

**BOROUGH OF WIND GAP  
29 MECHANIC STREET  
WIND GAP, PA 18091  
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The Council meeting of the Borough of Wind Gap on Monday, July 10, 2006, was called to order at 7:30 p.m. by Kerry Gassler at which time he reminded those present that the meeting was being recorded. In attendance were Councilpersons: Todd Beil, Scott Parsons, and Tony Curcio. Also in attendance were Mayor Mitchell D. Mogilski, Sr., Borough Solicitor Leonard Zito, Borough Engineer, Brian Pysher, and Borough Administrator Louise Firestone. Absent were: Councilwoman Karen Skorochoch and Councilmen Jon Faust and George Hinton.

## **PUBLIC COMMENT**

1. Richard Dentith, 204 East Third Street, Wind Gap. Mr. Dentith, who lives adjacent to the Borough Park, reported that last Thursday night a man relieved himself on Mr. Dentith's property. He reported that he has had five such similar incidents this year with the baseball teams. He stated that last year he called the Police on one of the coaches. He asked Council for advice on how to stop such behavior? He indicated that if Council does nothing, he would close the three openings in his front yard to prevent anyone from coming on his property and put the signs up again. Kerry will contact the Park Board and Tony Borger, Wind Gap Area Athletic Association, to discuss this problem with them. If necessary specific rules need to be set up or the threat that if it continues they would have to move their league elsewhere. Scott suggested getting in touch with the Legion team since they are separate from the AA. The Mayor guaranteed that if the Police were contacted they would take action against the individuals.

2. Bob Overpeck. Bob informed Council that he has a water problem, but his neighbor is causing the problem. His neighbor built a bridge over the creek in April and it is causing water to back up into the backyards. He contacted George Hinton and George looked at the property and indicated that he would get a letter out to the property owner. Kerry directed the Borough Engineer, Brian Pysher, to do a site visit. If the bridge encroaches on the creek, Brian will address a letter to the property owner. Bob asked to be contacted when they do the site visit.

## **APPROVAL OF EXPENSES**

**On motion** by Scott Parsons to approve payment from the County Bond Issue to Zito, Martino and Karasek in the amount of \$112.50 and payment to Hanover Engineering Associates in the amount of \$165.71 and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

**On motion** by Todd Beil to pay the expenses for the month of June 2006 in the amount of \$48,409.97 and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

## COMMITTEE REPORTS

1. EMS – Karen Skorochood was absent.
2. Police – George Hinton was absent. Mayor Mogilski stated that he asked the Chief to have the vehicles behind Roberti's Garage removed. The Chief responded that he was verifying who owns the property where the vehicles are parked. The property may be part of the Roberti property, which the Borough currently owns. He will continue his investigation of the property and have the junk vehicles removed as soon as possible. Kerry indicated that the vehicles might be on a portion of his property; he will look into it tomorrow.

Scott Parsons asked is something could be done with the vehicles parking on Genoga and Lehigh on Saturday mornings? The Chief replied that both George and the Chief spoke to Mr. Bavaria and indicated that they have afforded him and those attending the flea market grace by not ticketing vehicles, but they will start ticketing offending vehicles.
3. Streets – George Hinton was absent.
4. Zoning – Tony Curcio had nothing to report.
5. Planning – Todd Beil reported that the Planning Commission had the Posh Development go through and it will be coming before Council. Brian Pysher added that Posh's engineer would give Collura's office the meets and bounds description of the grading easement. As soon as Brian receives that information he will forward it to the Borough Solicitor so that an agreement with Mr. and Mrs. Karner can be drafted. Posh's Engineer, Jeff Ott, indicated that because it will take approximately 150 days before they receive their NPDES permit they would probably combine the two phases. Kerry asked Brian to drop off the old plan at the Borough office so that he can review it with Mr. Karner.
6. Parks – Karen Skorochood was absent.
7. Fire Company – Jon Faust was absent.
8. Sewer Authority – Scott Parsons reported the Authority accepted the resignation of Tom Knitter from the Wind Gap Municipal Authority. Kerry asked Mr. Zito if the Borough needs to advertise the position? Len replied that the Borough is better served by advertising for those people who may be interested. The position has a specified term and a replacement would serve the unexpired term of Mr. Knitter. The Borough is not required to advertise, but as matter of policy he recommends that Council does duly advertise. Council decided that the opening would be advertised. A letter will be sent to Mr. Knitter thanking him for a fine job.
9. 911 – Tony Curcio had nothing to report.

## Mayor's Report

Mayor Mogilski stated that he has a zoning question regarding West Fifth Street where it intersects with F Alley. The guy has proposed building a garage on that corner and he is right to the corner. He reported that he spoke to Jodi, Zoning Officer, about it and she indicated that she spoke to the Chief about it. The Mayor said he was told that the Chief said go ahead let him build it. The corner of an ordained street and an alley are both recognized as the same. Why are we letting this garage be built on the corner? The Mayor remembers there were a few instances where kids almost got hit on bikes there. A couple of years ago, on this property, a fence was put up in the backyard and after it was put up it was in the alley on the alley side. He didn't dig for the footer for the garage on that side or the street side yet, after he takes the fence out, the garage might be in the alley again. According to the Mayor, if you line up how that street is ordained, the curb comes to the edge of his house so he is probably going to be in the street with his garage. There should be a 25' site triangle and setbacks. Kerry asked if there was a plot plan? The Mayor replied that Jodi doesn't have one. Mr. Zito was asked what Council could do in this matter. Len replied that a person can acquire rights to a permit that is issued in error, assuming this permit was issued in error, the law is that you acquire no rights except you can acquire rights if you spent substantial monies on reliance upon the issuance of the permit then your rights become vested as a result of your investment. His recommended that the Engineer look at the Zoning Ordinance and determine whether or not this permit was issued in error, if it was issued in error, it needs to be stopped immediately. The property owner could file a claim against the Borough based on acquire vested rights by virtue of the investment for this project. Kerry asked that he be contacted when Brian does the site visit. Brian stated that he would look into it this week. The Mayor asked to be contacted also.

The Mayor reported that Mr. Morrow on West Street contacted him today to complain about trucks by MSG still being a problem. The Chief stated that he has not received any complaints. The Mayor added that he contacted Officer Dailey about the concerns. Brian Pysher stated that if there is a problem with the trucks the residents could contact the DEP. The Borough Office has the number for the contact at the DEP Bureau of Mining.

The Mayor informed those present that if any resident had substantial damage because of flooding to contact him and he will get them in touch with FEMA or PEMA.

## **Engineer's Report**

Brian Pysher reported that at the Planning meeting the Posh property was discussed and Mr. Posh agreed to everything that was conditioned in the review letter. They will end up consolidating both plans and the extension of First Street will be put in at the same time as the residential subdivision. We still need to obtain the grading permit. They have started work on a PennDOT permit.

In regards to the upstairs of the municipal building, Brian sent the plans to an HVAC person to spec out and once he receives those back he would forward them to Labor and Industry.

He reported on the complaints that he has received regarding the Muschlitz excavating. He did several site visits to the Muschlitz property on East West Street. According to the DEP, the property owner is bringing in material from a permitted site, which he is allowed to do and he is also allowed to take that same material that he brought in and move it out of there. Most of

complaints have been in reference to the trucks damaging the road. Brian explained that the proof roll that they did when they constructed the road was to run a loaded tri-axle over the road so the road is constructed to handle that type of traffic. He referred all concerns to the DEP Bureau of Mining. The DEP has determined that it is a mining operation because he is taking the slate refuse to profit site, so Mr. Muschlitz is taking all the necessary steps to obtain the permits required by the DEP.

## **Solicitor's Report**

Len Zito reported that Ron Karasek outlined all the matters being handled by his law office for the Borough during the month of June in a report.

## **NEW BUSINESS**

There was no new business before Council at this time.

## **OLD BUSINESS**

1. Scott Parsons stated that he has a complaint. The Borough has been sued and one of the persons on the lawsuit is also serving as a chairman on a Borough committee. Scott asked if Council can take a course of action to remove him from the committee or can they ask him to resign? He has taken a position against the Borough of Wind Gap and is it a conflict of interest? He asked Council for their input. The Mayor asked if that was more a freedom of speech? Scott stated that up until this point, the Borough has not had to spend a dime except for the time that people on Council have put into the project and now the Borough is spending money because of this lawsuit. He added that when he was elected one of his jobs was to oversee what the Borough does financially. The Mayor asked what would Council do if one of the members of Council sued the Borough? Tony added that the Borough had to take on a separate solicitor because of a conflict due to a law office that the Borough is using. Here is an individual who is representing the Borough on a committee, does that run parallel? Len asked what the nature of the committee that the person serves on? Kerry replied that it is Emergency Management. Len stated that committee persons or other appointed position that are within the Borough Code, such as Recreation Board or Park Board, serve at the will of Council, and so Council may remove them at their discretion for a good reason or for no reason. They serve at the will of Council. It is different for a Councilperson, who is an elected official, elected by the people so the same rules do not apply. In response to Scott's question, Council may remove this person for any reason and no that person cannot successfully contend that their removal was an abridgement of their free speech or their rights to sue or as retaliation. Kerry suggested that this topic be placed on the next meeting's agenda when a full board of Council is present.

**On motion** by Tony Curcio to adjourn the meeting of July 10, 2006 and seconded by Todd Beil. Council agreed unanimously.

The meeting of July 10, 2006 adjourned at 8:00 p.m.

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Louise Firestone, Secretary / Treasurer