

**BOROUGH OF WIND GAP  
29 MECHANIC STREET  
WIND GAP, PA 18091  
863-7288  
FAX 863-1011**

## **EXECUTIVE SESSION**

Council convened prior to the meeting for an Executive Session at 6:30 p.m.

The Council meeting of the Borough of Wind Gap on Monday, June 7, 2004, was called to order at 7:34 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., George Hinton, Jr., Scott Parsons, and Tony Curcio. Also in attendance were Mayor Kenneth George, Borough Solicitor Leonard Zito, Borough Engineer, Ronald Madison and Secretary/Treasurer Louise Firestone.

Kerry reported that Council was in Executive Session regarding the Schinstine Condemnation, Manor Haven Condemnation, personnel, Roberti lawsuit, and the Grace Industries litigation.

## **APPROVAL OF MINUTES**

Tabled until June 15, 2004 meeting.

## **APPROVAL OF EXPENDITURES**

**On motion** by Mitchell D. Mogilski, Sr. to approve the expenses in the amount of \$31,981.01 and seconded by Tony Curcio. Kerry asked that the bill from Hanover Engineering in the amount of \$3,388.24 related to the Slate Belt Industrial Road be forwarded to the County to be paid out of the bond money. That amount will be reduced from the total expenses. Roll call vote taken. Motion carried unanimously.

## **GUEST**

1. William Haberl, Superintendent Pen Argyl Area School District, introduced himself and John Dally. William explained that they met with Harry Smith and Len Zito representatives of Waste Management on behalf of the School District. There is a 50 acre tract of land behind Wind Gap Middle School that is going up for sale and the School District was interested in purchasing this piece of property. They asked if Waste Management would be interested in helping to purchase the property owned by Brian Perin. Waste Management went to their representatives in Houston, Texas and received a very favorable response. Mr. Haberl previously copied Council on an agreement for Waste Management to facilitate the purchase of

the 50 acres at 100% of the cost, whatever it is, which will help all three municipalities (Wind Gap, Pen Argyl, Plainfield Township). Waste Management has asked that all three municipalities give their blessing. The School District does not anticipate needing this land in the next 2 to 3 years, but it may need to expand in the next 8 to 10 to 20 years. The School District realizes that there is not much more room for expansion at the present location of the high school. Brian Perin has offered the sale of this land to the School District for a 60-day period, which ends the end of June. The property is north of the Middle School along Longecore Road right behind where the current auditorium is located. Mr. Zito added that on March 4, 2004, Len and Harry Smith from Waste Management met with Dr. Haberl, several school officials including school principals and John Dally and they discussed the expansion of the surrounding school districts and the potential for expansion of Pen Argyl Area School District. It was discussed and understood that the Pen Argyl School District did not have suitable land on which to expand without an alternate location. Alan McFall, Solicitor for the Pen Argyl Area School District, spoke with Len regarding the agreement. Len has reviewed the agreement and it contains the pertinent requirements for Waste Management and the School District. Len added that the property is developable because it is assessable to public water and public sewer. Mr. Perin has a home on the property so he is not selling his entire tract of land, but maintaining approximately ten acres where the house is located.

Pat Sutter stated that Mr. Zito should not be making comments and should recuse himself, Council should not listen to him because he represents Waste Management. This looks really good to the State as far as them getting their permit granted because Waste Management is donating land to the School District. Len explained that a conflict would exist if there were competing interest between the Borough of Wind Gap and the School District and Waste Management for this property. He added that the representations that he made and Mr. Haberl made are factual representations; they are not subjected to any kind of controversy.

**On motion** by Tony Curcio to accept the agreement and seconded by Karen Skorochoch.

Lucy Eron asked why does the School Board and Waste Management need Wind Gap's approval? Kerry replied that Wind Gap is part of School District and they want all three municipalities to agree with this. Harry Smith, Waste Management, added that Waste Management wants the communities who make up the school district to understand what they are doing and acknowledge so that this can move forward. Lucy asked if all three do not agree with this agreement does that mean that Waste Management will not move forward with this purchase? Harry replied that it would have to be considered at that time. Lucy asked what the asking price is for the property? Harry replied that it is \$750,000. Lucy asked when would the deed be turned over to the school district? Harry replied that when the property is purchased and the property is subdivided. Lucy stated that Waste Management is asking for approval before it is completed. Harry replied that there are land developers who could use this land. Lucy asked what the land has been appraised at? Harry replied that it has not been appraised yet. Mitch asked whether the 60-day time frame is for a commitment or for the actual sale? Harry replied it is for commitment. Mitch asked if this could be held off for two weeks? Kerry stated that there is a motion on the floor, did anyone want to withdraw their motion? The answer was no.

Roll call vote was taken at this time. In favor: K. Gassler, G. Hinton, W. Male, S.

Parsons, K. Skorochood, T. Curcio. Opposed: M. Mogilski (he stated that he cannot vote on something that he did not have time to review and asked that this be included in the minutes). Motion carried with a vote of 6-1.

## **Public Comment**

1. Vickie Allen – Vickie asked if she could leave landfill complaint handouts in the Borough Hall? Council agreed that they could be left in Borough Hall.
2. Richard Dentith. Richard asked a couple months ago about the Zoning Officer, did anyone check into it? Kerry replied that he did check. Kerry explained that if someone is in violation of the zoning ordinance, the Zoning Officer notifies them and when they pay for and obtain the proper permits the project moves on. Richard stated that Mr. Nichols' neighbor, Marc Williams, received a letter when he put in a little flowerbed, but Mr. Nichols' other neighbor, Mr. Grefe, has never paid or received a permit to put in the fence. Ron added that if something is done without a permit, the Zoning Officer would issue a cease and desist order (enforcement notice), the resident must rectify the violation. If everything about the patio would meet the Borough's ordinance, and he would have obtained a permit in the first place, the only way to rectify the violation is by getting a permit and that is exactly what he did. The Zoning Officer then determines if the patio meets the ordinance, he will issue a permit even if it is after the fact. Richard questioned the architectural curbing blocking Mr. Nichols from going around his driveway in his van. He asked Council to have the Zoning Officer tell Mr. Grefe to tear them out so Mr. Nichols can use his driveway again. Ron stated that the issue is a property line dispute, because neither property owner can define where the property line is and that is not up to the Zoning Officer. Richard replied that Mr. Nichols did have his property surveyed. Ron said that he did not have a licensed surveyor provide a plan with a seal on it. The Zoning Officer determined that the railroad ties are not covered by the Borough ordinance so there is no need to get a permit.

## **Solicitor's Report**

Len Zito reported he has given all reports in connection with the Executive Session.

## **Engineer's Report**

Ron Madison reported that the draft SALDO is almost completed. He will provide a copy of the draft to Council members, the Mayor, the Planning Commission members, the Borough Solicitor and the Planning Commission Solicitor for review. He would like to have some discussion at the July planning meeting if the agenda is light. If necessary, a special meeting may be needed solely to discuss the updated SALDO. Council agreed that a copy would be forwarded to both Solicitors.

## **NEW BUSINESS**

1. George Hinton reported the Part-time Officer Luis Ruiz is in Florida training for a position with Homeland Security. If Officer Ruiz returns, he is unsure how many hours he would be available to work or if he will be returning at all. An ad for a part-time officer has been put in the newspaper. Mayor George spoke to Part-time Police Officer Chris Stalter and he is also in the process of looking for full-time employment. The Mayor suggesting considering hiring two part-timers and look at a full-time officer for next year. George stated that if the Borough is going to continue hiring part-time officers a clause should be put in the their contract stating they would stay or work a certain amount of hours before they quit or they would reimburse the Borough a portion of the expense for their vest/uniforms. Kerry asked for Len for his opinion. Len advised that this is a collective bargaining item and the obligations and benefits of a part-time and full-time police officers are subject to contract and must be negotiated. A mandatory minimum tenure time may not be acceptable to the union negotiator based upon his experience, they are not looked upon favorably. Discussion regarding how many officers to hire at this time. George suggested that once the applicants are reviewed, a recommendation will be given to Council on the number of officers to be hired. Mitch asked if Officer Ruiz is training for homeland security, could he expect to return and have his job back? Len stated that if an employee is drafted and involuntarily removed from his job by a pre-emptive superior government action, then upon return could contend that the only reason that he left was because some higher authority called him to duty then and he is entitled to return to his position. George stated that Officer Ruiz is training and will then be assigned a position, possibly Three Mile Island or Florida.

2. Part-time Street Worker, Randy Bogart. Kerry reported that Randy received his CDL license. **On motion** by George Hinton to give Randy Bogart a \$1.00 an hour raise effective immediately and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

**On motion** by Mitchell D. Mogilski, Sr. for the Borough to pay the cost of the difference between his regular license and the CDL license and seconded by Scott Parsons. Roll call vote taken. Motion carried unanimously.

## **OLD BUSINESS**

1. Traffic Light Permit Application. Ron reported that the submission package for the Third Street traffic light was sent to PennDOT today. As soon as the permit is received this project can be put out to bid.

2. Woodward/Lehigh Stormwater Project Award. Ron reported that only two bids were received and the low bid for this project came in at \$35,428. The other bid was \$61,000. Hanover originally estimated this project to be under \$20,000 and subsequently would not have to be advertised as a prevailing wage project. Ron received input from Len regarding the Prevailing Wage Act because there is a phrase in the Act that states if the estimated cost exceeds \$25,000 there must prevailing wage. Because it was not estimated over \$25,000, Hanover does not feel that there would be a violation of the Act if Council wishes to award this

contract. Ron spoke to several other contractors and they stated that this job is too small and they already have full work schedules. They also mentioned that the PennDOT restriction on work hours from 9:00 a.m. to 3:00 p.m. is too restrictive. Ron recommended not taking any action on this bid until next meeting. Ron will try to set up a meeting with Bernie Corbett and Lou Chunko of PennDOT to find out if this project is re-bid in January 2005 would the Agility Program funds still be available. He will ask if PennDOT would amend the permit to give a full day of work and not restrict the hours. Kerry stated that this would be tabled until the workshop meeting.

3. Third Street Park Drainage Project Award. Ron reported that four bids were received for this project. He feels that the bids for this project were inflated due to the full work schedule of the contractors. The low bid, after it was corrected, for this project was \$152,045.71. Ron was anticipating a range of \$90,000 to \$100,000. PennDOT restricted the work hours on this project as well. Another comment by one of the bidders, was the PennDOT was requiring to bring up the trench with stone and use 4" BCBC base pavement and then saw cut back 12" either side of the trench with wearing course. Money could be saved if the work hours would be modified and if they allow them to come up to the trench with BCBC. He recommended tabling this award until the June 15, 2004 workshop meeting. Hanson was awarded the paving project by PennDOT for Third Street, but they are willing to hold off until next year as long as there is an adjustment for materials. Marie Christman, PennDOT, has given her verbal that this project can be held until next year.

Pat Sutter asked who is responsible for cleaning up the Park pavilions? George replied that no one works on the weekends in the Park. The workers clean the pavilions on Friday and on Monday.

4. MS4 DEP Final Annual Report. Ron reported that the final report has been completed. **On motion** by Karen Skorochood to accept the report and seconded by Tony Curcio. Roll call vote taken. In favor: M. Mogilski, S. Parsons, K. Skorochood, T. Curcio, K. Gassler, G. Hinton. Abstained: W. Male. Motion carried with a vote of 6-0-1.

5. East West Street. George stated that there are two areas on East West Street without curb on the Park side and that is where the road is starting to crumble. George said that he spoke to Council members who served on the Street Committee when the project was done and there were no budget constraints on this project, yet no curbs were installed. He asked why the Borough should have to pay when the project was not done correctly? Ron replied that he appreciates that George has taken such an interest, but when the project was done he was told to keep costs down. They tried to do the bare minimum to control the water. They designed a 40' depressed curb so water could flow over the street and into the wetlands. George stated that the road is failing and something needs to be done to remedy the situation and it should not be at a cost to the Borough. George's other concern is the swale on the other side of the road. Hanover dug down in the ground until they hit water. When the water percolated out of the ground it was allowed to pool there with nowhere to go. Topsoil was put there and grass seed was planted and now there is a swale that the Borough has to maintain. George is concerned

about the safety of the area and the money that is necessary to maintain the swale. He asked why there is no gabion rock? Ron replied in regard to the safety, the curb and the speed of the road do not meet the warrants of guide rails. The Borough can put in guide rails, but at the time, Borough Council chose not to put in the guide rails. It was previously suggested that to improve the road at night the Borough could install the fiberglass reflectors. In regard to the swale and wetness, when the contract was put in at the end of the year to meet the deadline for the funding for the Landfill Postclosure it was done in December. Ron stated that they were glad that they didn't do it then because they found a lot of the springs. They were not sure if it was a temporary water table issue or if it was going to be a long-term water issue. Obviously if they had gone with a liner and stone it would have been more expensive. Ron stated that if the Borough wants Hanover Engineering to pay for that, that is Council's decision, but he disagrees. He will take any of Council's wishes to the ownership of Hanover Engineering. Kerry said that when the project was in draft form, there was discussion about the water sheeting across the street and at that point it was not a money issue. Ron replied that if curbing was put in then more inlets would be required and it does become a money issue. Kerry said that the Borough was on the Landfill Postclosure funds and there were no restrictions on the funds. Winton advised that Council constantly changed projects and stretched that money as far as they could to do as many projects as they could. Since a portion of the road is failing, Ron suggested a remedy to the situation would be putting in depressed curbing so that water can still flow over it to avoid putting in an extra inlet box. John Zucal to contact the contractor to get an estimate on depressed curb after it is determines how far the curb would need to be.

6. Mitch Mogilski reported that he has contacted the two firms who provided bids last year on a speaker system. Mitch asked if he must contact a total of three parties? Len stated that Council is not under any obligation under the telephonic bid process since the bids would be under \$4,000.

7. Mayor Kenneth George reported that he checked with the COG and all the municipalities have their own Code Enforcement Officer. Kerry stated that Council would be looking at a Third Party Inspector. The Mayor added that the COG is establishing an Appeals Board if Council is interested in going along with that. Len advised that the agreements should be looked at closely. Tony asked if the Borough could be part of the Appeals Board if they opt out? Len replied that an Appeals Board procedure has to be set up whether the Borough opts in or opts out. The Mayor asked for input from Council regarding the Appeals Board by the next meeting.

8. George Hinton reported that the Metcraft fixtures have arrived. The plumber will start on June 11, 2004. The plumber will at least get the two working that are not currently working. The Borough in not paying for the fixtures or the plumbing and everyone concurred. Ron stated that Council has seen Hanover's correspondence to the contractor and their bond company has been notified. Len reported that he has discussed this with Ron. The issue is whether there is any liability on Hanover for the inspection oversight which resulted in the installation of toilets/sinks/urinals. It is his view that the costs associated with the correction of the oversight to put the Borough in the position it should have been in at the time the of inspection was made was a contractual matter both with the contractor and with Hanover. Len believes that the bonding

company will probably join Hanover and make a contention that this oversight should have been seen or noticed and that what was supplied was equivalent equipment. At the end of the day, Len is satisfied that after speaking with Ron Madison, Hanover Engineering is going to make sure that the Borough is made whole on this matter and there will be no out of pocket cost to this municipality for Hanover's oversight. Ron confirmed Len's comments as true. Ron added that Hanover being on site, does not absolve Grace Industries.

9. Industrial Road Update. Ron asked for direction from Council on the industrial road for Pidcock Engineering. Ron explained that there are a couple issues. One is the alignment, is it going to stay on Nolan Perin's property or is the Borough going to help condemn the property north. Should it be designed as submitted or should it shift to the north. Council directed Ron to advise Pidcock to design the road on the property owned by Nolan Perin. Another issue is landscape buffers to the residential properties and it was decided that they should do that. Would Council consider a waiver to the curb and sidewalk for the industrial road. Several members have stated that they would like to see the curb and sidewalk. Kerry polled Council for curbing: Scott – yes, Karen – yes, Tony – yes, Kerry – yes, George – yes, Winton – yes, Mitch – responded that he will wait for the vote. Winton stated that the road should be built to PennDOT specs. Mitch said that Council is not even sure if it is going to be switched over to the other side. Kerry said that Council is giving Ron direction for Pidcock Engineering. Mitch replied that two weeks ago, Council voted to contact County Council to divert all those funds, the balance, over to the west side of the road. Kerry and George attended the County Council meeting and read the draft letter. County Council asked Kerry if the Borough owns the property, do they have the engineering done, do they have the plans done and do they have the cost estimate and this must all be done by the end of the year, then they might consider it. There is no budget to do any of this work. Mitch said that according to the paper, County Council is taking action at their next meeting. George stated that it was his understanding that County Council is waiting for direction from Wind Gap. If the money was not used by the end of the year or there is no direction, the money might go into the prison. Kerry said that the motion was if the project couldn't be completed then it stays on the existing project. Mitch argued that the second half of the letter is not what anyone at the table stated. Kerry said that the motion was taken from the minutes and faxed to Mr. Zito so he could draft the letter. Mitch said that there was no place Council said that we would absolutely, positively stick with the original project. All other council members said yes it did. Mitch replied that the original project called for all industrial so all aspects have to be looked at. Kerry added that the initial project was stated in a letter from Glenn Riebman that if the industrial road went in it would creat jobs. Then a letter came from Nick Sabatine stating that they would like industrial jobs. Kerry read the draft letter to County Council and to Pen Argyl Council. Pen Argyl did not want to be out of the bond and they are still committed to it. Mitch said that the wording of the motion and the letter from Len is different. Mitch made County Council aware that the letter was incorrect because he faxed it to them. He believes that the words are different. Scott read the letter faxed to Len to compose the letter. The fax states, "Council's motion was made by Mitch Mogilski, Sr. to send a letter to County turning back the balance of the \$2.6 million for the road because it is detrimental with an increase in traffic to Wind Gap and switch the project to the other side of North Broadway (west side). If County will not approve the project on the west side of North Broadway, then Borough

Council will keep the money for the current project. Motion seconded by George Hinton". Kerry indicated that this motion was read to County Council, but he explained to them it was unofficial, it was written, but it had to be voted on and once approved then Kerry would sign it. Len added that there is another letter that went to President Gassler dated May 19, 2004, with the draft letter enclosed which had not been signed. The letter clearly says "the draft letter is enclosed, if it accurately represents the resolution of Borough Council please advise me and Louise can put it in final form or I will have my office put it in final form for your signature. Paragraph – If it does not accurately represent the resolution of Borough Council, please make the corrections that are necessary. Since the resolution forms part of the mid month regular meeting, I also recommend that Council approve the minutes prior to the signing and distribution of the letter". That was the end of this discussion.

Ron reviewed: no realignment, curbing – yes, landscape buffer – yes, PennDOT thickness – yes. Karen asked for sidewalk status? Ron replied that at the time, they would probably request a waiver. Karen expressed her concern that many people walk in the Borough and sidewalks should be installed so the problem that exists on Male Road is not repeated. Sidewalks: Tony – yes, Scott – no, George – yes, Mitch – yes, Kerry – yes, Karen – yes, Winton – yes.

**On motion** by Scott Parsons to adjourn the meeting of June 7, 2004 and seconded by Tony Curcio. Council agreed unanimously. The meeting of June 7, 2004 adjourned at 9:17 p.m.

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Louise Firestone, Secretary / Treasurer