

**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, August 7, 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: Jon Faust, Todd, Beil, George Hinton, Scott Parsons, and Tony Curcio. Also in attendance were Mayor Mitchell D. Mogilski, Sr., Borough Solicitor Ronold Karasek, Borough Engineer, Brian Pysher, and Borough Administrator Louise Firestone. Absent was Councilwoman Karen Skorochod.

**PUBLIC COMMENT**

1. George Kressler. George asked if Council would consider offering the residents the option of paying their real estate taxes in installments for next year along with the current one payment option. Kerry asked Ron Karasek what the procedure would be to initiate this change? Ron replied that it would just necessitate changing forms and updating the Borough ordinance. Tax Collector Patricia Sutter suggested a three-payment option. She knows that it would be more work, so would she receive more compensation? Ron replied that it would be a Council decision. She asked if each Council member sees her monthly report? Kerry replied that he sees it and Louise sees it, but the remainder of Council only sees the total tax collected each month. She asked that Council receive a copy of her report. Scott requested more information prior to Council acting on this suggestion, specifically, how many installment and when the payments would be due. Kerry will get more information from Patricia Sutter prior to the next Council meeting.

2. Don Nywening, 518 Liberty Street, Wind Gap. Don informed Council that a big tree on the corner of Liberty Street and Woodward Avenue is a safety issue that must be addressed. The tree, which is located on the property of Sue and John Hendershot, needs to be trimmed. There are no sidewalks on Liberty and the children must walk on the road, which is not safe, because the tree hinders the sight of the drivers. Don presented Council with photos of the tree. Brian Pysher asked if stop signs control the streets? The stop sign is on Woodward Avenue. Brian explained that according to the ordinance, if one is a controlled street and the other is an uncontrolled street, then the clear site triangle does apply. He added that the Borough has the right to trim the tree to offer a clear site triangle at that intersection, which would be between two and ten feet up. Council directed Brian to make a visit to the intersection and report back to Council as soon as possible. Don asked Council to review Ordinance 363 regulating and restricting outdoor fires. The ordinance, which was enacted in 1989, seems to specifically apply to burning brush and refuse. He asked Council to consider enacting an ordinance that would allow people to have outdoor chimeneas, which have grown in popularity, but which cannot be burned on Sundays or after sunset. Mayor Mogilski stated that the ordinance specifies that the Fire Chief, First Lieutenant, or Second Lieutenant must grant permission to the property owner and they must enforce the ordinance. Don replied that he understood that, but he wants a new ordinance created that would allow the chimeneas. George added that outdoor furnaces are popular and gaining popularity also for heating swimming pools, and heating homes in the wintertime. There are rules and regulations. Anytime there is burning wood there is smoke and that may not be conducive in a neighborhood because it may be bothersome to neighbors. Don stated that he does not see the difference between burning in a chimeneas outside and burning in his fireplace inside his house. George replied that the difference is most people would not light a fireplace in August in 100-degree temperatures, but they might light an outdoor chimeneas.

Plus the smokestack is above the roofline, which is above the neighbor's windows. He suggested that Council may want to refine the ordinance, but he cautioned Council to be careful regarding this ordinance because of the residents opposed to the outdoor wood smoke would come to Council to voice their complaints.

3. Vickie Allen, 311 Alpha Avenue, Wind Gap. In regards to the industrial road, Vickie asked if there have been any traffic exceptions made in the Borough of Wind Gap, specifically Alpha Road and Lehigh Avenue, such as no parking and are there any updates? George replied that he spoke to Dennis Toomey, Design Engineer, PennDOT, and asked to be informed when a meeting would be scheduled. There have been no meetings scheduled yet. Vickie encouraged Council to remain involved in the process because the municipalities have a say on what goes on in the Borough and to stay in touch with PennDOT. Kerry replied that the Borough's Engineer, Jim Milot, has remained in the contact with PennDOT engineers regarding the traffic concerns. Vickie asked what a Plainfield Supervisor's comment regarding the Borough of Wind Gap being contacted for their input on the project (National Realty project) and Wind Gap did not respond? George stated that he is not sure what she is talking about because the committee has attended numerous meetings. Kerry added that Wind Gap Committee has met with Pen Argyl, Plainfield and the National Realty people. George promised to call Matt Glennon, Plainfield Township Supervisor, and find out if there is something that needs to be done. The Mayor stated that at a COG meeting there was discussion regarding Wind Gap granting the 47 waivers that National Realty asked for on this project. George replied that the committee has not seen anything in writing on waivers and when it becomes available the committee will report back to Council. Plainfield has stated that they did not do anything and Pen Argyl stated that they are not going to grant any waivers. Vickie stated that her neighbor at 303 Alpha Avenue has excessive weeds in the rear of the property. No one appears to be there and she asked if Council could do anything. The Mayor will look at the property and take care of the situation. Vickie asked why, if Council had appointed a special solicitor for the bond issue because of a possible conflict of interest, was Attorney Karasek representing the Borough at the hearing with the Slate Belt Concerned Citizens? Kerry replied that Bond Issue Special Solicitor is Attorney Dwight Danser, but Mr. Karasek is defending the Borough of Wind Gap because it is a lawsuit. It has nothing to do with any contracts to be signed by Mr. Perin or anyone else related to the project. It is a separate lawsuit where the Borough is being sued.

## **APPROVAL OF MINUTES**

**On motion** by Jon Faust to approve the minutes of the June 20, 2006 meeting and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

**On motion** by Scott Parsons to approve the minutes of the July 10, 2006 meeting and seconded by Todd Beil. Roll call vote taken. In favor: T. Curcio, J. Faust, K. Gassler, G. Hinton, S. Parsons. Abstained: G. Hinton. Motion carried with a vote of 5-0-1.

## **APPROVAL OF EXPENSES**

**On motion** by Tony Curcio to pay the expenses for the month of July 2006 in the amount of \$18,220.93 and seconded by Jon Faust. Roll call vote taken. Motion carried unanimously.

**On motion** by Tony Curcio to approve payment from the County Bond Issue to Hanover Engineering Associates in the amount of \$611.26 and seconded by Scott Parsons. Roll call vote taken. In favor: K. Gassler, G. Hinton, S. Parsons, T. Curcio, J. Faust. Opposed: T. Beil. Motion carried with a vote of 5-1.

## **SOLICITOR'S REPORT**

Ron Karasek reported that all the matters being handled by his law office for the Borough during the month of July are outlined in a report. The report includes the meetings attended as Borough Solicitor and Planning Commission Solicitor, Subdivision Matters (Posh – Conditional Final Plan Approval), Land Development Matters (none), Zoning and other Land Use Matters (Real Estate Tax Assessment appeal for Wind Gap Apartments), Developments on Outstanding Litigation (Weeast, Slate Belt Concerned Citizens, Schinstine), Court Decisions on Borough Cases (none), and Miscellaneous Matters (Scheduling Police Overtime). Outstanding issues include: East West Street condemnation, North Broadway Storm Sewer Easement Agreements, PPL & Cell Tower Issue and Nuisance Ordinance (panhandling).

## **ENGINEER'S REPORT**

Brian Pysher reported that he contacted an HVAC contractor over a month ago and still does not have a layout or sizing for the units on the municipal building renovations project. He asked if anyone could recommend an HVAC contractor? Once he has the layout he can forward the plans to Labor and Industry.

Brian spoke to the DEP regarding the bridge over the creek near Bob Overpeck's house. The DEP relayed that if the body of water drains over 100 acres it does require a permit to put any kind of obstruction. Brian said that it is the engineer's opinion that because it can be handled as a private issue with an outside agency that Council should chose to not become involved. Council agreed to let this be handled privately. Brian will contact Bob Overpeck to offer him the phone number of the DEP.

Brian reported that there was a question with the sewer at the Dunkin' Donuts, but he was not sure what was going on with that issue. George said that he spoke to Borough Engineer Bob Collura because Terry Miklas, Wind Gap Sewer Authority, contacted him about the installation of the pipes. The construction was in the original plan, but there was some delay in beginning that portion of the project. Joe Posh stated that all the pipes were installed up to the area, but the actual hook-ups were Dunkin Donuts responsibility. Terry was concerned if the pipes were tested. Joe stated that the pipes were tested. Paul Levits added that the Sewer Authority inspected the outside, but they did not inspect the inside and the issue is inside the building. George stated that he understood that Labor and Industry was on-site to do inspections today.

Brian reported that he inspected the building that was being constructed on the corner by the Mayor's house and it is within the setbacks and out of the clear site triangle. He suggested that the Borough consider enacting a requirement to provide a grading plan along with the application for any construction over a certain square footage to be determined by Council and the engineer. With all the new developments, the individual lots will have individual Stormwater facilities on them that will need to be inspected to make sure that they are installed correctly. Other municipalities and boroughs used grading plans so that they can be sure that everything is the way that it is supposed to be as designed. He offered to sit with the Borough Solicitor and help draft an ordinance. The Mayor asked George if he had a chance to take a look at the newly constructed building on his alley? George replied that he went up F Alley and noticed that next to the new garage are a boat and then the fence so snow coming off the roof should not be a problem and in fact, the Mayor's garage is actually closer to the alley. Brian stated that the way the ordinance reads, it refers to a controlled and an uncontrolled street in order for the clear site triangle to pertain and neither one of those are controlled. The Mayor stated that Council should consider installing a stop sign on Fifth Street. Kerry said that Fifth Street is ordained on paper. Ron suggested that Brian obtain a copy of an ordinance from Upper Mount Bethel that addresses the grading plot plan issue.

## NEW BUSINESS

1. Final/Conditional Approval – Posh Residential Subdivision. George Hinton asked Brian Pysker if he had received all the necessary information regarding First Street? Brian stated that the developer and his engineer have issues with the DEP and it is his understanding that the NPDES permit they are waiting on could take up to 260 days. Until they obtain the permit, they cannot proceed with any construction. Brian feels that the original plan discussed by the developer and Council of breaking the project into two phases will not have to occur. They had agreed to put up security for both phases if they did get the plans recorded separately. Mr. Posh stated that he is willing to meet all the conditions. Kerry stated that he met with Mr. Karner on the corner of South Broadway and East First Street to explain the twenty-foot easement for this project. Ron stated that it would be a temporary construction easement. Mr. Karner asked that he be allowed to keep his shed, which could possibly just be moved because it sits on a concrete slab. He will be losing one parking space and asked that a spot be paved next to where it is now. He emphasized, that he does not want water in his basement as a result of the construction of the street. Jeff Karner along with Alex Cortez asked Kerry to have Council consider making East First Street a one-way street off of South Broadway heading east. If a car comes out of First Street, it would have to make a right anyway so they suggest that the traffic have to go to Third Street to make the left to go south on Broadway. He does not care if the shrubs are removed as long as that area is replaced with grass. If all that is taken care of, he will sign the agreement for the easement. Mr. Posh stated that he will check on the meets and bounds description with his engineer so the agreement can be signed as soon as possible. Ron Karasek informed Council that they have some time to act on this plan. There are a lot of conditions on this plan as per the recommendation made by the Planning Commission at the July 6, 2006 meeting. The Planning Commission did not discuss this project in phases. If Council wants a representative from Posh Properties along with his engineer to attend a future meeting to further explain the plan that could and should be done. Mr. Posh did agree and sign all the conditions. Brian stated that he has not received any revised plans showing that the phases have been combined. Mr. Posh stated that he has no problem waiting.

**On motion** by George Hinton to table the approval for one month and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

2. Delinquent Real Estate Tax Claim – Roberti Property. Ron Karasek explained that the Borough received a letter from Mr. Roberti's attorney attaching a delinquent tax bill for the 2005 calendar year. The Borough condemned the property and now owns it; the taxes would be the responsibility of the Borough. Ron asked if Mr. Roberti left the property by August 31, 2005 and if he did then there should be some apportionment? The Borough would not have to pay the tax, but paperwork would have to be filed on behalf of the Borough to have the property taken off with the County. Kerry replied that he was out on August 31, 2005. Ron will do what is necessary to move this issue along with the County stating that Mr. Roberti owes the taxes up until August 31, 2005 and then Wind Gap Borough became the property owner. If the Tax Claim Bureau does not want to do that, then the Borough may have to sue the Bureau to get that done. If Mr. Roberti's attorney does not want to pay the taxes up until August 31, 2006 then the Borough may have to discuss that issue also. Scott asked if the Borough could just say that we have owned it since the beginning of the year and just have it taken off so that no one owes anything? Ron replied that he would go in the direction Council decides. The County may not accept that resolution. The amount of money owed in taxes is \$3,255.82. It may cost less just to have the taxes paid and not have to continue arguing back and forth. The Borough still does not have the deed for the property because Mr. Roberti is still fighting the compensation received for the property.

3. Ordinance – Realty Transfer Tax. Ron Karasek explained that the Borough received a letter from the Recorder of Deeds basically stating that they received a directive from Harrisburg that they would like to have all the ordinances recorded at the Courthouse with respect to Real Estate Transfer Tax that is charged by the Borough. It is not the real estate tax, but the transfer tax for when property is bought and sold in the amount of 1% of the sale to the State, and the 1% is divided up between the Borough and the school. Ron spoke to the Northampton County Recorder of Deeds and basically they are looking for current ordinances so that they can have a complete file. This was initiated by the Department of Revenue and the County is following up with correspondence to each municipality. Ron was already supplied with Ordinance 266 enacted in 1972. Ron will review the ordinance to make sure that it is sufficient for Borough purposes. The State would like to collect interest on the money that is due. Some ordinances do not permit the collection of interest. With recent changes to the law, the Borough may have to add an amendment to Ordinance to have the ability to collect the interest. Ron will review the Borough's current ordinance and if necessary, work on amending this ordinance and once Council approves the amendment it will be filed at the Northampton County Recorder's Office.

4. House Bill 87 – The Mayor explained that it came from Northampton County specifically, Ron Angle, asking if Wind Gap would support the bill. The bill puts a tax freeze on open-space land and would put this issue on as a referendum. The question would read, "do you favor the imposition of a described tax and millage rate by your local government unit to use for purpose?" The Mayor believes that the decision should be left up to the taxpayers. Kerry asked Council to review this House Bill further and it will be discussed at the workshop meeting.

5. Kerry reported that Roger Bet submitted his letter of resignation from the Wind Gap Park Board effective immediately. A copy of the letter will be provided to Council. A letter of thanks will be sent to Roger for his time served on the Park Board.

## **OLD BUSINESS**

1. COG – Regional Police Participation. George stated that this came up at the COG meeting and Borough Council has not made a definite decision on their participation. George informed Council that Pen Argyl Borough will not participate and at this time, Plainfield Township is non-committal. Scott stated that during reviewing the study that was done by the COG, it would cost Wind Gap approximately \$100,000 more to regionalize and if the Borough is going to spend that kind of money, the Borough could hire two more officers. George added that the new facility to house the regional police would cost a couple of million dollars, but where is it coming from? It would be coming from the participating municipalities.

**On motion** by Scott Parsons to not participate in the Regional Police and seconded by Tony Curcio. Roll call vote taken. In favor: S. Parsons, T. Beil, T. Curcio, J. Faust, G. Hinton. Abstained: K. Gassler. Kerry explained that he has an opinion from the Liquor Control Board that he is not allowed to vote on any police issues to be on Council. He had a legal opinion rendered about a month ago. Motion carried with a vote of 5-0-1.

2. Second Quarter Tipping Fee Review. Tony Curcio informed Council that the second quarter tipping fees from Waste Management in the amount of \$57,488.28. The Fire Company, the Ambulance Corps and the Library have been sent a check. The funds to date totals \$153,516.48. The Borough has spent a total of \$13,845.98 of those funds this year.

3. Emergency Management Chairman. Kerry stated that Council has some questions regarding John Maher's position as chairman of the Emergency Management Committee and his position in the lawsuit filed against the Borough. John stated that if Council feels it is a conflict, then he would resign

his position. Scott asked John if he feels it is a conflict? John replied that he does not feel that it is a conflict. He stated that he disagrees with decisions that were made. He believes what he is doing for Emergency Management is an important thing and has to be done and he is committed to getting it done because it is a benefit for the residents of the Borough. The other thing is a basic disagreement with building a Wal-Mart stuck in the middle of a community and that is more of a philosophical issue because he does not like what Wal-Mart does or what it will do with the community. It is questioning why things are being done. Scott stated that he has always hoped and believed that this would not cost the taxpayers any money. The County Bond money is to build the road and he wants to see that road built. Up until this point, the only thing that it has cost the Borough of Wind Gap is the time spent by the people on Council to attend meetings to try and move this project along. Now that the Borough is being sued, it will now cost the taxpayers money because Council has to have a defense. John stated that it is obvious that nothing has been done with the road because no dirt has been turned over. He believes that there has been no accountability on the funds spent or the project. They are trying to make sure what was promised is what is being delivered. Scott stated that when the bid goes out for the road, the bond money is spent for the road and that is separate from building the Wal-Mart. John asked where is the accountability for the \$2,500,000, because there does not appear to be any public records kept. He spoke to his attorney today and the attorney still hasn't seen any of those documents that are supposed to be in place. Scott informed Council that he has been to three or four meetings and that things are running as smoothly as they can at this point and moving forward. John believes that he can keep the two issues separate, he has and he will continue to do so to get the emergency plan enacted as required by the State. Council agreed to leave John on the committee.

4. Mayor Mogilski asked Council to consider purchasing another Nextel phone for the Police Department. He reviewed the Police budget and feels that there is enough money in this year's budget.

**On motion** by Tony Curcio to add another phone for use by the Police Department to be used on duty and seconded by Jon Faust. Roll call vote taken. In favor: T. Beil, T. Curcio, J. Faust, G. Hinton, S. Parsons. Abstained: K. Gassler. Motion carried with a vote of 5-0-1.

5. Jon Faust reported that the Fire Company was looking into purchasing chain saws, but he has discovered that there is no money in the Fire Company budget to make this purchase. He asked if there is another fund where the money could come from in this year's budget? Tony stated that the Fire Company has \$3,000 from tipping fees this year, with a check just being sent in the amount of \$1,150.

6. George Hinton reported that he would be out of town next week. The Zoning Officer completed the survey regarding the eight-foot easements as directed by Council. He suggested that Borough Council go by the Zoning Ordinance when enforcing the eight-foot easement. He asked that Council really take a look at this issue prior to make any type of decision.

7. George Hinton reported that a resident came to the Borough office inquiring about purchasing half of Pear Street. George measured Pear Street and it is 17' wide at the widest point and the resident wants 20' of it. He encouraged Council to look at this issue also. He suggested that Council not give up Pear Street because there is sewer in that street.

8. Patricia Sutter asked Borough Council to write a letter to Waste Management or DEP and tell them about the awful smell of the garbage trucks. Council was in agreement to first write a letter to Waste Management.

9. Mayor Mogilski asked if anyone has donations of clothing or furniture for the Gunderman family that recently had a house fire on Sullivan Trail, to please get in touch with him. If anyone wants to make a financial contribution there is an account set up at Wachovia Bank. Two Eagle Projects are going on, with the signs going up in town. The Borough has garbage collection on Friday and some residents are putting their trash out the following day and letting it sit for the week. Ordinance 263 states that garbage has to be out before 7:00 p.m. on the day of collection. This ordinance has to be looked into for clarification.

**On motion** by Tony Curcio to adjourn the meeting of August 7, 2006 and seconded by Todd Beil. Council agreed unanimously. The meeting of August 7, 2006 adjourned at 8:59 p.m.

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Louise Firestone, Borough Administrator