

**BOROUGH OF WIND GAP  
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The Council meeting of the Borough of Wind Gap on Monday, May 2, 2016, was called to order at 7:00 p.m. by Council President Dave Hess, at which time he reminded those present that the meeting was being recorded. In attendance were Councilmen: Jon Faust, David Valley, Alex Cortezzo III, Tony Curcio, and Jeff Yob. Also in attendance were Mayor James Shoemaker, Borough Solicitor Ronold Karasek, Borough Engineer Brian Pysher and Borough Administrator Louise Firestone. Absent were Councilman Kerry Gassler.

**PUBLIC COMMENT**

1. Mrs. Getz, of Fairview Avenue, came to Council regarding the status of 347 Fairview Avenue. She said the garbage is getting out of hand, they have garbage dropped off at their property and they also run their four wheelers down the alleys. Mrs. Getz said that she is thinking of getting neighbors together and going to Express Times. Brian Pysher said that the four wheelers is a Police matter. He said that regarding the garbage, Enforcement Notices have been sent out both certified receipt and regular mail. Brian said that prior to citing them he has to make sure we have done our due diligence to make sure we notified them properly otherwise once we get to the Magistrate the case will be thrown out. Brian said he talked with the Borough Solicitor Ronald Karasek to work with him on citations and will meet with him regarding the best course of action. Brian said he encourages the neighbors to call Slate Belt Police every time there is an incident regarding the ATV's. Mayor Shoemaker said that citizens are welcome to attend the Regional Police meeting to address their complaints.

Bob Matlock asked if it is possible to have the Constable deliver the citation to them. Attorney Karasek informed Council that he will have discussions with Brian on how to best handle the situation.

2. Guy Findon appeared before Council with concerns regarding the property at 27 Lincoln Avenue. He said to his knowledge this property has been abandoned for two year. Guy said he complained about this property last year and nothing has been done. He brought pictures of the property with him, which was shown to Council. Guy said that periodically the owners will stop by. He said the place is dilapidated, they have 2 abandoned vehicles in the driveway, all violations of Borough Ordinance. He said that lawn is about a foot high, windows are open, most likely moldy inside and infested with who knows what, and the pool has two feet of green stagnant water in it. Guy said he is also concerned with all the viruses from mosquitoes. Brian said he through they were in compliance after receiving their Enforcement Notice last year. Brian said he will discuss this with Attorney Karasek as to the next step. Brian said that there is a problem getting notices to them. Jeff Yob asked if we could do something since this is a health concern with the mosquitoes. Attorney Karasek said that we would have to get the water in the pool inspected. He also said that every land owner has the ability to bring their own private nuisance complaint against their neighbor.

**APPROVAL OF MINUTES**

**On motion** by Tony Curcio to approve the minutes of April 19, 2016 and seconded by Dave Valley. Roll call vote taken. In favor: A. Cortezzo, T. Curcio, J. Faust, D. Hess, and D. Valley. Abstained: Jeff Yob. Motion carried 5 – 0 – 1.

## **APPROVAL OF EXPENSES**

**On motion** by Jon Faust to approve the expenses for the month of April in the amount of \$21,833.68 and seconded by Tony Curcio. Roll call vote taken. Council agreed unanimously.

## **SOLICITOR'S REPORT**

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

**Subdivision Matters:** N/A

### **Land Development Matters:**

Receipt, Review and Administration of e-mails from Borough EIT concerning status of Official Action and earlier Plan Approval re: Water's Edge at Wind Gap, LLC (Muschlitz) West Street Land Development Plan.

Receipt, Review and Administration of Plan Application (and Related Documents) re: Albanese & Grimes Properties, LLC – Preliminary and Final Major Subdivision (Lehigh Avenue).

Receipt, Review and Administration of Extension of Time form re: AutoZone Land Development Plan.

Receipt, Review and Administration of SALDO Waiver form and Enclosure Correspondence to Borough re: AutoZone Land Development Plan, Wind Gap Chevrolet Land Development Plan and Tyrone Klump Land Sketch Plan.

Receipt, Review and Administration of signed SALDO Waiver Form re: Kostenbader – Pipeline Petroleum Fuel Retail and Convenience Store Sketch Plan.

### **Zoning and Other Land Use Matters:**

Receipt, Review and Administration of signed Addendum/Endorsement to Agreement of Sale re: Wind Gap to Albanese & Grimes Properties LLC – Sale of Lehigh Avenue.

Preparation of Well Abandonment Agreement re: 435 North Broadway.

Receipt, Review and Administration of e-mails and correspondence re: Status of Wind Gap Sewer Authority Approval – 435 North Broadway.

### **Developments on Outstanding Litigation:**

Receipt, Review and Administration of Correspondence from CitiMortgage, Inc (with attachments) re: Municipal Claim vs. Estate of Sandra F. Davey, deceased.

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

### **Miscellaneous:**

Receipt, Review and Administration of Signal Project Form, Application for Signal Approval and Related Documents re: SR 512 Corridor Improvements Program.

Legal Research re: Executive Session – PA Open Meeting Law – Purchase of Property.

Receipt, Review and Administration from Borough Code Enforcement Officer attaching Enforcement Notice re: 347 Fairview Avenue.

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?) – no action taken.

Attorney Karasek said he needs to discuss the ARLE Grant with Brian to verify that everything was all taken care of that needs to be included in the agreement. The Borough and Plainfield Township will need to adopt an ordinance. Brian said he forwarded all the information that Rob Hoffman, from Traffic Planning and Design presented, to Plainfield Township for their review. Brian said Plainfield Township will be discussing the agreement at their May 11<sup>th</sup> Township meeting. Attorney Karasek said that he had concerns as to where the computer software and hardware would be housed, but it was agreed to be housed at the Slate Belt Police Department in Plainfield. Attorney Karasek said he sent a letter to Dave Backenstoe the Solicitor for Plainfield Township asking if we needed an ordinance between the two municipalities under the Intergovernmental Cooperation Act and he asked if it would be a good idea to have a signed agreement with the Police.

Dave Hess asked Council to review outstanding items on Attorney Karasek's report for any future action to be taken. Some of the items have been outstanding for years and need to be discussed and resolved. Brian stated that some items are related to changes that could be considered in the Borough Zoning Ordinance. Since requirements for fences has recently been discussed maybe a committee could be formed to review several zoning issues. Dave Hess, Alex Cortezzo, and Jeff Yob will be on the fence committee.

## **ENGINEER'S REPORT**

Brian said he is currently working on Washington Street overlay bid specifications. He hopes to have the advertisement together by the end of the week so it can be put out to bid. Brian met with Jason Keenhold, the electrician, because there were issues with the lighting in the Municipal Building garage. He said for the main disconnects for each of the electric panels have fuses for each of the three phases. During the last rainstorm, one of the fuses was blown. Brian said three fuses were purchased and Jason replaced the blown fuse today.

Brian said there are still Zoning issues with respect to the Ambulance building. Brian reported that a Zoning Permit for the Change-of-Use for the property was issued with the agreement that Ken would finalize all to the issues with the sewer authority. He said he issued the permit because he is allowed to under the Zoning Ordinance, but when it comes to issuing the Certificate of Compliance, (which allows the building to be occupied and open for business) he cannot issue that until he has the Labor & Industry approval and the Sewer Authority approval, inspection, and permit. Brian said he has Labor & Industry Certificate of Occupancy Permit. He said he received a letter from Ken's attorney which stated that Ken has received a bill from the Sewer Authority. Brian said he called Bob Hahn from the Sewer Authority who said there was a check dropped off for the feasibility study, but Mr. Fairchild has never provided the information required to complete the feasibility study. Brian was informed that Ken was on the agenda for the Sewer Authority, but he did not attend the meeting. Brian said has received notification stating the Ken is conducting working there. Brian informed Ken that he has to complete the requirements with the Sewer Authority prior to receiving the Certificate of Compliance. Brian said that in regards to the Sewer Authority, Ken said this is something the Borough was supposed to be handling. Brian said as of now there is no Certificate of Compliance and his next step is to issue an Enforcement Notice. Attorney Karasek said that as of Thursday an email went from Mr. Fairchild's Attorney to the Sewer Authority in regards to the EDU's and asking for clarification on what needs to be done.

## **NEW BUSINESS**

1. Auto Zone Land Development Plan – Attorney Karasek said Brian can take over for the official action by the Borough in respect to the plan that has been filed. He said Brian sent out a review letter as of today advising to the status of the items that are outstanding. Attorney Karasek said if in fact the

Borough is prepared to approve this plan he has prepared the Agreement for Conditional Plan Approval Form to be checked off and signed by the applicant.

Regarding the review letter, Brian said it is a lengthy review with details with respect to the project and the history of the project. Brian read the paragraph bringing us up to date from the Council meeting of February 16<sup>th</sup> where Council had addressed that waiver request from Auto Zone.

The paragraph read: At the Wind Gap Borough council meeting held on February 15, 2016, Council approved all of the waivers requests except for Request #4, Saldo 510.A.4. This section requires that no portion of a parking compound shall be permitted within ten (10) feet of side or rear property lines and twenty (20) feet from street right-of-way lines. As a result of this waiver denial, the applicant has revised their plans to move the proposed improvements, building and parking facility, approximately 20' to the south in order to meet the requirements of the Ordinance. In order to facilitate this change, an adjoining property owned by John Jr. and Donna Barto (formerly owned by Martha J. McIntyre), needed to be subdivided, and the new lots consolidated with the adjoining properties. The parcel being subdivided is 40' in width and is proposed to be subdivided in half. The northern parcel will merge with tax parcel F8NW4A 1 2, which is the parcel Auto Zone is developing, and the southern parcel will merge with other lands of John Jr. and Donna Barto, tax parcel F8NW4A 1 5. The proposed subdivision has been provided on a separate sheet (Barto Plan of Lots, A Subdivision & consolidation of Parcel ID's F8NW4A 1 2, F8NW4A 1 3, & F8NW4A 15, Sheet 1 Of 1, prepared by McIlvried, DiDiano & Mox, LLC., dated 3/29/2016).

The last waiver that he referenced was the parking facility being 20' from street right-of-ways so the only way the applicants engineer could meet those requirement was to shift everything to the south. He said that in order for them to develop the property, they needed additional property and the applicant has acquired the former McIntyre property which is 40 feet total width. Brian said as part of the revised application they are proposing to split that parcel in half, 20' merging with Auto Zone and the remaining 20' with Mr. Barto's property on the South. He said everything basically stays the same, but now they meet the requirements. Brian said some of the other requirements they now meet are the loading and unloading zone, they obtained a variance for and now with the additional room they can put a 14' by 75' loading or unloading zone. He said the only question or concerns we have is how we are going to incorporate the subdivision and lot consolidation that has to be done as part of the plan application. Brian said originally it was just land development of an existing parcel of land and now we have an aspect of taking an adjoining parcel sub-dividing into two lots and merging with adjoining properties. He said the sub division plan was submitted on a separate sheet and he advised them to try to incorporate into the original plan set with all of the plans so one document is recorded. Brian said that if they do choose to do this, there are some other procedures that we would have to follow in order to approve.

Fintan McHugh, representing Auto Zone, said he spoke with the engineer regarding the issue about consolidating everything on a single sheet and he said whatever Brian's preference is they will do. Fintan and Auto Zone's engineer reviewed the conditions and they are fine with them, they are housekeeping issues without a need for additional waivers.

AutoZone Land Development Plan (Preliminary and Final) Agreement for Conditional Plan Approval:

- Sewage Exemption approved by Borough
- Northampton County Conservation District Review and Approval
- PennDOT Highway Permit or Borough Driveway Permit
- Compliance with all conditions set forth in Borough Engineer's letter of May 2, 2016: Sub #4,8,10,28,29 General #3,4,6,7,8,9,10,13,15
- Unification and Merger Deed for both the Auto Zone and Barto properties
- Improvements Agreement with security acceptable to Borough Engineer and Borough Solicitor
- Park, Recreation and Open Space (Fees-in-Lieu) – one (1) Lot

- Monuments, pins and/or markers to be set in the field and certified, in writing, by Applicant's Engineer
- All SALDO Waivers added to plan
- Stormwater Maintenance Agreement approval by Borough Engineer and Borough Solicitor
- Subdivision of the former McIntyre Property to be included into the Land Development Plan
- Signature of Plan
- Notarization of Plan

**On motion** by Jeff Yob to approve Preliminary/Final Plan for the AutoZone based upon all the conditions as stated by the Borough Solicitor and agreed to by Authorized Agent Fintan McHugh and seconded by David Valley. Roll call vote taken. In favor: D. Hess, D. Valley, J. Yob, A. Cortezzo, T. Curcio. Opposed: J. Faust. Motion carried with a vote of 5-1.

2. Community Wide Yard Sale – The Community Yard Sale will take place on July 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup>.

**On motion** by Jeff Yob to have the Community Wide Yard Sale on July 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> and seconded by Alex Cortezzo. Roll call vote taken. Council agreed unanimously.

## **OLD BUSINESS**

1. Water's Edge Wind Gap Land Development Plan – Attorney Karasek said that Brian informed him that the developer wants to proceed with completing some of the improvements related to his land development so that makes the final plan approval different than what Council approved. Attorney Karasek said that back in October 2014, Council approved the Water's Edge Land Development Plan as both a preliminary and final plan approval for this project with various conditions. He said one of the conditions is the developer must enter into an improvements agreement with security. Attorney Karasek said if they want final plan approval they must post a development agreement stating that they will do these required improvements. He said it is his understanding that Mr. Muschlitz does not want to post an improvements agreement and that he would rather put in the improvements first, which he is required to do. He said Borough Council cannot give him final plan approval if does not sign an improvements agreement. Mr. Karasek said Council would have to reconsider their final plan approval vote and vote on granting a preliminary plan approval with conditions and one of those conditions would be entering into an improvements agreement.

Attorney McClain, for Water's Edge said the approval that was granted was a conditional preliminary final, the improvements agreement was one of the conditions. He said it was Mr. Muschlitz's desire is not to attempt to circumvent, he wanted to start the improvement, and yes, there is going to be a home owners association. He said the vast majority of these improvements are going to be privately owned and maintained by the home owners association so he wanted to finalize what he considered the balance of the cost to be. Attorney McClain said the conditions Mr. Muschlitz is attempting to address because he doesn't want to be posting a bond if he doesn't have to incur bank origination fees. Mr. Muschlitz will have to provide a check to the Borough for escrow for the Borough Engineer to come out and look at the improvements. They are not going to do anything or build anything. They already have the preliminary and final plan, they will not have anything recorded at the Court House. Plans will be prepared when done and ready to enter into the Improvement

Agreement. They are acting on the basis of the preliminary plan approval and the ability to put the improvements into the ground.

Attorney Karasek said his concern is that they have final plan approval on a condition that is not going to be met. Mr. Muschlitz said there are some storm water piping and structures that should be put in now in order to be in conformance with the NPDS permit with sewer conservation. He said some of these pipes are permanent and he thinks Brian would like to come out and look at them when he puts them in. Brian said yes that is why they spoke about the inspections. Mr. Muschlitz said that within a week two weeks the Homeowners Association Declaration, Public Offering, Bi-Laws, and the Rules and Regulations should be finalized, a draft will be submitted for comment. Attorney Karasek said so that there is no misunderstanding, in the future that they should send a copy, of exactly what they want to do, to the Borough with a copy to him.

2. Municipal Building Façade – Brian will have an update at the mid-month meeting.
3. Park Master Plan – Louise said she will contact the Engineer for an update.

## **QUESTIONS & COMMENTS**

1. Fire Company Social Hall – George Hinton questioned the location for the Social Hall, 111 N. Broadway or at the Municipal Complex. Dave Hess said that at the last meeting Randy George stated that the Fire Department wanted the Social Hall at 111 N. Broadway. George said good now they can start moving forward without delays. He said that the panhandling has once again started again on Male Road. George said that all stop signs should be upgraded to meet PennDOT standards. He said regarding businesses that Council is approving or not approving, he doesn't think this building is in the best interest for our community. George said that the applicant for Center Street was denied for a far less impact to the Borough than what the impact will be at Male Road with traffic from the Auto Zone. He said he hopes he is wrong, but he thinks this will be a traffic nightmare. George said Council should listen to the recommendation from Zoning and Planning. He said you don't need them if you are always going to overrule their recommendations. He said regarding the old Ambulance building, Council should get together with the Sewer Authority and the buyer to get this resolved instead of costing everyone a lot of money. George asked if the Fire Department or the Borough should call the Sewer Authority to find out if there are any liens on the property at 111 N. Broadway. Dave said Louise sent a letter to the Sewer Authority for all the properties we have for sale. Louise said she has not received a response as of yet. George said we should ride around the Borough to see what properties have issues. He said the residents keep complaining and nothing is done. He said if we do not have the proper wording in the Building or Property Maintenance, we should have it changed. He said if it wasn't for alleys, property lines, and mess in the neighbor's yard we would not hear anything from the residents because the rest of the Borough runs smoothly.

2. Siren on top of Well Fargo Bank – Jon Faust reported that he was contacted about the siren. He was informed that the roof on the top of the bank is sagging because of the weight of the siren and they developed a water leak which is scheduled to be repaired May 11<sup>th</sup>. Tony said it is a Civil Defense Siren. Jon said he contacted several people and he could get a crane there to remove the siren from the roof, but Council may have to decide how to proceed with replacing the siren at a different location possibly with a siren that weighs less than the approximate 1,000 pounds or an electronic one that is only a few hundred pounds. Jeff Yob said anything that was Civil Defense got absorbed by the Borough. Dave Hess said that we need to take it down and we can decide what to do at a later date.

**On motion** by Jeff Yob to remove siren from Wells Fargo Bank due to an emergency and seconded by Dave Valley. Roll call vote taken. Council agreed unanimously

### **Executive Session**

Council adjourned to Executive Session to discuss personnel issues at 8:38 p.m. Council reconvened at 8:45 p.m.

**On motion** by Jon Faust to move the pay rate of our part time employee up to \$13.50 per hour effective the next pay period and to review the salary at the beginning of the year and seconded by Jeff Yob. Roll call vote taken. Council agreed unanimously

**On motion** by Tony Curcio to adjourn the meeting of May 2, 2016. Council agreed unanimously.

The meeting of May 2, 2016 adjourned at 8:49 p.m.

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Louise Firestone, Borough Administrator