

Borough Council Regular Meeting June 26, 2016

The regular meeting of Windber Borough Council was called to order by Windber Borough Council President, Barry Jerley at 7:00 p.m.

Pledge of Allegiance.

The following Council Members were present: John Holden, Jason Hunter, Barry Jerley, Pete LaMonaca, Ron Mash, Sonya Pekala, and James Spinos. James Furmanchik, Borough Manager, and Mayor Scott Penrod were also present. Solicitor, Jeffrey Berkey was absent.

Baseball Fields Sale

Mr. Furmanchik said everyone at this table is well aware of the situation with regards to the sale of the little league fields. He had a conversation with the respective buyer over the past few days. There was some confusion that the restriction if added to the sales agreement, automatically went into the deed too. He said he wasn't aware it had to be and he doesn't believe council was either. With that being said, the buyer has taken the position that he will walk away from the purchase if it has to go into the deed also. When Mr. Furmanchik was notified of that he tried to get into touch with the buyer. Mr. Furmanchik finally did, and the buyer said he was at the end of his rope and was done. Mr. Furmanchik asked him if we would have a meeting tonight and turn that motion around if he would reconsider and he said he would. This brings us to this meeting this evening.

Mr. Furmanchik said if council would be in favor of doing that we are looking for a motion to approve the terms of the transaction as presented at the last council meeting without restriction and authorizing the respective borough officers to execute all necessary documents to conclude the transaction; i.e. Richland Township Planning Commission Application, subdivision plan, agreement of sale, deed, affidavits, etc. A motion was made by Mr. Mash to approve the motion and Mr. Spinos seconded the motion. Two no, Mr. Holden and Mrs. Pekala. Motion carried.

Comments: Mr. Holden said he hoped that Solicitor Berkey would have been here tonight to confirm that it would have had to be in the deed also. He also asked if we had access to the minutes from the last meeting. Mrs. Gates said no. He said he once again wanted to confirm the zoning and make sure it was zoned residential and not commercial. Mrs. Pekala said even if it is they can change the zoning that has happened in the past.

Mr. Holden said Mr. Furmanchik shared with him an email he got from the perspective buyer and an insert was in that email. He was hoping the solicitor would have been here to read it. Mr. Furmanchik said he has it and can read it.

Mr. Furmanchik said this was later in the day after the perspective buyer and he had a telephone conversation and he brought it to our attention that his attorney mentioned that if it is in the sales agreement that it has to appear in the deed.

The email read as follows: I haven't yet spoken with Mr. Seger, but he is correct I am not going to deal with this new requirement. When we first talked about doing something on this property we discovered the existing restriction and worked together with Berwind to remove it.

In the past year or so at no time did council or Berkey mention anything like this being added back in as part of the deal? To bring it into the deal now along with the numerous other turns this thing has taken leaves me more than just a little disappointed. I am paying fair market value for the property. Though I have no intention for any other use than baseball or softball the issue of getting a piece of property with these restrictions in place means it is not fully marketable and as such not of fair market value. I am at the end of my rope. It is in this 11th hour add-on that council has to have that I must respectfully back out. Mr. Furmanchik said that was his position as of 5:04 p.m. on Friday.

Mr. Spinos said right now it is going to cost us \$4,500 for a subdivision that we have to pay for plus about another \$10,000 in attorney fees if we do not sell this piece of property. We all agreed at the beginning that we wanted to sell it and now we are this deep into a hole and about to lose taxpayers money.

Mr. Furmanchik said he concurs with the perspective buyer that if there are restrictions to the deed that the property becomes of a lesser value. Mr. Holden said initially he made the statement because he was concerned and wanted the term in the sales agreement that it be developed solely for recreation and baseball, so kids have a place to play. Mr. Tunstall has conveyed that numerous times to Mr. Furmanchik and in his email that Mr. Furmanchik shared so we have to assume his intentions are genuine and pure and will proceed in that manner and keep the property for baseball. Hopefully for our generation it will be used for the youth of Windber and the surrounding communities.

Mr. Furmanchik said in the last nine months every conversation he has had with Mr. Tunstall leads him to believe he is a man of character and a man of his word. He said in his lifetime there will be nothing but baseball and softball there. Mr. Holden said the money invested while it is important and the potential money we stand to lose if we don't sell the field is important because it is the taxpayer's money. A lot of that wasn't this council's fault. Mr. Spinos agreed.

Mr. Mash said there is an agreement between Mr. Tunstall and WYBOS that there will be baseball there. Mr. Hunter said he feels comfortable that it is zoned residential and the only thing that could happen there would be houses could be built, which could benefit the park in the long run too.

Mr. Furmanchik asked for a roll call vote: Mr. Mash, yes; Mr. Spinos, yes; Mr. Holden, yes; Mr. Hunter, yes; Mr. Jerley, abstained; Mr. LaMonaca, yes; and Mrs. Pekala, no. Motion carried, five yes, 1 no and one abstained.

Council convened into an executive session at 7:12 p.m. for personnel matters.

Council reconvened from an executive session at 7:35 p.m.

Next Meeting The next borough council meeting will be held on July 12, 2016.

Adjourn Meeting was adjourned by Council President, Barry Jerley at 7:45 p.m.

Respectfully Submitted By:

Robin S. Gates

