

**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, April 1, 2013, was called to order at 7:30 p.m. by Council President, George Hinton, at which time he reminded those present that the meeting was being recorded. In attendance were Councilmen: Jon Faust, John Maher, Kerry Gassler, Joe Weaver and Dave Hess. Also in attendance were Mayor James M. Shoemaker, Borough Solicitor Ronold Karasek, Borough Engineer Brian Pysher and Borough Administrator Louise Firestone. Absent was Councilman Tony Curcio.

**PUBLIC COMMENT**

1. Jim Albanese, 368 Blue Valley Drive. Jim has been in the computer business for over 25 years and is working with Victor Rodite, Slate Belt Council of Governments, in trying to obtain some equipment from Hewlett-Packard to run a GIS application. The project is Hewlett-Packard equipment which would be purchased under a government contract through the Pennsylvania Co-Stars contract. That contract is a bid protected contract which does not require a municipality or an educational institution to bid because all the pricing is based on HP's Pennsylvania contract pricing. Jim recently became an HP authorized reseller, which means that HP will pay him a fee to facilitate and order through PA Co-Stars contract. He has not worked previously with Wind Gap, but he does have experience working with several municipalities. Wind Gap Borough and the Slate Belt COG wrote a grant together for the Gaming Grant, of which the COG would have a \$10,000 to use toward the GIS application. Jim has assisted Victor in writing a budget for the use of the funding. Jim has spoken to John Maher regarding the purchase of the HP equipment and the delivery destination. John had expressed his concern to Jim about making sure that all the purchasing is done within the guidelines of the grant contract. Typically the Borough purchases equipment through a local computer company and has it delivered to the Borough office. Jim stated that he will be purchasing a 44" printer/plotter that will be used to print maps and that specific piece of equipment is over 100 lbs. It is easier to have it shipped to his office so he can connect and assemble the printer prior to setting it up in the COG office. Jim provided Council with purchase orders for the proposed equipment, which was updated today. He asked if the order could be processed through him since he has done all the work putting together the quote from Hewlett Packard and he can best serve the Slate Belt COG and the Borough. He offered to collaborate with the Borough computer tech in order to get this project done. John stated that Wind Gap Borough is the lead on the grant from the County and is responsible to maintain all the records because we are ultimately held accountable. John had to re-submit all the necessary paperwork in order to have the County approve the purchase of the equipment as part of the grant. Alicia Karner, Northampton County, was very specific in stating that all authorization and expenditures had to be done through the Borough. John apologized to Jim, but feels that in order to remain within the grant guidelines, the Borough needs to use their normal purchasing process. If Jim feels that he should be compensated for the work already done, he should contact Victor and the COG.

2. Attorney Joe Piperato, representing Tuskes Homes and Charles Tuskes, in regard to the purchase of the Gap View Estates Development. Tuskes Homes was approached by Lafayette Ambassador Bank with the possible intent of having Tuskes Homes purchase the remaining vacant lots within the subdivision which is known as Gap View Estates. It is scheduled for sheriff sale on Lafayette

Ambassador foreclosure for May 5, 2013. Lafayette wants to assign their rights to the sheriff sale to a buyer that would go to the sheriff sale then purchase the seven lots that are available. Tuskes Homes wanted to confirm with the Borough what subdivision improvements remain outstanding, which has already been provided by Brian Pysher. The current estimate for the improvements is \$48,360.40 and most of those improvements are done on a lot by lot basis as the houses are being constructed. He realizes that the Borough was forced to pull the bond of the developer and that the Borough is in custody of the funds remaining on the escrow which is approximately \$37,000. He explained that his purpose in being here tonight is to find out prior to entering into a contract with Lafayette Ambassador Bank, if those funds would be available to the developer as the improvements are completed, and the difference between the \$48,360 and the \$37,000, that his client not be required to post the difference, but that no monies would be released from the \$37,000 until such time that the work has been completed and been inspected. Brian expressed his concern about enough funding because the Borough has already expended a substantial amount of money in doing some of the improvements due to timing issues. The Borough had previously requested additional funds from the developer, but he had no response. George added that the Borough had to get the road paved and cut the grass on the vacant lots. Brian stated that in Gap View Estates that was an error in the original design of the road so it had to be re-designed which lowered the elevation of the road, which in turn made more improvements for adjoining properties, specifically the Karners and Cortezos. The Borough wrote a letter, cited the sections in the Wind Gap Borough SALDO and the Municipalities Planning Code that states that if there is an error in the design that the Borough is within their rights to request whatever additional funds are required to make the improvement. At that same time, the bond was two years old so the Borough made the request to the developer to increase the bond by twenty percent and again there was no response. There was a sediment basin, but the NPDES permit was to expire last August and the County contacted the developer who in turn told them to contact the Borough. The permittee for the NPDES permit is always the contractor/builder. He installed all the erosion sedimentation control facilities so he is required to maintain them. The Borough was told that if they would not become the permittee then at the least, the sedimentation basin would have to be converted to a detention basin. The Borough hired a contractor to do this at a cost of approximately \$4,000. The NPDES permit is no longer active for this development. The outstanding issues include: the sidewalks, the lighting, the trees, the pins and the monuments. Attorney Piperato asked if it would be possible to get an idea regarding how much of that \$37,000 would be left after the Borough is reimbursed for their expenses. Ron added that as long as the Borough is being reimbursed for whatever they put into this project because they need to be protected because it is taxpayer money being used.

## **APPROVAL OF MINUTES**

**On motion** by John Maher to approve the minutes of the March 19, 2013 Council meeting and seconded by Jon Faust. Roll call vote taken. Motion carried unanimously.

## **APPROVAL OF EXPENSES**

**On motion** by Kerry Gassler to approve the expenses for the month of March 2013 in the amount of \$52,935.21 and seconded by Dave Hess. 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 February are outlined in a report. The report includes the meetings attended as Borough Solicitor.

**Subdivision Matters:** Prepare Conditional Approval Form re: Wind Gap Minor Subdivision (on Lehigh Street).

**Land Development Matters:** N/A.

**Zoning and Other Land Use Matters:** Receipt, review and administration of telephone calls and e-mails re: Male Road Bridge Repairs. Prepare additional and final drafts of advertising notice, adopting ordinance (under the PA Local Government Unit Debt Act – LGUDA) and Resolution for private sale of note to Merchant's Bank re: Purchase of Emerald West Street Property. E-mail the LGUDA Advertisement to Express-Times to Publish with copies of final ordinance and resolution to the County Law Library and Borough. E-mail sample of LGUDA Note to Merchant's Bank representative for review.

**Developments on Outstanding Litigation:** Receipt, review and administration of Notice of EEOC Dismissal of Charges.

**Court Decisions on Borough Cases:** N/A.

**Miscellaneous:** Receipt, review and administration of Revised Nuisance Ordinance and Preparation of Revisions to it (The revised Nuisance Ordinance is in lieu of the Property Maintenance Code Ordinance). Receipt, review and administration of e-mails and final draft of Teamsters Contract with the Road Crew. Preparation of Monthly Solicitor's Report.

**Outstanding Items:** Home Occupation, Clear Site Triangle (and related) Zoning Ordinance Amendments, Stop Sign Ordinance, Dog Park Ordinance, Fire Company Ordinance, 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 reported that he spent a majority of his time during the month working on the Nuisance Ordinance. He worked on getting the ordinances advertised and adopted in order for the Borough to move forward with the purchase Emerald Property Tract.

Brian added that he has the revised plans that he will send to the alternate engineer on the Borough's Lehigh Street subdivision. Brian will make the final plan on mylars for the Borough once he has received approval from the engineer and will provide Ron with a paper copy of the plan. Ron will work with the Borough office to get the plan recorded.

## **ENGINEER'S REPORT**

Brian Pysher reported that the Borough's Planning Commission will meet this Thursday. The last time the plan for the MSG property was discussed the lot width has to be 150' based on Plainfield Township's ordinance. Brian stated that the Borough now has the approval letter from Lehigh Valley Planning Commission. He has revised the plans according to the engineer's review letter and all waiver request forms have been completed, which has been acted upon by Borough Council. He will be sending a copy to the alternate engineer this week. Brian anticipates that the Wind Gap Borough Planning Commission will recommend the plan for approval so hopefully Council can act on their recommendation at the mid-month meeting. Once that has been done, the final paperwork can be completed. Brian has taken the measurements of the interior of the building and done the necessary electrical HVAC work that is required in order to submit the plans to Pennsylvania Department of Labor and Industry. He hopes to have this submission done in the next week or so based on the renovations that have been discussed with the Wind Gap Fire Company and the Wind Gap Ambulance Corps.

Brian reported that either the owner of the property at 142 Washington Street or the resident who lives at that location has placed a corrugated metal pipe in the stream. He sent a letter citing certain sections of the code that requires a permit from DEP and informing them that the pipe has to be removed until all the specific permits have been obtained.

Brian made contact today with Descoco Company, the low bidders for the Male Road Bridge, to discuss the contract for the project. He spoke to the engineer from Guistine Associates who requested a copy of the designs that were put out for bid and the original bridge drawings that were received from the bridge inspection company. Descoco would be able to fit this project in their schedule within the next couple of weeks. He believes that Guistine hired an engineer to review all that is going on with the

bridge and the required improvements as verification to make sure that no one is trying to pull a fast one. Guistine has basically confirmed that they would not be disputing the findings of the inspection company, because the inspection is done according to PennDOT specifications. The turning lane will have to be shut down during the repair work which should be done overnight.

George reported that the Borough workers did get started on the park project in the kiddie play area. The disassembling of the equipment has begun and Rich will report if there is any damage done to any pieces of play equipment during this process. Brian forwarded a copy of the proposed playground to George Ely Associates to get approval of the positioning of the equipment. He received the instructions to replace the basketball hoops that had faded during the first year.

## **NEW BUSINESS**

### **1. Official Action – Nuisance Ordinance No. 481.**

Glenn Redshaw asked why the ordinance name was changed from Property Maintenance to Nuisance. George replied that originally the Council committee was trying to establish a property maintenance code for the Borough, but during the process there were issues regarding cats in the Borough. The Borough has always had a nuisance ordinance, so the committee decided to look at that ordinance in order to address the immediate issues and add new verbiage to that ordinance. This ordinance would assist the Animal Control Officer so he can do his job more effectively. At this time, the committee is recommending the enactment of the ordinance that Council has before it, which has been duly advertised in the Easton Express-Times. John added that the committee felt that a property maintenance is very intrusive and would take a lot of time for all the discussions necessary. Glenn asked who is the code official and is it Darlene. Ron explained that this is not a Property Maintenance Code, but the definition in the ordinance states that a "Code Official – is the official who is charged with the administration and enforcement of this ordinance, or any duly authorized representative. The Code Official, or any duly authorized representative, shall have all authority necessary to enforce the provisions of this act, including instituting summary citation proceedings". Borough Council will have to decide who they will charge with administering this ordinance. He cautioned that this is not a property maintenance ordinance, but a nuisance ordinance. Glenn expressed his concern about this ordinance being used as a way to gain personal revenge. John stated that in the ordinance it specifically states that no anonymous complaints will be acted upon, only legitimate complaints. Glenn questioned how the code official would know by standing outside if there is a violation inside the building. John explained that the official would not be cruising around the Borough looking for problems, but would respond to written complaints. George said that last year there was an issue with neighbors complaining about a house in their neighborhood that had a terrible odor. The Animal Control Officer was fortunate enough to get the family involved, but this ordinance would have allowed him the authority to proceed immediately. Glenn thanked Council for their efforts in putting this ordinance together and removes some of the extreme restrictions from the original proposed maintenance code. He asked if the resident who has the complaint filed against them have a right to see the complaint. Ron replied that he is not sure if under the Right-to-Know Act if the written complaint is a public document. Jon asked if there are any legal repercussions. Ron replied that in the opinion of some legal writers, the Borough chilled the complaint process by requiring someone to give their name. Some legitimate complaints may not be responded to by the Borough because resident is reluctant to give their name for fear of retribution from turning in their neighbor. Ron explained that the procedure should be as follows: the complaint comes to the Borough; the enforcement officer would go to the property to determine if it is a legitimate complaint, if it is not, then it is done and that is the end. If the complaint is determined to be legitimate then the enforcement officer would have to decide what action should be taken and usually that comes before Borough Council. The enforcement officer would be able to send out an enforcement notice or citation without getting prior approval from Council. This would be no different than the Zoning Officer sending out

enforcement notices based on her own determination of the zoning ordinance. If Council is asked for their input they could direct the officer to file an enforcement action, file a summary citation, file an injunction, how does Borough Council want the particular incident handled, and then Council would become the complainant.

Council decided that they want Ron to look into the Open Records Act regarding the public right to know. He could add to the ordinance, if this complaint is a public record under the Open Records Act, that complaint can be given to the property owner who has the complaint filed in violation. He would suggest adding that if allowed by PA Open Records Act, the complainant's information can be revealed. The Borough would be protected in keeping something private under the Act, but if Act says no it is not private the Borough would have no liability in giving out that information.

Ron does not believe that this would not be a substantial enough change to the ordinance that would require re-advertising.

**On motion** by John Maher to revise the ordinance to include allowing the identity of the complainant to be revealed if not protected based on the PA Open Records Act. After further discussion, John withdrew his motion to allow Ron Karasek to research the issues involving Right-to-Know. This issue tabled until the April workshop meeting.

## **OLD BUSINESS**

1. George thanked John, Louise and Darlene for their efforts in getting the letter sent out to the Borough. The packet of information included the banner information and the Kiddie Play Area project. George covered the cost of the mailing which was \$930.20. He reminded anyone still interested in purchasing a banner to do so as soon as possible.

**On motion** by John Maher to adjourn the meeting of April 1, 2013. Council agreed unanimously.

The meeting of April 1, 2013 adjourned at 8:49 p.m.

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Louise Firestone, Borough Administrator