandamus Action. It would be subject to personal review by any Authority members. Len asked if that includes members signing individually for all issues that are raised or could be raised related to the three pieces of litigation? John replied that the semi-annual payment is purely Authority and Council. The take

over litigation, Mandamus is purely Authority and Council. Wind Gap Municipal Authority vs. Male, et. al is between the Authority and Council to a certain degree, but the subject matter is claiming that the take over resolution was abusive discretion of Borough Council. It would be subject to review by individual members of the Authority and their personal Counsel. Russell Dieter called a poll vote on number eight: Paul Levits – yes, Ron DeCesare – yes, Tom Knitter – yes, John Barto – yes, Rick Keenhold – yes, Brian Thompson – absent, Russell Dieter – yes. Russ stated that he spoke to Mr. Thompson and he would be in favor.

Steve Goudsouzian summarized that they individual members of the Authority are willing to sign releases relating to all three pieces of litigation that are outstanding or any claims that are now outstanding in those three pieces of litigation. Because they are ongoing, any litigation that could be raised in those litigations. John Molnar stated that he was specific when he said semi-annual payment litigation, the Mandamus Action, and the Federal Court Action related to the Authority claiming that the takeover resolution was abusive discretion and was invalid. Len asked if the pleadings are closed? Steve replied that they are not closed there is no standing motion to dismiss. Steve explained that with the Federal Court Action, a complaint was filed and normally either the defendants would object to the complaint or file Responsive Pleading (an answer). Borough Council has filed a motion to dismiss challenging the complaint. Borough has not had an opportunity to raise their defense or raise a counterclaim or otherwise because it is not at that stage. Based on the Federal Court Judge's directive as to proceeding through discovery, the Borough proceeded through discovery despite the fact no answer was ever made to the complaint yet because it is still outstanding, the Federal Court Judge has not made that decision. After the discovery period was done, then on behalf of Borough Council, Steve filed a motion for Summary Judgment, again asking for the case to be thrown out. There are claims that Council could raise, there are claims that Borough Council could raise as counterclaims. You cannot raise those issues until the Judge rules on the motion to dismiss. Steve took issue with Attorney Molnar's characterization that the only issue raised relates to one particular thing. The Pleading (the complaint filed in the Federal Court Action) raises all sorts of allegations. Some are not drafted very clearly, some are not very specific as to what it is that some members or Borough Council as a whole did. He suggested that whatever the complaint says it is all encompassing and not limiting to the sole issue as characterized because there is more than that, the complaint contains several series of different types of claims. The release must cover all the issues and any related potential issues. Len clarified, the Authority members, as an Authority, and individually are prepared to release as an Authority, and individually all the claims that are stated in the Authority complaint of the Federal number in turn.

Scott stated he does not want another lawsuit come across the Council table that has anything to do or says anything about the Municipal Authority's lawsuit or the Borough's lawsuit between each other. If these things are part of it, that's anything. He does not want any of the Council members or the Authority members going to court and somebody bring up a deposition that was taken due to this or a motion that was passed due to this. John Molnar asked the Authority members again, Russell Dieter – yes, Paul Levits – yes, Tom Knitter – yes, Rick Keenhold as Scott stated – yes, Ron DeCesare – yes, as previously stated Brian Thompson would vote yes. John Molnar stated that the Authority is in complete agreement with Mr. Parsons. As understood by Len Zito, this release will address all the issues in the Federal complaint, Northampton County complaint and in the Municipal Authority litigation over the semi-

annual payments.

PUBLIC COMMENT - None

On motion by Scott Parsons to approve to end this litigation, steps one through eight as was spoken here tonight, with regard to number eight, both sides and all respective parties in all three sets of litigation will sign respective releases relating to those litigations as characterized in early statements and seconded by Karen Skorochood. Roll call vote taken. Motion carried unanimously.

Wind Gap Municipal Authority made a motion to accept the committee recommendations, all eight points. Roll call vote taken. Motion carried unanimously.

John Barto suggested having both committees meet to review these documents. Steve Goudsouzian will draw up the documents. The Federal Court Judge will be notified of tonight's developments. The Court will probably keep the case open until the releases are signed and everything is settled. Steve will ask the Court on Tuesday to have everything continued for thirty days. John Molnar requested having both bodies request an extension to the Judge.

On motion by George Hinton to authorize legal Counsel, Steve Goudsouzian, to request a thirty day stay and seconded by Scott Parsons. Roll call vote taken. Motion carried unanimously.

Scott Parsons read from the Municipal Authorities Act as previously stated.

Wind Gap Municipal Authority made a motion to ask for a thirty day extension. Roll call vote taken. Motion carried unanimously.

Russell Dieter thanked the committees for the diligent work that was done especially on their eight points and he hopes that this is just the beginning of working together.

On motion by Tony Curcio to adjourn the Special Meeting of January 15, 2004 and seconded by George Hinton. Meeting adjourned at 9:16 p.m.

Louise Firestone, Secretary / Treasurer