

**BOROUGH OF WIND GAP  
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The Special Council meeting of the Borough of Wind Gap on Thursday, October 6, 2005, 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: George Hinton, Scott Parsons and Tony Curcio. Also in attendance were Borough Solicitor Ronold Karasek and Secretary/Treasurer Louise Firestone. Absent were Mayor Kenneth George, Councilmen Winton Male, Jr. and Mitchell D. Mogilski, Sr. and Councilwoman Karen Skorochood.

**PUBLIC COMMENT**

1. Jamie Hailstone, representing the Slate Belt Concerned Citizens. Mr. Hailstone stated that if there is a vote on the question of the Bond Issue it is an illegal vote. He added that not only would Council be voting illegally, but also they would be opening the Borough and themselves up to possible Civil Rights violations. He distributed a copy of the statute, which controls in cases such as this. The facts are the Mayor, Kenneth George, did not vote on a tie vote at the last meeting. In that case as stated in Section 46003 of the Municipal Code, Council members must have a meeting at least five days afterwards; no less than ten days and the Mayor gets five days notice. He stated that none of that has been done in this case. It is not an official meeting, you can do any other business, but you cannot vote on that issue. He added that the Borough Solicitor, Mr. Karasek, has withdrawn from any discussion regarding NAPER Development because of his relationship with them. If he has advised you on this issue, it should be that Borough Council should seek different Counsel because he cannot advise you because of the conflict. He read Section 46003 "If such a tie or split vote shall occur at any meeting when the mayor is not in attendance the matter shall be tabled to a special meeting to be held within not less than five days or more than ten days as set by the president of council, and the mayor shall be given at least five days' notice of such meeting, at which meeting it shall be the duty of the mayor to cast the tie-breaking vote". He stated that the tape from Monday night's meeting clearly shows that this body knew of this law, understood this law and originally chose to follow it and then decided at the last minute to fly in the face of it. That is further proof of intent on the part of Council to subvert the law, which is one of the things that would come up in a Civil Rights action.

Ron Karasek informed Council that it appears to him that tonight's meeting could not be a tie-breaking vote meeting because it was not held in the less five day and not more than the ten day window. If Council wishes to have the tie-breaking vote it would have to be at another meeting and the Mayor must be given five-day notice. Ron explained that he is not sure that the motion made will get the Borough citizens where they want to be regarding the Bond Issue. There are a

number of legal issues with respect to that issue. The Resolution that adopted the Bond Money was a formal Resolution 2000-9 of the Borough. He was not sure if Council could amend a resolution by just a motion made at a meeting. Secondly, it is of a legislative character as opposed to an administrative act so it may need to be advertised. The third issue is there are other municipalities and municipal entities that are part of the project who may object to Wind Gap now changing their mind about the use of the money and they have relied upon it for that particular project. He does not know if having that motion either approved or not approved by the Mayor does what the intent of the motion is.

Ron also re-iterated that he although he does not believe that no conflict exists, he feels that because a perception of a conflict or that there is an appearance of a conflict it undermines the confidence of the public in its government, it undermines the legal profession and what needs to be done with respect to legal matters. The first order of business should be this evening should be to appoint a special Solicitor to handle this particular project so that the work done by Ron can be turned over to this Solicitor to be independently reviewed and analyzed and then that Solicitor can advise Council with respect to these issues.

Kerry explained that Council was given three options during the Executive Session held prior to the meeting on Monday, October 3, 2005. Two of the three Solicitors responded back to Mr. Karasek. Attorney Mark Minotti is the Borough's alternate Solicitor to the Wind Gap Zoning Hearing Board. He and his dad are Solicitors to Wilson Borough. They have done a significant amount of municipal land use work. The other is Karl Longenbach who has been in practice for 28 years; he is a former Solicitor to the Northampton County Council so he is aware of that body of law in that area. He and Mr. Minotti are both out of the area and do not have any allegiance with anyone one way or another. The other was Attorney Danser from Easton, Solicitor Lower Mount Bethel. Ron stated that Council does not have to pick any of the individuals he mentioned, but he did not want Council to be left without any names to work with on this topic. Kerry asked Council if they had a Solicitor that they would like to suggest.

**On motion** by George Hinton to contact Attorney Karl Longenbach to appoint him as special Solicitor for this project and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously. Ron will contact Attorney Longenbach and meet with him to transfer the file. He asked Borough Council to notify him what meetings Council would be discussing the Bond Issue so that he could make arrangements to have Attorney Longenbach present.

## **NEW BUSINESS**

1. George Hinton reported on the Giant Food Store Expansion Project. George and the Borough Engineer, Hanover Engineering are looking into specifics related to the drawings for this project. George stated that allegedly the Borough approved a set of plans through Hanover Engineering, which were submitted and recorded. Somewhere along the line, Giant changed their project after Base Engineering went in to do their inspection then the drawings changed and Base Engineering sealed a set of drawings. Kerry asked if that was the approved Land Development Plan approved by the Borough? They re-modified a land development plan as an Inspecting Agency. Kerry stated that he was not sure if they could do that. George added that the contractor on the job is following those plans and that is where some of these changes are coming into play. They have an approved set of plans that they are working off. They are

supposed to be providing Hanover Engineering with a copy of these drawings so Hanover can see what the changes were made. George asked specifically about the 12' garage door behind the building and that was not on the original set of drawings. Ron asked for clarification. The change was made by Giant and then approved by Base Engineering, a third party inspector for the Borough, without the approval of the Borough's engineer. Ron stated that all changes have to come before the Borough and the engineer has the opportunity to decide if the change is minor or affects the status of the project.

2. George Hinton reported on the CVS Pharmacy project. He met with Rettew Engineering to discuss the concerns about the wall. The north side of property currently has a six-foot wall. A railing will now be installed on that wall. The south side has a four and a half foot wall. They are going to install guardrail with the cylinders already in place to pour the concrete. Kerry asked if they changed their plan also? There are sidewalks in front along 512, but there are no sidewalks turning into the CVS. Anyone walking to the CVS will turn in and then have to walk in the driveway. George explained that the developer asked for a special exception when the plan was before Council for approval. They had a slope of less than 30" should there be a hand railing or not. Council decided that based on a 30" slope a railing would not be necessary. However, when they started construction they put in a decorative block wall and that ended up at about seven feet, but when the paving is complete it will be about six feet of wall. They tore up the neighbor's sidewalks; they noted that the driveway and apron has to be repaired.

## OLD BUSINESS

1. Park Paving Project. Ron Karasek reported that he sent correspondence to Council suggested that the change is significant and advised Council with that big of a change the project should be re-bid. The theory is that another bid could have said if I had known that they would or would not have been part of the bid specs, I could have bid on this job. Kerry reported that Rettew sent correspondence stating that they feel it does not have to be re-bid. Ron informed Council that his job is not to decide policy, but to discuss legal issues with Council.

**On motion** by George Hinton to reject all bids and seconded by Scott Parsons. Roll call vote taken. Motion carried unanimously.

**On motion** by Scott Parsons to allow the Wind Gap Park Board to re-bid the paving project in January 2006 and save the tipping funds for this project and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

2. Stormwater Issues – North Broadway. Kerry reported that he spoke to Bob Collura regarding easements related to the Stormwater project done in the 1980's. Bob stated that there were no easements done at that time. Ron suggested that as a courtesy, Council should approach the property owners and explain the situation. George stated that the Borough installed pipes and over the years the seams have settled. Bob Collura was the engineer for the Borough at the time, and Kerry provided a copy of the plan to Hanover Engineering. Ron suggested that he prepare a formal easement agreement, with the map attached to it and then

have it signed. The project would include either five or six properties. Ron suggested that still as a courtesy, Council notify the property owners that paperwork will be forthcoming regarding the repair of the pipe.

**On motion** by George Hinton to have the Borough Solicitor draw up easement agreements to be signed by the property owners and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

Ron to follow up with Bob Collura to obtain a copy of the original plan. Millie will provide Mr. Karasek with the tax map numbers for the properties in question.

3. Bill Anskis Company. Kerry stated that the other matter discussed in the Executive Session on Monday, October 3, 2005 was an offer by Anskis to settle the final payment on the Third Street drainage project. The final bill due to Anskis was \$23,119.70, but the Borough believed that Anskis was responsible for the re-bid expenses in the amount of \$2,332.35. Anskis offered to pay \$1,500 toward the re-bid expenses incurred by the Borough for a final settlement amount of \$21,619.70.

**On motion** by Scott Parsons to pay the Bill Anskis Company in the amount of \$21,619.70 and seconded by George Hinton. Roll call vote taken. Motion carried unanimously.

4. George Hinton reported that he spoke to the Chief regarding running the scales for the trucks. The Chief contacted Bushkill Township to discuss the availability of the scales and officers to perform the inspections. George informed Council that there is the possibility it could put the Police over-budget for the year. Kerry stated that since this was an issue discussed at the meeting on Monday and the public wants the Borough to crack down on the laws then the Borough should take that chance.

**On motion** by George Hinton to partner with Bushkill Township to conduct truck stops using the scales and seconded by Scott Parsons. Roll call vote taken. Motion carried unanimously.

Ron Karasek asked if a formal agreement between Wind Gap and Bushkill Township exists? He will check the files.

**On motion** by Tony Curcio to adjourn the meeting of October 6, 2005 and seconded by Scott Parsons. The meeting of October 6, 2005 adjourned at 8:05 p.m.

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Louise Firestone, Secretary / Treasurer