

**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 Tuesday, September 7, 2010, was called to order at 7:30 p.m. by Council President, Scott Parsons, at which time he reminded those present that the meeting was being recorded. In attendance were Councilmen: John Maher, Dave Hess, Kerry Gassler, George Hinton, Joe Weaver, and Tony Curcio. Also in attendance were Mayor James M. Shoemaker, Borough Solicitor Ronold Karasek, Borough Engineer Brian Pysher and Borough Administrator Louise Firestone.

PUBLIC COMMENT

1. Bob Matlock, 346 Alpha Avenue. Bob expressed his concern with the how things are going in the Borough. There are cars parked on the wrong side of the street parked the wrong way. This seems to be going unnoticed by the people who should be seeing it. He asked that this be look into by the department. His other issue was garbage cans not being retrieved by property owners for several days after the garbage have been collected. He asked if the Borough's ordinance regarding garbage addresses the timeframe of when the cans should be removed from the curb. Scott will take a look at the ordinance.
2. Jon Faust. Jon asked Council if anything had been done regarding pursuing hiring an Animal Control Officer. Louise is to receive information from Pen Argyl because they employ an Animal Control Officer and are willing to share the rate and ordinance with Wind Gap. Jon informed Council that the floor in the social hall of the firehouse is getting really bad. The floor is sagging and a hole is developing. He asked Council to consider addressing and repairing the floor.
3. Lorraine Ruscher, Beautification Committee. Lorraine stated that she has tried for several months to get assistance from Louise Firestone, Borough Administrator, to apply for grants that would benefit the community by improving the sidewalks within Wind Gap. Unfortunately, Lorraine acknowledged that Louise has been occupied with other issues in the Borough and has not completed the applications. Lorraine has tried to solicit assistance from the Mayor and he has not responded. Mayor Shoemaker suggested that the Borough seek help from the Slate Belt Council of Governments. Brian Pysher stated that the Borough did make application through Community Development Block Grants (CDBG) for street improvements this year, but the Borough was not granted any funding. The Borough has been successful in obtaining funding through Northampton County (CDBG) for street improvements in the past and will continue to pursue funding through this funding source. Brian added that the County had three times the request for funding as they had available. The biggest issue with sidewalk grant applications is the projects need to be shovel ready, which means the Borough would have to spend the money up front for engineering and design and then hope that the grant application is approved to do the project or the Borough would have spent money without the ability to fund the project through Borough revenues. Brian suggested that if the Borough is to pursue grant applications for sidewalk upgrades that the project is broken down into smaller projects. Lorraine asked Brian to review the numbers and updated for current grant applications.

4. Paul Levits, 125 West Street, Wind Gap. Paul stated that he is not here representing the Wind Gap Municipal Authority, but a tax payer, a rate payer in the Borough. The one project that the Authority just did has been shovel ready for years, but was not done because of the recession, but they went ahead with it in the alleys. The policy they have had for 15 plus years in the alleys on the backfill was native shale, deemed acceptable by the Authority Engineer, and that is what was re-used they have never had a problem. The lines were adequate and never had a failure because of using the shale. After the Authority let the contract, at an on-site meeting, the Borough decided that native shale in the alleyways was not acceptable. The cost of the project was increased by \$35,000 because of this directive. Paul stated the increase in the project theoretically cost each home on the system added a \$35.00 charge (\$35 per EDU). He feels that it is money that should not have been spent. George asked why the backfill is spelled out for stone in the bid specifications. Paul replied that they leave it up to interpretation once it is determined if the native shale can be re-used. Brian stated that this is the first Authority project in the Borough since Robert Collura has been the Borough Engineer. When Brian arrived at the job site he checked the specifications to see what the backfill requirements were in the gravel alleys and it stated 2RC or modified stone. Paul stated that maybe a better communication system must exist and then this might not have happened.

5. Alex Cortezzo, Wind Gap. Alex asked for an update on First Street. The progress has really slowed and he wants to know what can be done faster. Brian replied that he is not sure what to do to make them move along faster with the project. The developer hired a contractor to only do part of the curbing installation and the developer was in the process of soliciting further quotes to complete the curbing. Brian understands that it is an inconvenience for the neighbors because of the ongoing construction. The developer is already in the penalty phase of the contract. Scott asked if there is anything the Borough can do? Ron Karasek stated that he would have to check the agreement, but typically some are two years and other projects could be up to five years. Alex is concerned about the safety of the area with steep slopes and unsafe land. Scott asked Ron to review the agreement for the time requirements. Paul Levits added that the developer was looking to hook up the existing house without final inspection and the Authority told him no. The Authority offered the developer to pay for a portion of the paving on Second Street where the road was opened by both organizations. Brian added that no certificate of occupancy would be issued until the entire infrastructure is complete and there is bituminous, binder, and wearing course is down. Scott promised Alex that the Borough will check into the requirements and progress of this project.

6. Tony Curcio, North Lehigh Avenue. Tony stated that North Lehigh Avenue is a racetrack between the hours of 6:30 p.m. and midnight. He can hear the trucks from his house up to the PetroMart. The Mayor will talk to the police officers on the night shift.

7. Lorraine Ruscher asked about the clean up of the house on the corner of Jefferson and West Street. Scott stated that he was by there a couple days ago and it was better than it used to be. John Maher added that it goes in cycles some days there is just four cars and then there is six, it goes back and forth. There was a "For Sale" sign on the tree stating that they had items to sell.

APPROVAL OF EXPENSES

On motion by Tony Curcio to approve the expenses for the month of August in the amount of \$45,141.48 and seconded by Kerry Gassler. Roll call vote taken. Motion carried unanimously.

On motion by Kerry Gassler to approve payment to Muschlitz Excavating for the Lehigh Street project in the amount of \$148,867.60 and seconded by George Hinton. Roll call vote taken. Motion carried unanimously.

APPROVAL OF MINUTES

On motion by John Maher to approve the minutes of the June 22, 2010 meeting and seconded by Dave Hess. Roll call vote taken. In favor: D. Hess, G. Hinton, J. Maher, S. Parsons. Abstained: J. Weaver, T. Curcio, K. Gassler. Motion carried with a vote of 4-0-3.

On motion by John Maher to approve the minutes of the August 2, 2010 meeting and seconded by Tony Curcio. Roll call vote taken. Motion carried unanimously.

SOLICITOR'S REPORT

Ron Karasek reported that all the matters being handled by his law office for the Borough during the month of August are outlined in a report. The report includes the meetings attended as Borough Solicitor.

Subdivision Matters: N/A.

Land Development Matters: N/A.

Zoning and Other Land Use Matters: Legal Research and preparation of Comprehensive Correspondence on Constitutional and Statutory Restrictions on Borough Use of Property re: Handi-Hut Bus Stop Structures. Preparation for and Attendance at Zoning Hearing Board hearing on Reimer Application in Defense of Free Standing Signs Violation.

Developments on Outstanding Litigation: File Extension Agreement re: Tittle Injunction Lawsuit. Receipt, Review and Administration of Borough Permit for 404 and/or 416 Lehigh Avenue.

Court Decisions on Borough Cases: N/A.

Miscellaneous:

Additional Legal Research on heart and lung Act vs. Workers' Compensation Act re: T. Dailey H/L Claim. Meeting with Police Committee and Officer T. Dailey re: Claim for Heart and Lung Benefits. Preparation of Monthly Solicitor's Report. Review various correspondence, subdivision and land development review letters, prepare correspondence, prepare extension agreements and approval forms for subdivision and land development matters and make and receive telephone calls.

Outstanding Items: Dentith storm water counterclaim (filed in response to Borough's injunction lawsuit and request for Borough's expenses) – no action taken and remains pending. Ordinance for loitering, begging and panhandling – pending but inactive. Ordinance for reimbursement of equipment, materials and supplies in responding to environmental, hazardous, safety or rescue events (police, fire or both?) – pending but inactive.

Ron Karasek reported that he received from Attorney Pete Layman the waiver of sidewalk requirement with respect to the former Posh Development. He has signed agreement signed by the developer and Mr. Raymond Cortez.

Mr. and Mrs. Wayne & Marie Geary had appeared before Council and requested that they be allowed to complete the demolition of the Tittle property and that an extension agreement be entered into and the agreement expired today at 5:00 p.m. He drove past the property prior to the meeting and it appears that have been demolished in accordance with the requests of Council. It was demolished down to the foundation along with the foundation being capped and sealed. Ron asked Council if they wanted any other inspection, but it does appear that the work has been completed.

In regard to the Keenhold matter, last month Ron was directed to inform Mr. Keenhold that the Borough would pay an additional \$500 he requested, provided that he sign a release, but Ron has not heard back as of yet.

He received a copy of the map with respect to the proposed zoning change. He will move forward with this change unless Council needs any further discussion on this issue. Ron must send a copy to the Lehigh Valley Planning Commission requesting their comments.

Handi-Hut agreement to advertise. Ron had previously indicated that he would draft an agreement for potential advertisers on the Borough bus shelters. Councilman Hess had asked Ron to double check to make certain that there would not be any advertising issues. Ron contacted the

Pennsylvania State Association of Boroughs and did some additional legal research. He sent a comprehensive letter to Council on August 5, 2010 expressing his concern regarding the Borough allowing advertising on their property. The Borough might be obligated to an advertiser no matter what they are advertising or how they are advertising it in their picture. Borough Council has to understand that there is the potential for dealing with controversial issues and/or pictures. Lorraine Ruscher stated that she drafted a contact sheet and outlining what the parameters were for the advertisers prior to approval and final printing. Scott stated that he does not want to have anything to do with the advertising end of the shelters. Ron stated that the Borough is not a private entity, but a public organization and there are certain levels of free speech. The most protected free speech that there is because you are on the street, the right-of-way. If someone asks for that advertising and the Borough says no, get ready because it will be a lawsuit. Other bus shelters are owned by private organization such as the bus company itself. Council discussed the possibility of leasing the bus shelters, but ultimately the shelters are Borough property. Council decided to table this issue until their Workshop meeting.

Ron reported on the PetroMart Zoning Hearing Board matter and he attended the meeting on August 4, 2010 as agreed upon by Borough Council. The hearing was held and the Zoning Hearing Board decided that the signs that were there should remain based upon a permit that had been issued and signed by Mr. Lysek, former Zoning Officer in 1993. Since the hearing, it was discovered by the current Borough Zoning Officer; the permit introduced at the hearing has nothing to do with this property, but has to do with the property next door. Ron stated that the decision is going to be written to allow the signs to remain. He asked if the Borough wants him to file an appeal of that decision based upon the fact that the applicants misled the Zoning Hearing Board. It is his opinion that Council should file an appeal because they are a victim of fraud, however, if Council does not want him to file an appeal he will not. Scott asked what this would cost the Borough. Ron replied that the Borough would be responsible for legal costs. Ron said that maybe Council should wait until the written decision has been received and then the Borough would have thirty days to file an appeal. Council was in agreement to wait until the decision is received.

ENGINEER'S REPORT

Brian Pysher reported that there was an anonymous complaint filed with Northampton County Conservation District because of illegal dumping on Third Street. The Municipal Authority contractor Ciccone had been dumping refuse from their alley project on the property and some encroached into the wetlands. A representative from Northampton County Conservation District did an on-site inspection and indicated that the Borough had to rectify the situation and install a silt fence. The Borough hired Schmauder Excavating to install silt fence. The Conservation District did a follow-up inspection and provided the Borough with a letter of clearance. Brian informed the Street Department that they are not to encroach the wetlands.

Brian stated that if there are anymore issues with Lehigh please forward his information to them. Most of the curbing is in and the sidewalks should be installed by the end of the week. They were working today milling about 8" of material in the road and start Thursday excavating the road base and putting the stone base down. He hopes the project takes three weeks to complete. He directed Muschlitz to fix Center Street and Mechanic Street. He received a quote of \$9,000 to do West Street so he would have to solicit two more quotes because it is more than the \$4,000.

Brian said Ron will review the agreement with Gibraltar Development and report back to Council.

Brian will obtain a copy of Bangor Borough's ordinance that requires anyone who opens a utility trench in a Borough street to repave it up to Borough standards. He said that their ordinance is a little extensive, but he will review it and make his recommendations.

Brian reported that the second storm sewer project on West West Street was put out to bid. The bids were opened today at 1:00 p.m. Council received a copy of the bid tabulation sheets and Muschlitz Excavating was the lower bidder. It is Brian's recommendation that Borough Council award the bid to Muschlitz. Scott stated that the low bid was \$99,114 and the high bid was \$159,980, it is hard to believe that there is a \$60,000 difference between the high and low. Brian replied that it has to do with how much profit margin the company needs, whether their equipment is paid off, how much they need to cover all their costs (employees, benefits) etc.

On motion by Kerry Gassler to accept the bid by Muschlitz for the West West Street Culvert of \$99,114 (funded by Community Development Block Grant) and seconded by John Maher. Roll call vote taken. Motion carried unanimously.

NEW BUSINESS

1. Procedure for Condolences. Scott stated that recently the retired Borough Police Chief passed away and the request in the newspaper obituary was to send a donation in Mr. Ambrose's name to organization of his wishes. Scott said the Borough does not have any procedure for recognizing the passing of a former member of a board, an employee, etc. Ron Karasek is not sure that there are any special rules defined in the Borough Code, but it may be a policy decision. Scott and Louise to draft a questionnaire outlining criteria such as: years of service, appointed, elected, etc.

OLD BUSINESS

There was no old business before Council at this time.

On motion by Tony Curcio to adjourn the meeting of John Maher. Council agreed unanimously. The meeting of September 7, 2010 adjourned at 8:38 p.m.

Louise Firestone, Borough Administrator