

**BOROUGH OF WIND GAP
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The Council meeting of the Borough of Wind Gap on Tuesday, September 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: Winton Male, Jr., Karen Skorochood, Mitchell D. Mogilski, Sr., George Hinton, Scott Parsons and Tony Curcio. Also in attendance were Mayor Kenneth George, Borough Solicitor, Ronold Karasek, Borough Engineer, Ronald Madison and Secretary/Treasurer Louise Firestone.

PUBLIC COMMENT

1. Vickie Allen. Vickie stated that she is opposed to the Wal-Mart and the Industrial Drive project. She understands that they are two separate issues, but they will not resolve the traffic issues in the Borough. She believes that the developer should be responsible for building the road and if it to keep the garbage trucks of the road, then Waste Management should pay for the road. This project has been changed from an Industrial center to a Retail center. County Council will ask the Borough officials if they still want the resident's tax dollars to be spent for this road. It is not too late for Borough Council to change their minds and admit that this is wrong for Wind Gap. She added that she does not have a good feeling about the intended interchange that might or might not happen. She stated that the Borough Council members were elected by the people to make the right choices for the residents of Wind Gap and Council members should honor that commitment and give back this waste of tax dollars.

APPROVAL OF EXPENDITURES

On motion by Tony Curcio to approve the expenses for August 2005 in the amount of \$23,874.63 and seconded by Winton Male, Jr. Roll call vote taken. Motion carried unanimously.

On motion by Winton Male, Jr. to approve a past due Hanover Engineering invoice for the Third Street Park Drainage Project in the amount of \$11,368.92 and seconded by George Hinton. Roll call vote taken. Motion carried unanimously.

On motion by Karen Skorochood to transfer funds from the Capital Reserve account in the amount of \$4,756.87 for the Master Plan in the Park and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

APPROVAL OF MINUTES

On motion by Scott Parsons to approve the minutes of the July 5, 2005 meeting and seconded by Tony Curcio. Roll call vote taken. In favor: W. Male, S. Parsons, T. Curcio, K.

Gassler, G. Hinton. Abstained: M. Mogilski, K. Skorochood. Motion carried with a vote of 5-0-2.

On motion by Mitchell D. Mogilski, Sr. to approve the minutes of the August 1, 2005 meeting and seconded by Tony Curcio. Roll call vote taken. In favor: M. Mogilski, S. Parsons, T. Curcio, K. Gassler, W. Male. Abstained: K. Skorochood, G. Hinton. Motion carried with a vote of 5-0-2.

Solicitor's Report

Ron Karasek reported that Ordinance 447 has been advertised and is ready for enactment. Ordinance 447 pertains to the Borough of Wind Gap standardizing and making uniform installation and operation of traffic control signalization (and related equipment and accouterment(s) within the Borough.

On motion by Winton Male, Jr. to adopt Ordinance 447 and seconded by Scott Parsons. Roll call vote taken. Motion carried unanimously.

Ron reported that he received a response correspondence from Penguin Industries parent of Protector Plastics at 403 Lehigh Avenue, related to a tree nuisance. Ron suggested that the Borough postpone further pursuit until re-contacted by Penguin because they are in the process of contacting tree removal companies along with contacting a surveyor to rectify a property line issue. Ron will update Council when necessary regarding this matter. He suggested that Council review the Nuisance Ordinance passed in 1893 and might update this ordinance.

Ron reported that at this point, he has nothing further regarding the Roberti property and no further action should be necessary.

The Bill Anskis Company matter, as previously discussed and at Ron's suggestion, was to wait for the re-bid invoice to be paid. If Anskis makes a claim for payment then the Borough could make a counterclaim for monies that they owe the Borough. This way no more money, time and effort will be spent on lawyer's fees.

Ron met with Ron Madison to discuss the Slate Belt Industrial project and the roadway project and he sent correspondence to all Counsel and parties involved explaining what he believes what Wind Gap needs to move the project forward. They talked about East West Street and the Perin property issue and Manor Haven and the cell tower issue.

Ron will represent the interest of the Borough at the Zoning Hearing Board regarding Mr. DeCesare and his matter. He met with the Zoning Officer to review the matter. The issue is simply that the Zoning Officer has requested an application for a permit be filed and once that has been filed, she will review the request. He does not believe that what she is asking is an unreasonable request.

This past month he prepared and filed a brief in the Schinstine condemnation case. The Borough is now waiting for Northampton County Court do decide whether or not Ms. Schinstine is entitled to a view for a second taking.

Ron stated that at last month's meeting, he was directed to prepare a stop sign

ordinance for a stop sign at the intersection of Fairview and Center. Ron referenced Ron Madison's correspondence stating that before that can be done, a traffic and engineering study needs to be done. At this point, he did not believe that Council had authorized a study to be completed for the intersection of Fairview and Center Streets.

Engineer's Report

Ron Madison referenced his correspondence dated August 9, 2005 regarding the proposed stop sign at the intersection of Fairview and Center. He said that Hanover Engineering does not recommend a stop sign be placed on Center Street, but if Council wishes they will do a stop sign warrant study. Discussion regarding the stop sign not being an additional stop sign, but be moved from Fairview to Center to stop the Center Street traffic. Ron feels that if a study is done, it will only show the inevitable conclusion that the intersection does not warrant another stop sign. Ron Karasek explained that according to the Motor Vehicle Code, a study must be done with regard to anything the Borough does with respect to speed limits, weight limits, stop signs, etc. and an ordinance enacted whether the road is a state road or not. The study would consist of a twelve-hour traffic count and typically when motorists have to stop too often, they speed up to make up for lost time. The Mayor suggested that a solution might be to monitor the speed. Mitch asked if lines could be painted so that the speed limit can be enforced. George agreed to have the lines painted. Council decided at this point, not to pursue a traffic study to move the stop signs.

Ron reported the other item is the cell tower on North Broadway. Hanover has correspondence with Len Zito and then Ron Karasek regarding the cell tower being located in error. Ron asked for permission to pursue this matter further with the Solicitor. Previous Borough Solicitor, Len Zito thought that he might be able to have an agreement with Counsel for PPL to have the tower moved at no cost to the Borough, if and when it needed to be moved for a road. Unfortunately, Counsel for PPL has changed and the new Solicitor is not as co-operative. PPL's surveyor has reviewed Hanover's information and stated that he agrees that PPL may be in error. Winton asked if the Borough has any recourse because they built it on the wrong property? Ron Karasek believes that the Borough has a lot of recourse if Council decides to pursue it. He suggested that Council not sit on this and move forward. Kerry asked if the permit could be revoked? Ron Madison replied that if continued research confirms what they suspect then that may one option brought before Council to move forward on this issue.

On motion by Tony Curcio to allow the Borough Engineer and the Borough Solicitor to work further on the cell tower issue and seconded by Mitchell D. Mogilski, Sr. Roll call vote taken. Motion carried unanimously.

Ron reported that he met with Ron Karasek, Kerry and George to discuss the Slate Belt Industrial Center project and he did pursue the matter again after the meeting with Pidcock Company. Today at the end of the day, he received a fax that is an Engineer's estimate. It is not sealed, but has all the values, which have not been reviewed, but it is a breakdown between Plainfield and Wind Gap and not necessarily Wind Gap Municipal Authority, the Pen Argyl Sewer Authority or PennDOT improvements. The Borough does not have the exact figure of monies available from the County, but it will be reviewed. Ron will continue to work on this so that the

project can be put out to bid as quickly as possible.

Ron provided Council with correspondence, but no action has to be taken tonight. There are some settlement issues in the backyards on North Broadway. Ron stated that the area was identified in the Hanover Engineering Stormwater Study of 1998 as a problem area. The original goal of the study was to work from the bottom of the Borough up and with additional available funds, the Borough would continue to do Stormwater projects. The Slate Belt Industrial Project and the Towns at the Gap project, there are some issues there that Council should be aware. He asked Council to give some direction after discussions at their workshop meeting.

Neil Roberti contacted Hanover Engineering requesting a building permit for auto sales across the street from his garage. He would like to use a portable toilet for sanitary facilities for the one-year temporary building permit. He went to the Wind Gap Municipal Authority they did not have a problem with it, but it would be a Sewage Enforcement Officer. Ron passed the information along to Scott Brown, the Borough's Sewage Enforcement Officer, and Scott sent a letter to Neil Roberti stating that the regulation do not allow portable toilets to be used for anything but temporary construction or public gathering events such as the Firemen's Picnic. Ron also copies the Zoning Officer on this correspondence.

NEW BUSINESS

1. Approval County Bond Issue Invoices. Tony reported that there are six invoices outstanding.

Summit Environmental Study	\$1,200.00
Keystone engineering May 9 – June 24	\$457.00
Pidcock services May 17 – June 15	\$26,735.25
Reimbursement of Pidcock expenses	\$2,029.88
Hanover Engineering May 28 – July 1	\$918.74
Hanover Engineering July 2 – August 29	\$470.95

On motion by Tony Curcio to approve payment in the amount of \$31,811.82 from the County Bond and seconded by Scott Parsons.

Mitch asked if the County is paying these bills? Ron Angle stated that the Borough is over the dollar amount. This money will be used up and ground will never be broken. They are way over on the engineering. The County has taken the position that the Borough is over budget and the Borough should check with the County to see if these bills will be paid. It is his belief that the County will not pay anymore engineering bills because it is over budget. Kerry replied that during a committee meeting with the County, John Kingsley, stated that the project engineering was already over budget, but the County continued to pay the bills. Mitch asked that this be held off because the Borough will not get the money back. Kerry stated that the Borough does not pay, but approves the invoices for payment from the County Bond funds. Roll call vote taken. In favor: T. Curcio, K. Gassler, G. Hinton, W. Male, S. Parsons. Opposed: M. Mogilski, K. Skorochood. Motion carried with a vote of 5-2.

2. Park Parking Lot Paving Project. Kerry reported that two bids came in for this project. The lowest was \$53,055.00. The Park board only has \$32,000.00 to pay for this project. The other bid was \$62,876.00. Scott stated that the Park Board was looking to take some of the

items out of the bid. Scott told them that they have to be careful in regard to how much they take out of the bid and still expect the contractor to do the job. Ron Madison stated that he was not aware of the terms of Rettew's bid specification, but Hanover's standard language, the project cannot be more than a 25% increase or decrease without having to reject all bids. Kerry asked if there is a timeline on when the bid has to be accepted or rejected? Ron stated that Hanover's specs call for the bidders holding their price for 60 days. Scott suggested that this issue be tabled until the next meeting. Their next meeting is scheduled for Tuesday, September 20, 2005. Kerry to contact Rettew tomorrow to find out answers to the Park Board and Council's questions.

3. Vehicle Damage Estimate – Repair Approval. George reported that vehicle was traveling on Lehigh Avenue while the Street department was mowing the grass at the Park. A rock flew out from the mower and skipped across the hood of vehicle causing a dent and scratches on the hood. George instructed the woman to obtain an estimate for repairs, which she did. The estimate was \$487.00.

On motion by Mitchell D. Mogilski, Sr. to approve the repair cost to the vehicle and seconded by George Hinton. Roll call vote taken. Motion carried unanimously.

4. Christmas Tree Lighting Ceremony. Mayor George reported that every year the lighting ceremony is held up at the Legion. In the past, Waste Management has been kind enough to donate the money for the tent rental of \$1,400. Harry Smith from Waste Management informed the Tree Lighting Committee that they would only be able to provide \$1,000. Mayor George asked Council if they would like to donate \$400 for the remainder of the rental? George Hinton stated that Cozy Barn, Hinton and Sons would donate the \$400. Mayor George thanked him on behalf of the committee.

OLD BUSINESS

1. Lease Between Borough of Wind Gap and Northampton County. The original agreement called for the County to notify the Borough via certified mail of their intent to end the lease agreement. The County sent correspondence dated August 3, 2005 to Mr. Karasek's office notifying Council of their intent. Kerry stated that the Borough would probably have no grounds not to accept and fight the notification.

On motion by Scott Parsons to accept the County's notification that they will vacate by the end of October and make final lease payment for the month of October and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

2. Ordinance 425 – Snow Emergency Ordinance. Mitch gave Council a copy of his suggestions regarding Broadway and Lehigh Snow Emergency routes. He pointed out on pages 7 and 8. Mitch stated that according to the ordinance, "all vehicles parked on streets running generally eastwardly or westwardly shall be removed within twenty-four (24) hours after the issuance of the Official Snow Removal Alert and no parking may be permitted on these streets until such time as plowing, salting and/or cindering has been completed". Kerry asked that this be topic be placed on the workshop agenda.

3. Street Lighting Update. Mitch reported that he contacted Met-Ed regarding their agreement to update street lighting in the Borough between March and August. Met-Ed stated that with all the flooding in Easton this past year, they are now shooting for October.

4. Winton Male stated that in the past whenever the Borough's Zoning Officer needed extra time he went ahead and scheduled more time. He stated that he would like Deborah to learn and understand the ACT Database and how to make entries into the system if needed, but that will take time above and beyond her normal three hours on Saturday. Kerry asked if there is money in the budget to pay for extra hours? The Interim Zoning fees were applied to the Zoning budget, which is already over budget. A reasonable estimate may be five or ten hours. Ron Karasek suggested that Council give Mr. Male a range, no more than so many hours.

On motion by Winton Male to allow up to twenty (20) additional hours be used for training of the Zoning Officer and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

5. Winton Male asked Council to think about alternate ways to handle the traffic. He suggested that an alternate way would be to educate residents to take a right at the light on Third Street and then a left onto Lehigh Avenue or going out further to Longcore. The other consideration would be on Constitution Avenue for the people coming from the south. The State has employees who could help the Borough regarding the traffic situation. Ron Angle stated that since Council has learned more about the Wal-Mart and Lowe's project, County Council wanted him to come to the Borough to find out if Wind Gap is thinking any different than they have in the past? He stated that he just arrived from the Pen Argyl meeting and the majority of them sitting there are not in favor of this project, but only in favor of the original project. Ron suggested that the Borough needs the third interchange. If County Council would be agreeable to transfer the money over to the interchange, would Borough Council be willing to do it? Mitch stated that this Council voted 4-3 in May 2004 to ask County Council to move the project from the east side of Broadway to the west side of Broadway and County Council answered no, because the money had to be spent by December 31, 2004. Ron stated that is not what happened. Ron told Council that he would do everything in his power and how it would be worded is the Borough would relinquish that side only if the Borough gets this side. He promised that he would go to bat for the Borough if they vote united tonight 7-0 and it is his opinion that he would get it. He promised that the bills approved tonight will not get paid because it is not right for the taxpayers to continue to pay for the engineering. Kerry asked if Pen Argyl Borough did that by motion? Ron replied that they barely had a quorum, but he did ask them and those who spoke stated that they are not in favor of Lowe's and Wal-mart and they only agreed to the Industrial project. George asked that the Solicitor be called upon to answer the following question: If a piece of property is zoned commercial retail, and someone wants to build retail there, we as a Borough and it was up to the Borough of Wind Gap, we voted against it (that is what Plainfield will have to do) does the Developer takes them to court because it was zoned that way, what is the possibility of the judge (or whoever decides in these matters) be in favor of the Developer or the people? Ron Karasek stated that in answering in an abstract fashion, if that person meets the ordinances in effect in order to build the project, the Borough must grant approval. The Borough cannot say that they do not want that project. As long as the Developer meets all Borough

ordinances and statutes and PennDOT regulations, then in his opinion the Borough loses in court. Ron Angle said that the Borough could say that they must make the following improvements before a building permit is issued. Ron Karasek said that there could be a spin to that, so yes and no. George insisted that the Council has to work for a true by-pass around Wind Gap because in twelve years, then the people in Wind Gap get choked with the traffic. Ron Angle stated that the Borough should have asked for more at the time to go toward a by-pass and the Borough should have gone to Waste Management, Mr. Perin, and National Realty, which will help them. George asked if legally could that money be moved? Ron Angle replied that it has been done with other projects and yes legally it can be done. Ron Karasek stated he is not familiar enough with that Bond Issue to be able to answer that, and he would have to meet with Bond Council to discuss it. Ron Angle stated that it says, if any project at any time, is deemed impractical or unfeasible, Council has the exclusive right to abandon and re-assign the money. George reported that Techno-Bloc was just before the Plainfield Township Planning Commission requesting a plan that would double the size of their building. The water trucks run 24 hours a day, seven days a week. The Borough cannot lose sight of the traffic problem and work toward a solution. A full interchange would cost \$15,000,000 to \$20,000,000. Winton added that it was recognized many years ago that a by-pass was necessary, but nothing was done. Even if the road is not built, and even if the retail center is not built, Wind Gap Borough will still have a traffic problem because there is a problem. Wind Gap, Pen Argyl, and Bangor will not stay the same and Council has to look toward the future and a solution to the traffic problem. If the money is pulled from Nolan, there is no definition for unfeasible, and he will sue the County. Kerry stated that when the bond money first came out it was to create jobs, but if the Borough goes from 33 to North Broadway there is nothing currently there to create a job except with this road in. Ron Angle stated that it is the road into the property.

Council decided to have Ron Karasek to review the original agreement with the three municipalities and N.A.P.E.R. Development and if the Borough can get out of the original agreement.

On motion by Winton Male, Jr. to adjourn the meeting of September 6, 2005 and seconded by Tony Curcio. The meeting of September 6, 2005 adjourned at 8:44 p.m.

Louise Firestone, Secretary / Treasurer