

**BOROUGH OF WIND GAP
545 East West Street
WIND GAP, PA 18091
610-863-7288
FAX 610-863-1011**

The Council meeting of the Borough of Wind Gap on Monday, January 4, 2021 was called to order at 7:01 p.m. by Council President Dave Hess, through Zoom Video Conferencing. Louise Firestone informed everyone that the meeting was being recorded.

A verbal roll call was taken by Borough Manager Louise Firestone – participating via Zoom computer link or Zoom phone link were Council members: Steve Bender, George Hinton, Dave Manzo, Joyce McGarry, Mike McNamara, and Jeff Yob. Also participating were Mayor Mitchell D. Mogilski Sr., Borough Solicitor Ronald Karasek, Borough Engineer Brian Pysher, and Borough Manager Louise Firestone.

PUBLIC COMMENT

1. Matt Silvius, 24 South Lehigh Avenue said that a neighbor has been lighting fireworks in celebration of July 4th and New Year's Eve. Mr. Silvius believes the explosives are M-60s and he is concerned about safety issues because of the close proximity to the neighboring houses and cars. He asked if Council adopted an ordinance that addresses fireworks and firework safety within the borough. Dave Hess said that an ordinance was enacted that prohibits igniting or discharging fireworks within the borough and any resident should contact the Slate Belt Regional Police with concerns regarding the enforcement of the ordinance. The Borough Office will provide Mr. Silvius with a copy of the ordinance.

2. Steve Reider, Director, Slate Belt Rising (SBR), spoke about the programs that are ongoing and new things for this year. He said that SBR still has grant funding available for commercial, residential, and rental property façades. SBR can also do business signage and murals, but that funding will be coming to an end on December 31st of this year. Please have anyone interested or eligible contact him so the money can be spent because the county will not let the program be extended anymore. The newest program that SBR has coming out with is the Commercial Lease Subsidy Program for new businesses coming into any one of the four SBR boroughs (Bangor, Pen Argyl, Portland, Wind Gap), they would be eligible to receive up to \$1,500 a month for the first three months of their lease and up to \$750 for the second three months of their lease. That is for the first six months of a two-year lease. SBR will advertise and do a mailing regarding this program and would like to get some businesses lined up to start in March. This is for new businesses coming in or for existing businesses that want to expand to a second location within the four boroughs that would also be eligible. For more information you can go to our website at [Slate Belt Rising.org](http://SlateBeltRising.org) for applications. SBR continues to support high school graduates with scholarships.

APPROVAL OF MINUTES

On motion by Dave Manzo to approve the December 22, 2020 minutes and seconded by Steve Bender. Roll call vote taken. Roll call vote taken. Council agreed unanimously.

APPROVAL OF EXPENSES

On motion by Steve Bender to approve the expenses in the amount of \$167,947.26 and seconded by Dave Manzo.

George Hinton would like to suggest that the Nazareth Ford bill in the amount of \$1,844.19 for the Ford-550 be held until the borough receives the truck back in working order. The truck was sent in to be fixed and came back two days later only to be sent back in for repairs for the same problem. Steve Bender said that he would like to rescind his motion to include the holding the payment for the truck repair.

Motion amended by Steve Bender to hold payment from Nazareth Ford until the Ford-550 is repaired and back at the borough, but approve the bills in the amount of \$166,097.07 and seconded by Dave Manzo. Roll call vote taken. Council agreed unanimously.

Jeff Yob questioned if the vandalism of the rental equipment at the park is an insurance claim? Dave Hess said that he believes it will be once the Police investigation is done. Plasterer Equipment billed the Borough, the bill had to be paid to them and hopefully we will collect restitution once the case is solved. Dave said that the Slate Belt Regional Police Department found the batteries, but we do not know if they have the perpetrators yet. Louise Firestone said she will follow up with Slate Belt Regional Police.

Dave Hess said that the Slate Belt Council of Government (COG) dues are to be paid, does Council want to continue participating in the COG. Attorney Karasek said that Wind Gap Borough would be able to use their Appeals Board for any Uniform Commercial Construct Code (UCC) appeals. If the Borough leaves the COG, an independent appeals board would have to be established with professionals from each industry. Dave Manzo said that the Appeals Board would also be for the International Property Maintenance Code, which was the initial thought. Steve Bender said that we were also able to rent their leaf vac and the COG recently purchased a street sweeper that will be available to rent.

SOLICITOR'S REPORT

MEETINGS ATTENDED:

November 2, 2020 - attendance at regular monthly meeting of Borough Council via ZOOM.

November 17, 2020 - attendance at regular mid-month meeting of Borough Council via ZOOM.

December 3, 2020 - attendance at regular monthly meeting of Borough Planning Commission via ZOOM.

December 7, 2020 – attendance at regular monthly meeting of Borough Council via ZOOM.

December 22, 2020 – attendance at regular mid-month meeting of Borough Council via ZOOM

SUBDIVISION MATTERS:

Receipt, Review and Administration of File, Several e-mails on Lot Consolidation, Temporary Access Easement Agreement and Monumentation Escrow, Subdivision Improvements and Requirements Agreement, Giroux and JERC Driveway Easement Agreement re JERC Subdivision Plan.

Receipt, review and Administration of File and Updated Plan, Several e-mails (with suggested revisions) for Lot Consolidation Deed and Deed to NAPER Development, Inc. re Detzi Preliminary/Final Minor Subdivision.

LAND DEVELOPMENT MATTERS:

Receipt, Review and Administration of File, and Signed Easement Agreement for Wind Gap Park Trail re Water's Edge at Wind Gao, LLC-Dream Lehigh Valley.

Receipt, Review and Administration of File and Sketch Plan Application, Sketch Plan, Zoning Permit Information, Computer Search on county website for deed and Tax Parcel Information, and Telephone Conference with Applicant's Attorney re PA Venture Capital, Inc. – Relocation of Billboard.

ZONING AND OTHER LAND USE MATTERS:

Receipt, Review and Administration of Gild, Borough Engineer review Correspondence, Zoning Permit and Related Information, Telephone Conference with R. Aide and e-mails re 40 South Broadway-Grading-Fill-Storm water Issues.

DEVELOPMENTS ON OUTSTANDING LITIGATION: N/A

COURT DECISIONS ON BOROUGH CASES: N/A

MISCELLANEOUS:

Preparation of Resolution 2020-07 re 2021 Real Estate Tax Millage.

Preparation of Planning Commission Agenda for December 3, 2020.

Preparation of December 3, 2020 Planning Commission Meeting Minutes.

Preparation of Monthly Solicitor's Report.

Outstanding Items:

Stop Sign Ordinance

Dog Park Ordinance

ENGINEER'S REPORT

Brian Pysher reported that we are still trying to finish up the maintenance garage. K.C. Mechanical was in last week insulating the pipes coming out of the boiler. There are still some items regarding the unit heaters in the garage that need to be vented through the roof and made operational yet. There continues to be punch list items that have yet to address. The Architects have sent out requests for all contractors to respond, but no status update has been received from the contractors regarding a timeframe for completion of all outstanding items. Dave Hess expressed his frustration because every month Council hears K.C. Mechanical is holding up progress of the project and in the meantime, the delays cost the borough because the utilities are turned on and being paid for, but the street department cannot occupy the building. Brian did ask W2A Design Architects, if there was some sort of time frame associated with our contracts with them. He did touch base with Louise today, they spoke with Attorney Karasek, and discussed what recourse the borough would have to get the work done or hire another contractor to complete the unfinished portion of the mechanical work. Brian and Louise will circle back with Attorney Karasek and figure out where they can go to make them complete the work.

Attorney Karasek added that there are two issues, he looked at the Architect's contract and that is just between the borough and the Architect. Does the borough have a contract with the general or was that portion being subbed out? He doesn't know what can be done now, other than chase K.C. Mechanical. Every contract should have a time frame to complete, how extras will be dealt with, all those become an issue when you have a contract going forward that is having a problem which would allow a claim against. Moving forward there should be a start date and a completion date on any contract that the Borough enters into so if not done by a certain date, there would be a penalty cost per day. Brian said that this is a multiple contractor project, K.C. Mechanical for HVAC, Warko Group for plumbing, Wind Gap Electric for the

electrical, and Nu Cor Management is the general contractor. Louise stated that the borough does have individual contracts, she does not know the time line for the contracts because the project was pushed back due to weather concerns so the original start date of 2019 became 2020. Attorney Karasek to be provided with a copy of the original contract with K.C. Mechanical for his review.

NEW BUSINESS

1. Wind Gap Municipal Authority Board Members – Dave Hess reported that the Borough received an e-mail with the copy of Mr. Dieter's choice not to seek another term on the Municipal Authority Board. Dave Manzo will look at the Wind Gap Municipal Authority Bylaws and Rules and Regulations to verify if a minimum number of members on their Board is required. Dave Hess said that there are currently five active members on the Board.

2. Planning – Proposed Warehouse Development Plainfield Township - George Hinton reported that he has concerns with the building that is going to surround the borough. Jaindl is looking to buy the old railroad bed where RPM is and Nolan Perin has his company called NAPER there. They are looking to put in over one million square feet of warehouses. George expressed his concern that Wind Gap does not really get all the submission information because the majority of projects are located within the townships and not the borough. Mr. Perin set up a meeting with representatives of Jaindl to try to get Wind Gap's input on it and further down the road Jaindl contacted the Borough again and had their engineers here to talk about it. Those present from the Borough were Louise Firestone, Brian Pyscher, Dave Manzo, and George Hinton. We gave them our concerns from Wind Gap's perspective regarding the impact of more trucks adding to the already existing traffic amounts that go through the borough on a daily basis. Unfortunately, these developments for the most part, utilize State roads and the borough has nothing in place to ask for any off-site improvements. We learned that firsthand with the JERC and Green Knight Economic Development projects on Male Road. He would to know if we can send a letter to Plainfield Township advising us of any properties connected to Wind Gap that they are looking to develop and keep us in the loop so we can set up a committee with people that will be willing to go and talk to the Planning Commission and Zoning Commission to address our concerns to Plainfield. We have a joint Comprehensive Plan, which has not been meeting, but this is what we have been talking about, having communities talk to each other so we can help each other. They all realize that getting through Wind Gap is not easy.

On motion by George Hinton to direct the Borough Manager to send a letter to Plainfield Township asking that Wind Gap Borough be included in all discussions for the Jaindl – NAPER and seconded by Jeff Yob. Roll call vote taken. Council agreed unanimously.

Attorney Karasek said that Plainfield Township has requirements that if the development borders Wind Gap they must keep us in the loop. Brian Pyscher said that based on the description, this will be similar to Industrial Drive that was proposed years ago. They will have to come before the Planning Commission with the development because their intention is to build a road from the landfill entrance on 512 out onto North Broadway. We will end up with a portion of the road in Wind Gap Borough and they will have to go through the Land Development process. George said that they put the road in Wind Gap, once the road is done and approved, it becomes our responsibility because it is in Wind Gap. Brian said that we should emphasize that we want to have that road remain as private and not have the Borough take it over. He does not know what the legal part of that is if they propose a road for dedication, does the Borough have to accept it. We are going to get the traffic from it and not

get any tax revenue because none of the buildings are in the Borough. We will end up with a couple of feet of new road that will have to be plowed, maintained, and paved in 20 to 25 years not to mention stormwater inlets and street lights. Attorney Karasek said that he did research several years ago and he is not sure if the Borough is required to take over a road even it is proposed for dedication. If the developer is not willing do something to accommodate the Borough, then the Borough can say that they are not taking it over.

Jeff Yob said that there was an agreement that any neighboring development would be discussed with the neighboring municipality. George said that regarding JERC, the only discussion that the borough had was at the Green Knight Economic Development pre-construction meetings. Just like their emergency entrance, Plainfield Township told them that they did not have to pave it, just put stone down. Wing Gap Borough was requesting access to the property and the developer had a meeting on site with them trying to figure out if and what would work. If it was not for the Planning Commission, Wind Gap would not have any idea of what was going on back there. Wind Gap is not getting anything from that project and we have a bridge that is failing and no one wants to sign on a letter to get the bridge fixed.

3. Approval 2021 Council Meeting Schedule – (Jan-Feb-March Zoom Platform)

On motion by Jeff Yob to approve the 2021 Council Meeting Schedule as published and advertised and seconded by George Hinton. Roll call vote taken. Council agreed unanimously.

4. Louise Firestone reported that she received a copy of an e-mail regarding a Skype meeting for the proposed Jaindl warehouse development initiated by Traffic Planning and Design and including PennDOT. She will forward the e-mail to Mr. Manzo and Mr. Hinton. Brian Pysher said that he did receive the e-mail for the Friday, January 8th meeting beginning at 11:00 a.m. via Skype. Brian explained that this is a scoping meeting through PennDOT so prior to any project involving PennDOT they require a meeting which provides an outline of the proposed project.

OLD BUSINESS

1. Stormwater Issue – 40 S Broadway - Attorney Karasek reported that he had a long discussion with the neighbor, Mr. Aide, and informed him that this was a private matter between neighbors. Mr. Aide said that this is not a private matter, the Borough approved the plan without allowing him to make the property bigger with various changes that are not part of the permit application. He is not sure if this should be relooked at again by Tina. Brian Pysher said that this originated late in November early December. He had some correspondence with the Zoning Officer last week, she asked if he had any contact with the owner, which he did. Subsequent to a letter, the excavator who was acting on behalf of the owner, contacted him. They did not agree with our assessment of this, explaining that there was inadequate cover for footing that was there, in order to get the proper frost footing that was needed they brought the fill in. Brian said they gave him the impression that there were no intentions of correcting or at least putting it back to the way it existed. Brian said that at the southside of 40 S Broadway, they brought in twenty-four inches of material and filled twenty-four inches at the foundation wall, tapered it to existing grade at or about the property line which makes it slope more towards that property. Jeff said that if it was not on the plan and they did it, it is up to the zoning officer to enforce the plan or a corrective measure. Attorney Karasek said that his concern is that he does not want to be in a position where Borough Council is telling the zoning officer what to do but if the people are in violation of the Borough Ordinance or permit etc, there should be action taken so it does not become a private issue, it becomes a Borough issue because there is a violation of non-compliance with the permit application. Jeff asked Attorney Karasek if it was

appropriate for us to ask the zoning officer if there is an intent of filing a complaint against that builder. Attorney Karasek said they could do that provided that it appears there is a violation of their application for the permit of maybe her remedy is to hold the certificate of occupancy. The Borough should know what is happening with this, being in the loop moving forward. Attorney Karasek said he is bringing up this issue because he knows that Mr. Aide has contacted the Borough and he wants to do what he can to keep the Borough protected. If there are Borough ordinances being violated, the Borough should take some action. Brian said there was a site plan that was submitted as part of it and it did not compose any fill, excavating or grading on the property. Our letter states that they are outside the scope of their zoning permit and it should be restored back to the original state. Brian will follow up with Tina again, she said she will hold the occupancy permit, if he cannot occupy it, it will force him to take some sort of action to correct this. Jeff said that he thinks that while it is under construction, we should fix this issue which is better than having them have them come back a few months from now. Steve Bender said he thought that Tina had previously relayed that she does not get involved with grading. Brian said yes, that is why he got involved because Mr. Aide has been contacting the Borough. Originally, we deferred it to Tina since she issued the zoning permit. That is the only thing that we did, the Borough issued a zoning permit. She does not do anything with grading so we stepped in and our determination was that they did work outside the scope of the zoning permit and he thinks that that is how this needs to be enforced is through the zoning permit. He believes this is more a civil matter and the Borough should stay out of this if at all possible. Brian will contact the Zoning Officer, Tina Serfass, and report back at the next meeting.

ADJOURNMENT

On motion by Jeff Yob to adjourn the meeting of January 4, 2021. Council agreed unanimously. The meeting of January 4, 2021 adjourned at 7:59 p.m.

Louise Firestone, Borough Manager