

Windber Borough Council

Meeting Minutes

April 20, 2010

OPENING

The meeting of the Windber Borough Council was called to order at 7:00 p.m. on April 20, 2010 by Mr. Barry Jerley, who led council and visitors in reciting "The Pledge of Allegiance to the Flag".

ATTENDANCE

Council members in attendance were Mr. Anthony Turcato, Mr. George Ledney, Mr. Barry Jerley, Mr. Jim Spinos, and Mr. Mike Winas. Mr. Simon Ohler arrived at 7:10 p.m. Also present were Mr. Fred Oliveros, Borough Manager, Ms Tina Wendell, Recording Secretary, Sergeant, Rick Skiles, and Mr. John Rugg, a borough resident. Mrs. Sonya Pekala and Mr. Jim Furmanchik were absent.

APPROVAL OF SEATING OF NEW RECORDING SECRETARY – MS TINA WENDELL

Mr. Ledney made a motion to approve Ms Tina Wendell as the new Recording Secretary. The motion was seconded by Mr. Jim Spinos. Motion was approved by unanimous voice vote except for Mr. Furmanchik and Mrs. Pekala, who were absent.

PUBLIC COMMENT ON AGENDA ITEMS

There were not any public comments on any of the agenda items.

CORRESPONDENCE

The principle matter that was discussed was in reference to literature/information from the Windber Fire Department. Mr. Oliveros compiled a letter; Mr. Turcato wanted to review the letter before it was sent out. Before the letter was mailed, Mr. Aaron Cicon, from the Windber Fire Department, stopped in and brought documents in to Mr. Oliveros for council members to review. Included in these documents is a confidentially agreement that Mr. Turcato had requested once before. He also brought a list of measures the fire department is going to take to straighten the fire company out and their financial situation. Mr. Fred Oliveros explained to Mr. Cicon about how council felt about the letter that was received. Mr. Cicon stated that the fire department will provide council with information and any reports that are requested by council, such as financial reports. Mr. Cicon said the fire department would possibly provide council with a quarterly financial report. The letter Mr. Oliveros compiled was not sent out because the matter was discussed face to face with Mr. Cicon.

All documents received are in council's packet, please take them home read them, digest them, and they will be discussed in more detail at the next council meeting.

BUSINESS ITEMS

- **Adopt a Resolution Allowing Use of Facsimile Signature (Stamped)**

There was adoption of resolution allowing the use of a facsimile signature stamped on checks for the required signature of Borough Council President. These are typically checks, bills, etc.

QUESTIONS OR REMARKS ON THE MOTION:

Mr. Spinos made a comment that basically it is going to be a signature stamp of Mr. Turcato's signature and questioned who has the authorization to use it? Cheryl has the authorization to use this stamp. Cheryl will call Mr. Turcato when the above-mentioned documents, checks, etc. need signed; and if Mr. Turcato is not able to make it in and sign; this is when Cheryl will stamp the necessary documents, checks, etc. so they are received on their due date and are not late. There is always a second signature on all of these documents, checks, etc., and Mr. Oliveros is the second person authorized to sign. In other words, there will always be one signature with the stamped signature, as two stamped signatures would not be accepted.

Mr. Winas made a motion to approve the stamped signature. Mr. Ledney seconded the motion. Motion was approved by unanimous voice vote except for Mr. Furmanchik and Mrs. Pekala, who were absent.

BOROUGH REPORTS

Mr. Turcato asked if any standing committee of council had any issues they wish to bring forth at this time. None were discussed.

UNFINISHED BUSINESS

- **Replacement of Part-Time Public Works Employee**

Mr. Oliveros spoke to a couple members of council, who felt we should replace Mr. Frank Meyers, who resigned at the last meeting. Money was set aside for him as a part-time employee and Mr. Oliveros needs council's permission to advertise for this position.

QUESTIONS AND REMARKS ON THE MOTION:

Mr. Spinos remarked that we should advertise for an individual who has some mechanical ability so we can replace what we had to save the borough money for repairs on these houses. That is something we are lacking in public works in the maintenance program; and when we review the applications to be sure that this person has the ability to do these repairs.

Routine maintenance is critical here, and it has been lacking, and we need to continue this. When we look back on the year that Mr. Meyers did work here, we saved a lot of money in this aspect. Mr. Oliveros will be reviewing the applications, doing the interviewing and making the recommendation to council.

Mr. Spinos made a motion to approve that council advertise in the newspaper for a part-time public works employee. Mr. Jerley seconded the motion. Motion was approved by unanimous voice vote except for Mr. Furmanchik and Mrs. Pekala, who were absent.

- **Third-Party Codes Enforcement Agency**

Mr. Oliveros spoke to one agency thus far, Somerset County Building Inspections. The Cambria County Code Enforcement Agency is here tonight, representing this agency are Ms Barb Frantz and Mr. Joe Muscatello. Council is basically looking at outsourcing code enforcement building codes and inspections and would like to know what The Cambria County Code Enforcement Agency has to offer.

Ms Frantz and Mr. Muscatello took the podium to speak. Ms Frantz explains that they are not a third-party agency, they are a government entity. Currently they are 34 municipalities that are members of the agency. They are nonprofit, being a government agency they are not permitted to charge any more fees than what it takes. They have 3 full-time inspectors. There is a \$700.00 membership fee to join, it is a one-time-only fee; after that, the agency would like council to appoint someone from Windber Council or a representative who would come to the meetings. They have a monthly meeting with the executive board, which actually meets every month. The full board, the agency tries to get everybody there at least 4 times a year to go over any major decisions, any fee schedule changes, agreements, wages, benefits, anything like that must be done by the full board, it cannot be done by the executive committee. The only thing the executive committee can do is pay regular monthly bills and entertain if there are any problems that they can address with the full board. The agency responds on inspections by checking the answering machine at 7:30 in the morning and if there are any inspections, they are out that day to inspect.

Mr. Turcato asked if they have a formal request for proposal. Mr. Oliveros received a packet but there are numerous ordinances in the packet. Ms Frantz explains that there needs to be an ordinance adopted to approve the inter-municipal agreement; because it is a municipal, it is not like a contract, it has to be done by ordinance to be a member of a municipal entity.

Ms Frantz also explains the other ordinance she put in the packet was if council is interested in the agency performing any other duties for council, such as property maintenance, zoning, flood plains administration, anything like that is what that ordinance is for. If council is not interested in anything like that then you would not adopt that ordinance.

The question was raised whether there was a fee for property maintenance. Ms Frantz explains that how the agency does it right now is if somebody calls the office and files a complaint, the agency would notify Fred Oliveros, and Mr. Oliveros, as Borough Manager, would need to tell the agency whether it is a legitimate complaint and then the agency would act on it. This is to avoid the neighbor disputes, ones that are just mad at their neighbor, so they turn them in. It has to be a legitimate complaint. There is a one-time \$55.00 fee to address it and we try to carry it through. If the agency has to go to the magistrate, then there would be a second \$55.00 fee. The borough would have to pay this because that is who is authorizing it to go to the magistrate. If the matter is taken to the magistrate and there are fines issued, the borough would get the fine money because the agency cannot collect fines. The agency

is a municipal entity but they are not a governing body, so it would be the governing body that would actually collect the money. The question was brought up where the fee for permit goes, and that money goes to the agency, as that is what they run the agency with.

The question was raised regarding the fee for permits and to whom does that money go to. The agency is run with this money. When somebody would come for a permit, they would fill out the agency's application and the agency would charge them a fee, depending on what the agency does. Ms Frantz replied "yes". The borough does not get any of that money. Along with any permit that the agency issues to the municipality, they have a municipal authorization form, which is included in the packet, and there are approximately seven or eight items that have to be signed off by someone in the municipality and one of them is your flood plain, one is setbacks, which would be like zoning, one is a driveway permit if you have a new home or building a garage. This is how the other municipalities have saved for building permit fees to still get some of their money by authorizing a fee for that authorization form.

Mr. Oliveros was reviewing the fee schedule, the agency's mechanical fee schedule. For example, would the agency charge Sheetz a fee for each mechanical device they have over there? This is an inspection fee. Ms Frantz replies that it is basically how they come up with the fee that is charged at the beginning for the permit; once the permit is issued, there are no fees after that. If the agency has to go back three, four, five or more times, that is just how it is. There are no additional fees for the amount of times the agency has to go back. Another example, say we have a fire, \$125.00, we have a hot-air furnace, \$125.00, would these \$125.00 amounts keep adding up and be figured into the price of the permit? Ms Frantz replied "yes". Mr. Turcato asked the question that the agency's inspection of mechanical units is part of the building permit fee, and Ms. Frantz replied "yes". They pay for their inspections up front, along with the building permit fee. Ms Frantz explains that once you would pay for the permit, just say that hypothetically the permit is \$200.00, which is it, which will cover even if we have to make 10 inspections. The borough makes no money on this, as well. Ms Frantz explains that under the law, it is illegal for municipalities to collect money for services they do not do. This is why the other municipalities adopted the fee to cover the municipal authorization form, because that is justified; somebody is taking the time to look at the flood plain map, somebody is taking the time to review setbacks, so then you can justify the fee.

Ms Frantz discusses that there are two case laws right now. One is in the city of Johnstown, it was one of the authorities charged a little extra money and somebody called them on it and the judge ruled against the city of Johnstown, which she believes it was around \$40,000.00 or so that they had to pay back to their residents for fees; and the other is in the city of Altoona, where there is a case law in the office where somebody took them on and actually, the city won because they did prove where they justified the fee that was charged and the judge ruled in their favor.

The agency does everything electrical, as well. The agency has certifications that cover plan reviews and inspections of both commercial and residential. These issues are covered with the three inspectors.

The question was raised whether the agency, regarding zoning board and the planning commission, does the agency attend these meetings and go over everything with them? Ms Frantz replied “that would depend if we do your zoning; if that would be part of doing your zoning, then, yes, we would.” If the planning commission would be part of the zoning, would the agency attend those meetings? Ms Frantz replied that we have not ever attended a meeting. When Ms Frantz receives a Municipal Authorization Form back from a municipality, they have already done their zoning, they have done their planning, they have done all that, and all that gets signed off on that Municipal Authorization Form and form would go to Mr. Oliveros, who gives clearance. If Ms Frantz does not have this form, the permit does not go out the door. Mr. Oliveros made the statement that If they do not have the clearances, then they have to go through the process. Ms Frantz states that when anybody calls for a building permit, that is one of the first things the agency tells them; when the agency sends out the application package, they all know that there is a Municipal Authorization Form that has to be signed off before we will issue a permit.

Mr. Muscatello adds that as he lives here in Windber, he would be able to meet with people, if they want to meet here or the _____ Building, and I could pick up applications and bring them back completed, though they would have to do the mailing, so that would be a help.

Again, the question is raised that if somebody gets in in the morning and you have a phone call in the morning it is usually the same day that you get an inspector out? Ms Frantz replies yes, and a lot of times if the inspectors are out in the area and she gets a call during the day and they say they are ready, she will find out where the inspector is at and if she knows he is in that area at some point, she tries to catch them, if she can, and they will pick it up.

QUESTIONS AND REMARKS ON THE MOTION

Mr. Turcato asked that before the council makes a decision, that Mr. Oliveros provide the council with the informational packet and have this sent out either before or when the next packet is sent out for the meeting in May and at that time, council will make a decision one way or the other.

- **Property Maintenance Person**

Mr. Oliveros talked about property maintenance. Mr. Oliveros mentioned this position to someone who was previously employed here. He had made the offer that he would consider doing that one day a week at \$15.00 an hour, whether it would be two hours a day, four hours a day, etc., but the total would be eight hours a week. Some of these agencies charge roughly \$65.00 an hour, so Mr. Oliveros said he was glad he offered his services and he would throw it out on the table. This way, we would have our own property maintenance person, somebody who is familiar with the borough. We would be paying \$15.00 an hour plus whatever mileage may apply. He would handle all property maintenance issues. Mr. Spinosa asked if the property maintenance person would be the individual to talk to the property owner/land owner and would he be the individual that would start the process at the magistrate with the fines and all that? Mr. Oliveros replied that this gentleman is familiar with this sort of thing and actually taught Mr. Oliveros. Mr. Oliveros is referring to Tyler, who made him the offer. Tyler knows the area and has a great personality for the position. He is very good around people and he lives in the area.

Eight hours are a good amount of hours to spend on property maintenance a week; when he first started here, he is the guy who made the statement to not spend more than 8 hours a week on property maintenance. This would be a 12-month-per-year position.

QUESTIONS AND REMARKS ON THE MOTION

Mr. Oliveros will talk with Tyler and have the above information specified in a document and submit the document at next month's meeting. All council members present were in agreement with this decision.

- **Removal of Soda Machine From Municipal Building (budget 300)**

The soda machine in the municipal building has already been removed.

QUESTIONS AND REMARKS ON THE MOTION

Due to the majority of the employees moving to the new Borough Building/Magistrate Office, the soda machine was not getting used as often as it was. Mr. Oliveros made the statement that the majority of the soda in the machine was already expired. Rather than spend the money to restock it, the best decision was to just remove the machine. Council budgeted \$300.00 refuge for the machine, which is no longer necessary to have in the building so it has been removed.

EXECUTIVE MEETING SESSION

Mr. Turcato called for an Executive Session at 7:25 p.m., April 20, 2010, council went into Executive Session on a potential contractual matter.

Council returned from the Executive Session at 8:00 p.m. and the meeting was reconvened.

Mr. Turcato announced that the Executive Session was regarding an ongoing police department contract discussion.

NEW BUSINESS

- **Residents' Complaint Regarding Trains Idling Throughout The Night**

Mr. John Rugg, who is a concerned resident and present today, met with the Executive Vice-President of Rosebud Coal Company regarding the matter of the trains idling at all hours during the night on the tracks in Mine 35 in order to load the coal cars. The vice-president's responsibility is transportation of coal over the rail. Mr. Rugg explained to the vice-president about the problems that the residents are having up in Mine 35 with the trains idling throughout the night while they are loading the cars. We went up and took a look at the situation, and he is going to give the Kiski Railroad Office a call and talk with them to change the way that they are doing things up there; rather than push the cars in, they are going to pull them in, where the engine will be on the far end, up towards Mine 41, and that will eliminate a lot of noise up in Mine 35.

Mr. Rugg also announced that the vice-president spoke to him regarding Windber Days. The railroad is going to park a walk-in train down in Windber by the old library. This will be for the public to view and something the kids will enjoy. This is something they already have set up and they use for public relations.

The question was raised whether the railroad will have full responsibility of the train, such as insurance purposes, etc. Mr. Rugg explained that it is a program they already use and replied "yes, their insurance will cover everything."

Mr. Rugg also announced, as far as dropping the speed limit down to 15 mph. The state said that we cannot put a 15 mile limit on it because there is no grade. I have asked Rosebud Coal Company to ask the truckers to voluntarily reduce their speed to 15 mph. It is more than likely that most of the drivers will comply but some will not; but as far as us posting it at 15 mph, there is no danger of a grade so there is no law stating we can change the speed limit. The coal company is listening to our complaints and they are reacting to them.

The question was raised regarding the coal dirt/dust on the roadways up in Mine 35. How we are trying to handle this is to try to get everybody to park on one side of the street one night and then park on the opposite side of the street the next night in order for the street cleaner to be able to get the streets cleaned properly. This should help to control the dust problem up in Mine 35. Somewhere along the line, Penn Dot even mentioned that the above parking system would be a good idea for snow removal, as well. The streets will be able to be cleared of snow much better manner using this system, as well. Snow removal is a great problem on the streets of Mine 35 right now and before we know it, it will be winter again, so this needs to be dealt with in a repetitious manner. This would have to be done with an ordinance, it would have to be mandated, and decided whether it is to be done on every night of the week or just on certain nights. We need to get the input of the residents who live in Mine 35 and take that issue from there.

- **Intersections Where Railroad Tracks are Located**

The question was raised regarding the intersections where the railroad tracks are, who replaces the railroad ties and things like that, is it the borough? The reply was that those types of situations are up to Kiski Railroad to maintain. Kiski is going to start a maintenance program and start replacing and fixing these areas. They do not want anything to happen here in town either, they are aware that there are 7 or 8 intersections and so forth that the train runs through and they are going to be working on them in the near future.

- **Railroad Crossing Lights Operational on Graham Avenue**

The question was raised whether or not the railroad crossing lights running across Graham Avenue are working yet? The lights were being worked on today, April 20, 2010, and there will be a final inspection on Monday, April 26, 2010, to be sure that everything is working properly at this intersection. Officer Skiles commented that the Windber Police will still be notified when the train will be coming through because the short couple of days the railroad lights were working properly, as soon as the lights would

come on people were just going on through as if they were not even there. If a driver runs these railroad lights, it will be a \$200.00 fine. If these lights are going to be ignored by drivers, then there is going to be a fatality, if the police are not notified so they can watch for people to be running these lights. We do not need to be having any accidents.

- **Borough Equipment at Windber Recreation Park**

Mr. Spinos raises the question regarding the borough's Ford pick-up truck that is sitting up at the park and wants to know why it is still sitting up there at the park. We need to get that truck down here and let Mr. Oliveros use it as his borough manager truck. Mr. Spinos states that with the truck just sitting up at the park, it is open to vandalism, like someone smashing the windows out, etc. In the past, the truck was always stored at the borough shed in the winter. If we are not going to use the truck, then the borough should get rid of it. This is costing the borough insurance, plates, registration, etc.

Mr. Spinos also brought up the fact that we have mowers, weed eaters, etc. up at the park. The statement was made that most of this equipment is used to take care of the park's grounds and the borough does not have a problem with sharing the equipment with the park for their use. This equipment was purchased quite some time ago and is mostly for residential use and concerns have been expressed regarding this fact already.

- **Additional Board Members for Municipal Authority Board**

Mr. Turcato has a form/letter from the municipal authority for appointment of two board members that would bring their board up to full strength. One member had been appointed but had been appointed at such a time that their bylaws provided for only five members and now they have amended it to seven. The letter states that the Municipal Authority Board requests that Gail Gaio be appointed to the Municipal Authority Board to serve a term of two years, and that Vicki Hiteshew-Bence be appointed to the Municipal Authority Board to serve a term of one year. Mr. Turcato states he assumes this is at the advice of the direction of their solicitor and this is what the terms will be.

QUESTIONS AND REMARKS ON THE MOTION

No questions or remarks were made.

Mr. Ledney made a motion to approve set appointments of board members for the Municipal Authority Board (Mrs. Gaio to a two-year term and Mrs. Hiteshew- Bence to a one-year term). Mr. Winas seconded the motion. Motion was approved by unanimous voice vote except for Mr. Furmanchik and Mrs. Pekala, who were absent.

- **Borough Council Meetings**

Mr. Oliveros would like to discuss Borough Council Meetings regarding when we have meetings on consecutive weeks, it is hard to get any correspondences back or packets together in that amount of time that are needed for the next meeting. To be able to accomplish what needs to be done in one week is pretty difficult. Mr. Oliveros suggests having two weeks between meetings, stating the third

week we would have all our financial information. If we would have meetings on the first Tuesday and the third Tuesday then we could pay bills both times. What is happening now is when we have one meeting to pay bills, like the third or second meeting, we have to go a whole month before we pay bills again and a lot of our creditors are giving us past-due notices, which we do not want to receive. If we separate our meetings a little more, then we could hit them twice.

Mr. Turcato asked if Mr. Oliveros' recommendation is that we change our borough council meetings to the first and third Tuesdays of the month, Mr. Oliveros responds "yes, but that would have to be re-advertised," which was agreed upon by Mr. Turcato. This is not going to happen now, we have something scheduled for the second meeting next month and the summer months we go to one meeting a month, so this is something we should think about and look at for September, to be put in place when we go back to two meetings a month; this is Mr. Oliveros' recommendation. Mr. Oliveros discussed this matter with the solicitor, he said he does not have a problem with it. He said he would probably only be able to attend one meeting a month, the meeting where we do the most business, which would probably be the third Tuesday of the month. Council is receptive to give this matter thought until later, until at least summer ends. If we decide to go that way, we will have to dually advertise to the change of the first and third Tuesdays of the month.

RECOGNITION OF VISITORS

Mr. John Rugg is concerned about 29th Street, it is the worst street. The water is going through the pavement, not even making it to the catch basin. If there is a storm water line in there, we can get it fixed under the Block Grant Money, and obviously we need to fix that line before the road gets paved. Mr. Rugg is not sure if there is a water line there or not. He suggests that if there is not a water line there, a simple wedge curve on one side, if not both sides, would be very economical compared to concrete curving. They did put in two new catch basins at the bottom, they did this when we had the flood. Some borough council members have been by there and are aware that there is a problem there. Mr. Rugg explains that when it rains the asphalt is raveling, the rain carries the gravel down to the bottom, the plows rip up all the patch work that was done, just think of the money the borough would save in patching would help pay for some of it. Mr. Rugg states this road is in horrible condition and promises have been made in the past that this would be fixed but it has not been fixed. Council will see what can be done about this matter. Mr. Oliveros replies that there is some money set aside, liquid funds, for paving. If there is no drain line there, then a wedge curve would be a possibility as one of the streets to be paved with a wedge curve. If there is a drain line there, we might want to include that with 28th Street, the storm water renovation there. Mr. Rugg explains that the kids cannot even play, they cannot ride their bikes, and there is not anything there. He also states that in the spring, until they get a cold patch in there, it is a trip hazard to walk up and down through there at night, there is plenty of light but the potholes are that bad every spring, then they come out and patch, but it really needs to be fixed.

Mr. Turcato asks for any further comments or questions from the public, no further responses were made.

Meeting was adjourned at 8:20 p.m.

Respectfully Submitted,

**Ms Tina Wendell
Recording Secretary**