

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

The Council reorganizational meeting of the Borough of Wind Gap on Monday, January 6, 2020, was called to order at 7:00 p.m. by Mayor Mitchell D. Mogilski, Sr. In attendance were Councilmen: Dave Hess, Dave Manzo, and Mike McNamara. Also, in attendance was Borough Solicitor Ronold Karasek, Borough Engineer Brian Pysher, and Borough Administrator Louise Firestone.

Administering the Oath of Office to Councilmen - At this time Mayor Mogilski administered the Oath of Office to: Steve Bender, George Hinton, and Jeff Yob. Council took their seats.

Mayor Mogilski then proceeded with the order of business by seeking nominations for Council President. Council made the following: **On nomination** by Jeff Yob for Dave Hess to hold the position of Council President. Vote for Dave Hess: Yea, S. Bender, Yea, D. Hess, Yea, G. Hinton, Yea, D. Manzo. Mr. Hess was appointed Council President with majority of the Council vote.

The next item of business was Mayor Mogilski seeking nominations for Council Vice President. Council made the following: **On nomination** by Mike McNamara to nominate D. Manzo for Council Vice President. Vote for Dave Manzo: Yea, D. Hess, Yea G. Hinton, Yea, D. Manzo, Yea, M. McNamara. Mr. Manzo was appointed Council Vice President with the majority of the Council vote.

Mayor Mogilski turned the meeting over to Council President Dave Hess.

The next item of business was Council President, Dave Hess seeking nominations for Council President Pro-Tem. Council made the following: **On nomination** by Jeff Yob for George Hinton to hold the position of Council President Pro-Tem. Vote for George Hinton: Yea, G. Hinton, Yea, D. Manzo, Yea, M. McNamara, and Yea, J. Yob. Mr. Hinton was appointed Council President Pro-Tem with the majority of the Council vote.

Council President announced a vacancy on Council. Council received a letter of interest from former Councilwoman, Joyce McGarry. **On motion** by George Hinton to appoint Joyce McGarry to the vacant council seat and seconded by Dave Manzo. Roll call vote taken. Motion carried unanimously.

Administering the Oath of Office to Councilwoman - At this time Mayor Mogilski administered the Oath of Office to newly appointed Councilwoman Joyce McGarry.

The next item of business was Council President, Dave Hess seeking nominations for Council Vacancy Board Chair. Council made the following: **On nomination** by Jeff Yob to appoint Randy Yordy. Randy Yordy declined. Council President, Dave Hess said that nominations for this position will be tabled until next meeting. An attempt will be made to contact former Council Vacancy Board Chair Mr. James Shoemaker to see if he would be willing to remain in the position.

## **PUBLIC COMMENT**

1. Rick Mutchler of Bio Spectra came before Council regarding his property on Alpha Road and Broadway, the old Cramer's property. He holds no one accountable for not knowing the drain was there, Cramer's is responsible for understanding the condition of the drain under their property. He has a concern about trying to fix it. He came here in December asking if he could fix it, he still personally believes this is not his drain. He believes the drain in collapsing at points on the property. Rick asked if there were any permits issued to open up the ground on his property to replace the drain? There was not. Rick said, may I ask what the difference between that and my opening the ground to replace the drain. How can I not open the ground and replace the drain that the Borough is not compelled to replace? Attorney Karasek said that to his understanding that you, Mr. Mutchler, agreed to allow the Borough to open that area and replace that pipe and or inlet and obviously the Borough can't be subjected to its own ordinances, if you will, so you however as a private person would be and you would then be subject to ordinances with respect to land development. Rick asked who is it that I can speak to, who is the final authority in this town that I need to be able to speak to about how to replace this drain. Attorney Karasek said that he would speak obviously with the Engineer to determine whether or not your plan would be acceptable and then you need to also speak with the Planning Administrator to determine if you plan to file land development or request a waiver of land development. You can come before Council and say that you do not think you need land development and here this is simply a drain that has been there for x number of years, I don't see where there is an issue, our engineer believes that the replacement is a relatively simple matter, we will assume for purposes of this discussion that your Borough Engineer feels the same, can we waive land development. Rick asked if there is anywhere that he would be able to find this in writing. Attorney Karasek said he could go to the Borough Sub-Division Land Development Ordinance and Appendix 11, the application for modification for land development waiver and section 308 gives you the procedure on how you go about doing that, we can certainly give you a copy of this without you having to purchase the entire book, although I can't tell you other sections of the book that might apply, we can do that before you leave tonight.

Attorney Karasek said he will forward the e-mail that Brian sent to him Friday afternoon, explaining his position of what occurred to all of Council. He did send it to Attorney Faul because he contacted him last week regarding his representation of Mr. Mutchler. Basically, what occurred, was apparently things were done and as work was done you cannot see under the ground, more problems occurred, more erosion occurred, so the project had to expand to be a little different than initially anticipated. Rick asked who is the person for him to see in the Borough if he has a question about how to proceed with something. Attorney Karasek said that it depends on what he is asking, if it is a zoning matter you have to talk to Zoning Officer, if it is land development matter it is usually the Engineer, if it is a legal matter, it would be him, and the final say in anything is Borough Council. It is Borough Council who makes the final decision and if Borough Council has a vote half and half, then the Mayor votes to dismiss or split the tie. To prepare that modification you would go to the Planning Commission first to request them to review the matter. Planning Commission will give a recommendation as to whether or not the modification should be permitted that it comes to this Council for decision as to whether or not it would be granted.

## **APPROVAL OF MINUTES**

**On motion** by Dave Manzo to approve the December 17, 2019 minutes and seconded by Mike McNamara. Roll call vote taken. In favor: J. McGarry, M. McNamara, D. Hess, G. Hinton, D. Manzo. Abstained: J. Yob, S. Bender. Motion carried 5 – 0 – 2.

## **APPROVAL OF EXPENSES**

**On motion** by Jeff Yob to approve the expenses in the amount of \$156,234.59 and seconded by Mike McNamara. Roll call vote taken. Council agreed unanimously.

## **SOLICITOR'S REPORT**

### **MEETINGS ATTENDED:**

December 2, 2019 - attendance at regular monthly meeting of Borough Council.

December 17, 2019 – attendance at regular mid-month meeting.

### **SUBDIVISION MATTERS:**

Receipt, Review and Administration of Two Items of comprehensive Correspondence from Applicant's Traffic Engineer on Traffic Study in Wind Gap and Plainfield Township re JERC Partners, LII, LLC.

Receipt, review and Administration of Responsive Correspondence from Applicant's Engineer Re-Submitting Revised Plan and Documents and Responding to Borough Engineer Review Letter dated August 29, 2019 re JERC Partners, LII, LLC Minor Subdivision.

### **LAND DEVELOPMENT MATTERS:**

Receipt, Review and Administration of Responsive Correspondence from Applicant's Engineer Re-Submitting Revised Plan and Documents and Responding to Borough Engineer Review Letter dated September 2, 2019 re JERC Partners, LII, LLC L.D. Plan.

Receipt, Review and Administration of Correspondence from PA DEP regarding Technical Deficiency Letter on NPDES Permit re JERC Partners, LII, LLC L.D. Plan.

Receipt, Review and Administration of GEO Technology Associates, Inc Report-Proposed Slope Configuration re JERC Partners, LII, LLC L.D. Plan.

Receipt, Review and Administration of Wind Gap Municipal Authority Capacity Correspondence and PNDI Search Results re T. Klump Land Development Plan – Third Street.

Receipt, Review and Administration of File, Receipt and Administration of SALDO Waiver/Official Action form and Enclosure Correspondence to Borough Administrator with copy to Borough council President re T. Klump Land Development Plan – Third Street. .

**ZONING AND OTHER LAND USE MATTERS:** N/A

**DEVELOPMENTS ON OUTSTANDING LITIGATION:** N/A

**COURT DECISIONS ON BOROUGH CASES:** N/A

### **MISCELLANEOUS:**

Review of Final Draft of Advertising Notice, Ordinance No. 507 and e-mails to Express Times re Real Estate Tax Millage.

Preparation of Ordinance No. 506 and Advertising Notice and e-mail to Express Times re SBRPD Charter Amendment for 2020.

Receipt, Review and Administration of File and Enclosure e-mail to Plainfield and Pen Argyl Solicitor with copy to Borough Administrator re Ordinance 506: Amendment to SBRPD Charter.

Review of Final Draft of Advertising Notice, Ordinance and e-mail to Express Times re Ordinance No. 505 Repeal Per Capita Tax.

Preliminary Review Construction Mortgage and General Obligation Note re Mortgage Refinance and Construction Mortgage of Municipal Garage.

Prepare Templates of the First Advertising Notice, Second Advertising Notice and Borough Ordinance re Construction of Maintenance Garage and Refinance of Existing Note-General Obligation Note.

Receipt, Review and Administration of e-mail transmission of Signature Pages of Ordinance No. 505 (Repeal Per Capita Tax), Ordinance No. 506 (SBRPD Charter Amendment) and Ordinance No. 507 (2020 Real Estate Tax Millage).

Receipt, Preliminary Review and Administration of Several e-mail transmissions from R. Mutchler and Borough EIT re Bio Spectra and Cramer's Cashway Drain Pipe Issue.

Preparation of Monthly Solicitor's Report.

**Outstanding Items:**

Stop Sign Ordinance

Dog Park Ordinance

**ENGINEER'S REPORT**

Brian Pysher reported that he is continuing to work on the plans for Lincoln Street storm drain project. They are preparing specs for the paving, that should go out early spring.

Brian will be a meeting with the design Engineer from Met Ed tomorrow on East First Street to try and determine where the wires are for installation of the street light pole.

Brian will be meeting with Bracalente Construction tomorrow to go over the remaining outstanding punch list items for Alpha Road.

**NEW BUSINESS**

1. Approve Advertisement of Borough Meetings for 2020.

**On motion** by Jeff Yob to approve the advertisement of Borough Meetings for 2020 and seconded by Dave Manzo. Roll call vote taken. Council agreed unanimously.

2. Dave Hess asked that Council hold off on the appointments to the various boards and commissions until the mid-month meeting. Council recently received a letter of interest from Mr. Pultz to serve on the Municipal Authority board.

**On motion** by Dave Manzo to create a temporary investigation committee to look into applicants for board positions to determine the eligibility and qualification of the person or persons applying to the board or commission and seconded by George Hinton. Roll call vote taken. Motion carried unanimously.

Dave Manzo, George Hinton and Joyce McGarry volunteered for the temporary investigation committee and they will discuss their findings at the next meeting.

**OLD BUSINESS**

1. Borough Manager – Dave Hess said that everyone should have a copy of the proposed rule, regulations, job description for the position of Borough Manager. Dave asked if any Council members have comments or questions regarding the job description. Attorney Karasek informed Council that the Borough Manager would serve at the pleasure of Council, they are not guaranteed any job. Council can construct an employment agreement for two years for purposes of benefits, salary, pension, health care benefits, etc. This can only be for no more than two years because on the next municipal election the theory is that you can have a change in Council members who may want to change those terms. A Borough Manager is an "At Will" employee at the end of the day and you can give as many non-legislative and not judicial powers and duties of Council and Planning Commission. If the Mayor wishes, he can also delegate non-legislative and non-judicial powers to that person. The only incompatible office is that neither the Mayor or any member of Council can be the Borough Manager.

Dave Manzo said he would like to discuss the spending threshold of \$5,000 without prior approval from Council. As currently written, this would be \$5,000 per item so if Council desires that can be changed to \$5,000 per month. Attorney Karasek stated that Council may desire to have the description read \$5,000 per item, but no more than \$10,000 per month. Once purchased the manager would have to notify Council that the purchase was made. Dave Hess said this would also be in the monthly expenses that Council reviews prior to approving the bills.

This just gives authority for a spending limit, as now the borough administrator calls me, this allows the day to day operations of the business to be handled by the manager.

Joyce McGarry asked if the person has to be nominated? Attorney Karasek said it would be by ordinance to have the borough manager approved. You may also want to consider, beginning where it talks about a vote by the majority of members of Council, it means no just the majority of who comes to the meeting, it has to be the majority of all seven members, so you need at least four, even if five come to the meeting, you need at least four.

Dave Hess said that if anyone has any changes to please get them to the office as soon as possible.

2. Attorney Karasek reported that JERC will be attending the January 21, 2020 Council meeting for purposes of reviewing the Conditional Plan Approvals on both the Minor Sub-division and Land Development Plan. George Hinton stated that Council should have representation from the Municipal Authority to be in attendance because the plan states that JERC will be hooking up to the pumping station which will be installed by the Green Knight Economic Corporation plan. Randy Yordy said that once the pumping station is completed it is going to be the Municipal Authorities. An account will be set up and funded for maintenance so no funds will ever come out of the Municipal Authorities service area customers for these projects in the future. Randy added that this is a different situation, the Authority will be taking over a pumping station, but they have never taken over one before. George Hinton said that at our next workshop meeting when JERC is here, it would be his recommendation to this Board, not to even entertain a motion to give them conditional approval without having all three entities here so everyone understands how this project is going to move forward. Attorney Karasek said that George is making that request because at the Planning Commission Meeting there was some uncertainty as to what was exactly going to happen so it makes good sense to have everyone here so we know what is going to or not going to happen with respect to this project. Randy said that he will ask their engineer to attend also.

Brian Pysher said that the JERC project is proposing to hook onto infrastructure that is to be built by the Green Knight Economic Development Corporation as part of their project. The Planning Commission expressed their concern that if the Green Knight Economic Development Corporation were to go out of business, what does JERC do. The Sewer Authority has that bonded but that would be like the situation on First Street where the Borough takes on the responsibility of this project. Randy said that is because the State will not accept their permit until they make sure that the GKEDC project is finished. Attorney Karasek said one of the conditions of the plan would be that Green Knights will complete the project or if not JERC completes it by getting bond money or getting benefit of any bond money and anything over that comes out of their pocket. The Borough and the Municipal Authority both have to make sure all agreements are in place so Wind Gap does not get stuck spending any taxpayer money.

## **ADJOURNMENT**

**On motion** by Jeff Yob to adjourn the meeting of January 6, 2020. Council agreed unanimously. The meeting of January 6, 2020 adjourned at 7:49 p.m.

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Louise Firestone, Borough Administrator