

**BOROUGH OF WIND GAP  
29 MECHANIC STREET  
WIND GAP, PA 18091  
863-7288  
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The Council meeting of the Borough of Wind Gap on Monday, May 3, 2004, was called to order at 7:30 p.m. by Council President Kerry Gassler, at which time he reminded those present that the meeting was being recorded. In attendance were Councilpersons: Karen Skorochood, George Hinton, Jr., Scott Parsons, and Tony Curcio. Also in attendance were Borough Solicitor Leonard Zito, and Secretary/Treasurer Louise Firestone. Absent were Mayor Kenneth George, Councilmen Winton S. Male, Jr and Mitchell D. Mogilski, Sr.

*Councilman Mogilski arrived at 7:32 p.m.*

*Borough Engineer Ronald Madison arrived at 7:33 p.m.*

*Mayor Kenneth George arrived at 7:39 p.m.*

## **APPROVAL OF MINUTES**

**On motion** by Tony Curcio to approve the minutes of April 20, 2004 and seconded by Karen Skorochood. Roll call vote taken. Motion carried unanimously.

## **APPROVAL OF EXPENDITURES**

**On motion** by Scott Parsons to approve the April expenses in the amount of \$23,464.50 and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

*Councilman Mogilski arrives.*

## **Public Comment**

1. Renee Schinstine addressed Council regarding her property on Fairview and West Street. A swale was dug on her property and it denied access to her back property. The condemnation was granted for the swale to be dug.

*Borough Engineer Ronald Madison arrives.*

Since the swale has been put in the water runoff has been worse for her. She has documentation supporting the contacts she has made and the contacts her attorney has made. She went to the Zoning Officer and asked to put a bridge in, but he stated that it would be an accessory structure that has to be 25' off the main road, but the swale goes right up against the

road. She would be required to go through the Zoning Hearing Board to be granted a variance to construct the bridge. She asked Council for a waiver of a variance. If she were granted the waiver, she would put the bridge in at her own expense. She asked for fair compensation for the almost 20% of her property that was condemned. She complained that there is so much water being retained that a tree has fallen over on her property and the mowing tractor sinks into the ground. After reviewing Renee's paperwork, Len stated that a valuation was done by Mr. Turtzo and asked if she was satisfied? She stated that she was satisfied. Len stated that she is entitled to that compensation and a practical way to resolve this is to waive the fee for the zoning hearing board since she is prepared to rectify the problem at her expense. He suggested that the Borough re-confirm the appraisal of the property. Renee added that the swale is higher than her property. Ron replied that it is possible that the contractor built the swale too high. A new pipe would have to be equal to what is under Fairview Avenue, which is a 24" elliptical pipe. Renee would need to provide specifications for the work that will be done.

*Mayor Kenneth George arrives.*

**On motion** by Tony Curcio to waive the Zoning Hearing Board application fee and seconded by George Hinton. Roll call vote taken. Motion carried unanimously. It was clarified that the fee is being waived but an application must be obtained from the Zoning Office and submitted to the Zoning Hearing Board.

2. Richard Dentith. Richard apologized for his behavior at a previous Council meeting. He stated that past Council, the Borough Zoning Officer and Winton Male started this whole situation with Mr. Grefe and Mr. Nichols. Mr. Grefe built the patio first and then had Mr. Blick issue a permit two years after it was built. Richard produced a copy of the permit for the fence which is dated 7/13/02 expires 7/13/03 and he works on it constantly as we speak. He also had a copy of the patio permit which was issued 1/3/04 and expires 1/3/05. He asked that this Zoning Officer should be punished or fired for him trying to get Jeff out of this. Kerry stated that he would have to talk to John Blick about this complaint. Richard stated that this would not be swept under the rug.

3. Russell Dieter, Chairman Wind Gap Municipal Authority. Russ stated that he comes before Council seeking advice on how to handle the situation he had to deal with last Wednesday at their meeting. They had a former member there claiming that they were still on the board. He stated that he is not an attorney and the solicitor was not much help either. Once this is all settled, he stated that the Authority would have to go back to validate issues. They had seven in attendance, but one additional member participated via telephone during the Executive Session. Len stated that he received a phone call from Councilman Parsons about this issue and Len researched the law. Scott advised him that Mr. Parsons attended the Municipal Authority meeting and the Authority permitted Mr. Keenhold to sit on the board with a nameplate and to vote and make motions when he is not a member. Scott questioned the procedure, but received no answer from the members of the Authority. The Authority Solicitor stated that he had not been asked to look into the question and was apparently unsure what to do. Scott inquired what could legally be done as far as what rights members of Borough Council would

have against members of the Municipal Authority for not complying with the law. Council appointee, Linda Nittle, was present. Len added that he spoke to both Russ and Scott briefly prior to tonight's meeting. It is clear that Mr. Keenhold is not a member of the Municipal Authority. He attempted to have his term renewed by an acceleration in October several years ago. The law is clear that these appointments do not become ripe until the term expires. In Mr. Keenhold's particular case, if Council does not replace him, his term continues on a month-to-month basis until he is replaced. Mrs. Nittle has replaced him. The question is whether or not the Borough Authority is in control of its meetings. Len suggested in the first instance that the Authority be permitted to manage its own house and police its own proceedings. If Mr. Keenhold participated in any votes, which affected the public interest or the interest of the Borough, those actions, in Len's view are void. If the Authority and its Solicitor are unsuccessful in confirming the constitution of the board with the seven members, who were appointed by the governing body, then there are two procedures available to Borough Council. The first is a resolution to refer the matter to the District Attorney. There are proceedings where the District Attorney becomes involved when people assert themselves in public office or position. The Authority could either on its own accord contact the District Attorney or the Council by motion could contact the District Attorney to become involved in these proceedings. There is an ancillary proceeding where Borough Council can question the behavior of the Authority members that it appointed and whether or not they should be dismissed for cause. There is a procedure where their behavior can be called to the attention of the court and the court has the ability to remove any members of an appointed authority for cause. Len stated that the Municipal Authority should take control of this matter, respect the appointments made by the elected, governing body and move on. If there is a problem beyond that, there are remedies available to both bodies. Mr. Dieter is in control of the Municipal Authority and how the meetings are run.

Russ asked that since Mr. Keenhold's appointment was not ripe until the term expired does that also mean that Mr. Barto, Mr. Knitter and himself have been on a month-to-month basis because they were all appointed prior to the end of their term? Len replied that these appointments are not ripe until the term expires on December 31 of any given year. You would continue to serve on a month-to-month basis until Borough Council filled the seat. If there had been accelerated appointments of other members of the panel, they have not been called into question by Borough Council. Council could re-affirm those positions for the terms that they now hold or re-state them. The only action that was taken was with respect to the position of Mr. Keenhold. Len to look into this and consult with the Authority Solicitor. Len will provide Council with a memo regarding this issue.

Paul Levits asked about appointments prior to December 31<sup>st</sup>, if that is challenged between now and the next meeting, what should they do? Len replied that the Municipal Authority constitutes seven members, those people are validly seated as members until otherwise notified by Borough Council.

## **Solicitor's Report**

Len Zito reported that he has provided a summary of active litigation, which was requested by the Borough Auditor. Len addressed the memo he received from John Blick regarding property owned by J. H. Beers. He stated that this is clearly a subdivision matter because old subdivision

plans, which are never completed, but exist of record, have a sunset on them. John Blick should refer this matter as a subdivision land development application to the Planning Commission.

## Engineer's Report

Ron Madison reported that he received a letter today from Jim Preston with a revised Towns at the Gap concept plan. Hanover will provide a review for the next meeting.

A draft of the proposed SALDO plan will be provided for all planners to review publicly.

## NEW BUSINESS

1. Kerry Gassler Land Development Plan. Council President, Kerry Gassler, handed the gavel over to Vice President, George Hinton, for this item of business.

**On motion** by Scott Parsons to accept the Land Development plan and seconded by Karen Skorochood. Discussion regarding the waiver requirement of showing all man-made and natural features within 400 feet of the boundaries of the property. Ron informed Council that this requirement typically is more practical in townships as opposed to boroughs. Since Hanover is not the engineer reviewing this plan, Ron stated that he has no opinion on this matter. Kerry stated that it is common that most developers submitting plans in the borough ask for this waiver. Roll call vote taken. In favor: M. Mogilski, S. Parsons, K. Skorochood, T. Curcio, G. Hinton. Abstained: K. Gassler.

Council President, Kerry Gassler, resumed control of the gavel.

2. Part-time street employee, Randy Bogart. Randy has been here one year and is up for an increase in pay. Randy is currently compensated at \$8.50 an hour.

**On motion** by George Hinton to increase his rate by \$.50 and seconded by Tony Curcio. Motion carried unanimously.

## OLD BUSINESS

1. Third Street Traffic Light Project. Ron referenced his letter dated April 30, 2004 that includes a total of five options.

Option 1 – Four-way traffic signalization of S. Broadway/Third Street. No physical improvements to the intersection would be provided and only a traffic signal permit would be required.

The preliminary estimated signal construction cost - \$90,000

Option 2 – In addition to Option 1, this would include removal of existing curb and sidewalk and replace with a wider 25' radius curb line on the southeast corner of the intersection. Option 2 would require a separate highway occupancy permit.

The preliminary estimated curb radius construction cost - \$7,000

Option 3 – In addition to Option 1 and 2, this would include the relocation of a Med-Ed utility pole and similar improvements to the northeast corner of the intersection as Option 2.

Preliminary estimated utility pole relocation cost (if expenses) - \$5,000

Preliminary estimated curb radius construction cost - \$8,000

Option 4 – In addition to Option 1, 2, and 3, this option would include the removal of existing storm drainage pipe and the installation of two type C inlets and piping for one open trench crossing Route 512.

Preliminary estimated drainage construction cost - \$19,000

Option 5 – In addition to Options 1, 2, 3 and 4, this option would include the replacement of existing curb along the north and south side of East Third Street to and including the first alley.

Preliminary estimated extended curb construction cost - \$13,000.

Option 1 Traffic Signal - \$ 90,000

Option 2 thru 5 - \$ 52,000

Total - \$142,000

Ron stated that due to the possible complicated nature of these traffic signals and HOP permits, this project would not be put out to bid until PennDOT issues the permits. However, the goal for this project to be completed prior to September 1, 2004 and the start of school is still anticipated. Discussion regarding the availability of funds for options other than option 1, installation of the light. George expressed concern because the original estimate for the traffic signal approved by previous Council was \$75,000 not \$90,000.

**On motion** by Tony Curcio to proceed with Option 1 for \$90,000 and seconded by Karen Skorochod. Roll call vote taken. Motion carried unanimously.

Ron stated that Hanover would design Option 1 and set the standards back so that if the curbs come later they will not have to move them.

2. Woodward / Lehigh Street Storm Drainage Project. Ron reported that he spoke to Bernie Corbett, PennDOT, and Bernie indicated that through the Agility Program they could supply materials. They would supply one precast type C inlet box, one precast type M inlet box, 118' of 12" RCP pipe. Hanover will develop a bid specification, which includes: all required labor, traffic control, excavating, flowable fill backfill, curb replacement and pavement restoration. Based upon the assistance of PennDOT, this project will not have to be bid as a State Prevailing Wage Contract. Hanover will advertise this bid package with a bid opening set for Tuesday, June 1, 2004 so that a report can be provided to Council and the contract awarded

at the Council meeting on Monday, June 7, 2004.

3. Third Street Drainage Project. Ron reported that PennDOT would not be able to assist with funding for the drainage project on Third Street. Hanover will develop the bid specifications as a standard municipal project based upon a State Prevailing Wage Contract. Hanover will try to advertise the bid package for bid opening set for Tuesday, June 1, 2004 so that a report can be provided to Council and the contract awarded at the Council meeting on Monday, June 7, 2004. The removal of the tree, stump, all the roots and restoration must be completed prior to the work being done. George reported that he has been working with Vic to have the tree removed. Vic stated he found someone to take down the tree for \$600. Mitch asked how long Council had to provide to have the tree removed. Len replied that Council is bound by some length of reasonableness. Ron stated that he would include the tree removal in the project as a separate line item and the curb and sidewalk around it will be a separate line item. George suggested giving him notice. Kerry stated that he would talk to him. Len suggested sending him a letter. Ron said that at this point in time, he would just have the successful contractor remove the tree and stump and tell him that he will be getting a bill. Len added that Vic could remove the tree in accordance with how the engineer determines it should be removed. Kerry said it would be easier to take the tree down with the stump in one piece because some of the roots will probably go across Third Street. Consensus was to leave the tree removal in the bid specs and if it is removed prior to the project that line item can be pulled out.

**On motion** by George Hinton to put the Third Street Drainage project out to bid and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

**On motion** by George Hinton to put the Woodward and Lehigh project out to bid and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

Kerry referenced a letter received from Hanover Engineering dated March 17, 2004 stating that the cost would cost \$4,000. Ron replied that the scope of the project has changed. Tony asked if Ron could re-quote for the next meeting. Ron replied that he would have that information for the workshop.

4. Park Restroom. Ron reported that the contract called for Metcraft because that is what was in the Modern precast specifications. Hanover was instructed to do whatever Modern has in their precast building for the specs. In reviewing the Acorn facilities for specifications, they met exactly what Metcraft was. Ron received price quotes for Acorn per fixture is \$900 to \$1,100 and Metcraft was around \$650. Both manufacturers recommended a proper cleaning solution. They will be providing a free sample of cleanser. George asked who accepted the bathroom as is? Ron replied Hanover accepted the restroom as is. They did not realize at the time that the fixtures were different from what was called out on the spec sheet. George added that the Acorn fixtures are tarnished. Council hired a plumber to fix the problem and it was discovered that the fixtures were not what they were suppose to be – Metcraft. Metcraft should be put in at someone's expense, other than the taxpayers of the Borough. Ron said that the contract states Metcraft or equal. Hanover reviewed the specs and they would have had to approve Acorn if they had submitted Acorn on the shop drawings. Two out of four don't work right now, but they only have a one-year warranty. One option is to replace that are malfunctioning with Acorn and

deduct it out of the retainage. Ron confirmed that Grace Industries and A to Z are suing each other. Grace has not paid A to Z a dime, A to Z never met their contractual obligation.

**On motion** by George Hinton to order all new Metcraft fixtures and seconded by Karen Skorochood. Roll call vote taken. Motion carried unanimously. Ron to forward quote to the Borough. It may take 4 to 6 weeks for the fixtures to be delivered. The Borough's plumber will install the fixtures.

5. Liability Insurance. The Street committee would like to utilize volunteers from the Easton Prison to start down by Arby's and clean out the streambeds. Because they are volunteers, additional liability insurance will need to be purchased at a cost approximately \$350 to \$400 a year. The Borough will rent a vehicle to transport the volunteers. Ron suggested notifying the private property owners along the waterways. All the work will be done by hand tools not power tools.

**On motion** by Scott Parsons to purchase the liability insurance and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

Ron added that in relation to the MS4 permitting, similar to adopt a highway, the DEP is looking at adopt a stream corridor. George to ask John to make a report on the cleanup so that it can be included in the annual DEP report.

6. County Bond – Approval of Invoices. Pidcock Company submitted a bill for engineering in the amount of \$98,351 which includes overtime of \$1,450.

On motion by Tony Curcio to approve payment in the amount of \$96,901 and seconded by George Hinton. Roll call vote taken. In favor: S. Parsons, K. Skorochood, T. Curcio, K. Gassler, G. Hinton. Opposed: M. Mogilski. Motion carried with a vote of 5-1.

7. Ambulance Lease. Kerry reported that the lease has been reviewed and signed by the ambulance board. Two changes have been made to the lease, page two delete the last two sentences under Section 1 "Lessor will retain the right to use two of the bays in the garage premises, if required, at any time for Lessor's purposes. If the Lessor elects to use a part of the premises there shall be no abatement of the rent." The ambulance board asked that this be taken out because they cannot have a tar buggy parked in the bays. Mitch agreed when this was discussed by the committees. Kerry's name replaced Winton Male's name on the signature page.

**On motion** by Mitchell D. Mogilski Sr. to approve the lease with the two changes and seconded by Tony Curcio. Roll call vote taken. In favor: K. Skorochood, T. Curcio, K. Gassler, G. Hinton, M. Mogilski. Opposed: S. Parsons. Motion carried with a vote of 5-1.

Scott asked if the Ambulance Corps is for profit or non-profit? Karen replied non-profit. Kerry added that the Ambulance Corps pays all their bills to maintain the Corps. Scott asked where the \$244 a month for rent came from? Mitch replied that originally the rent was a graduated amount and the committee came with this figure to compensate for the building at a little over \$73,000. Scott stated that the rent would be \$244 for 25 years.

8. Scott added that after hearing from Russell Dieter and after discussing with Mr. Zito, Scott is recommending leaving this go for another month. Council will see what the Municipal

Authority does and if necessary, Council can always go back and revisit this issue.

**On motion** by to Scott Parsons adjourn the meeting of May 3, 2004 and seconded by Tony Curcio. Council agreed unanimously. The meeting of May 3, 2004 adjourned at 9:09 p.m.

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Louise Firestone, Secretary / Treasurer