

## **Borough Council Regular Meeting September 12, 2017**

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: Mike Bryan, Barry Jerley, John Holden, Pete LaMonaca, Ron Mash, Sonya Pekala, and James Spinos. Jim Furmanchik, Borough Manager was present. Mayor, Scott Penrod was absent. Attorney, Joseph Green was present.

### **Approval Minutes**

A motion was made by Mr. LaMonaca and seconded by Mr. Holden to approve the Minutes of August 8, 2017 Meeting. Motion carried.

### **Recognition Visitors**

Pino Gallina owner of Mimo's Restaurant spoke to council. Mr. Gallina thanked Borough Council for letting him speak tonight and in particular Borough Manager, Jim Furmanchik for helping him through this process.

Mr. Gallina said he is the sole owner of Mimo's Restaurant here in Windber. His father started this business almost 35 years ago. Later he married his mother and she became a partner. He said his parents had a few restaurants in other locations as well but they fell almost instantly in love with the town of Windber. They decided to focus their business here and discontinue the others.

Mr. Gallina said he was born and raised here and graduated from Windber Area High School in 2004. A few years later he had moved out of Windber and into Richland Township but something was missing. He said Richland was great and all but to him it was lacking something and that something was the small town feeling you get here in a town like this one. He said everyone here knows one another and is there for one another. This is a centralized downtown and you do not get that with Richland. Mr. Gallina and his wife moved back to Windber and are expecting their first child soon.

The main reason they wanted to move back was because of everything Windber has to offer. They truly admire the history of this unique town and wanted their children to experience it someday as well. He feels Windber has greatly improved over the past several years in so many ways. He has seen many businesses open in the past few years and it has been great for our town economically.

Iron Horse has drawn a new large crowd of people into the area. The hospital has seen new life with the efforts of Mr. Kurtz and others; the Arcadia Theater brings in many people looking forward to an entertaining evening out due to the efforts of Mr. Bahorik and others as well. In addition to all the improvements the town has seen it has also become more beautiful. WAVE organizers and volunteers in particular Mr. Hiteshew have done so much with the beautification process of the borough. This town is a great place to walk through on a nice day and take in the sites of Windber.

Mr. Gallina said since Mimo's is located in such a great location across from Miner's Park he would like to incorporate some minor outdoor dining options for their business.

He said there are only a few other places with outdoor seating in our surrounding our area. He believes many people would enjoy the view of Miner's Park from outside of Mimo's. The outdoor dining option that he has in mind would include three tables just in front of Mimo's on the borough sidewalk. It would be roughly 18 feet wide by 8 feet in depth. It would leave plenty of room for pedestrians who walk through town. Anyone walking past would have 8 feet of sidewalk to use at their leisure. He said they are very fortunate to have such a wide sidewalk in front of their business.

**Visitors**  
**Pino Gallina**

Mr. Gallina passed out a sketch of the sidewalk dimensions to council. Mr. Furmanchik had taken a picture of 14<sup>th</sup> Street looking west towards Mimo's he gave the picture to council. He Said Mimo's is fortunate to have additional footage of sidewalk in front of their business. He said they would not have an issue. If council would grant Mr. Gallina permission he would have the flower box and the garbage can removed to cause even less inconvenience. He said there is plenty of room for a handicapped person with a wheel chair or Hover Round to travel through.

A motion was made by Mr. Spinos and seconded by Mrs. Pekala to approve Mr. Gallina's plans for an outdoor dining area in front of Mimo's Restaurant. Remarks: Mr. Holden asked if there was a borough code as far as pedestrian right of way. Attorney Green said he did not believe so as long as they can pass. Mr. Furmanchik said as long as the sidewalk is passable to pedestrian traffic it is allowable and Mr. Gallina has one of the largest areas of sidewalk in the business district and has plenty of room. He said they are going to put awning across the front with lighting and music.

Mr. Spinos asked if they were going to have an outdoor liquor license. Mr. Gallina said they have the liquor license already what the placard is for is an extension of service. This is just part of the process and has been ongoing for about three or four months. PLCB wants an approval from council in order to move forward to the next step. Mr. Spinos asked if he was going to fence that area off. Mr. Gallina said the PLCB agent did not know the answer to that but he will do whatever is required. He said the table and chairs will be removable and brought in every evening and then put back out in the morning. Mr. Furmanchik said two letters will have to be signed by council to the PLCB approving Mr. Gallina's project. Mr. Gallina said he checked on the details with his insurance company and they are covered under their insurance. All of council was in favor of the motion and motion was carried.

Mr. Furmanchik thanked Mr. Gallina and Mimo's restaurant for being so gracious to those in Windber in giving and helping out with sponsorships and donations to events in town.

**Correspondence**

1. Minutes and Treasurer Report from the Windber Municipal Authority's August 1 and 15, 2017 Meetings.
2. Somerset County Borough's Association Dinner Meeting Thursday, September 21, 2017.
3. Windber Regional Training Institute News Letter.
4. Windber Area Authority Minutes of June 14, 2017.

5. Email from Vicki Hiteshew requesting a sponsorship from the Borough in the amount of \$500 to sponsor the children's area at Oktoberfest which will be held on October 7, 2017 at Recreation Park.

A motion was made by Mrs. Pekala and seconded by Mr. Spinos to approve the sponsorship for Oktoberfest in the amount of \$500. Motion carried.

6. Letter from Mr. Doug Weaver of Weaver Building and Remodeling requesting permission to close the alley behind First Commonwealth Bank September 25, 2017 through September 29, 2017 to install siding, fascia and soffit on a residential property across the alley.

A motion was made by Mr. Spinos and seconded by Mr. Holden to approve Mr. Weaver's request to close the alley on the above mentioned dates. Motion carried.

**Approval  
Payroll**

A motion was made by Mr. Holden and seconded by Mrs. Pekala to approve payroll for August 4 and 18, 2017. Motion carried.

**Approval  
Bills**

A motion was made by Mr. Spinos and seconded by Mr. Holden to approve bills for August 2017. Motion carried.

**Opening  
Bids**

Council opened bids for the parcel of land at Windber Recreation Park. Property located at the Windber Recreation Park North of Recreation Park Road in Richland Township. (aka Baseball Fields).

Mr. Furmanchik placed a copy of the appraisal of the property for sale at council's seats. He said they only received one bid. It was turned in by Mr. Rick Roberts today at 3:41 p.m.

Mr. Jerley read the bid amount. The bid was for \$125,000. There was a check included for 10%. Mr. Spinos made a motion to accept the bid amount of \$125,000 by Mr. Rick Roberts for the sale of the property. Remarks; Mr. Spinos said Mr. Roberts has additional recreational plans for the property which will beautify the park and benefit the entire Windber Community. Mr. Jerley asked if expenses incurred from the sale of the property could be returned to the general fund. Mr. Green said yes.

Mr. Spinos added to his motion that the monies from the sale will be used towards Windber Recreation Park with the exception of the \$20,000 given towards the cost of the pool liner in 2016 will be returned to the Capital Improvement Fund and the expense incurred due to the sale of this property will be returned to the General Fund. Motion was seconded by Mr. Mash. Roll call vote: Mr. Spinos, yes; Mr. Mash, yes; Mr. Bryan, yes; Mr. Holden, Yes; Mr. Jerley, no; Mr. LaMonaca, no; and Mrs. Pekala, no. Motion carried.

**EADS**

**2015 SANITARY SEWER REHABILITATION PROJECT**

**Construction Status** - Construction is 100% complete as of June 12, 2017. (*Unchanged*)

**NPDES Permit** Close-Out-The Notice of Termination for the NPDES Construction Permit was submitted to Somerset Conservation District and the final inspection was

completed on September 12, 2017. The Somerset Conservation District is now finalizing the paper for the termination of the NPDES Permit.

**WQM Part II Permit Close-Out** - The Post Construction Certification for the Water Quality Management Permit has been submitted to PA DEP. We are now awaiting the completion of a final inspection by PA DEP.

**EAD's Record Drawings** - A draft set of record drawings was provided to Manager Furmanchik in July. (*Unchanged*)

**GIS Map Update** - A draft GIS map of Windber Borough's sanitary sewer system was provided to Manager Furmanchik in May. (*Unchanged*)

**PennVest Pay Request No. 17** - Refer to Page 3 for a summary of the pay request. The following is included in PennVest Pay Request No. 17:

*EADS Inspection Services - \$279.00*

*EADS PennVest Admin. Services - \$349.51*

*EADS Record Drawing Preparation - \$767.70*

*EADS Construction Admin. Services - \$175.50*

Total Pay Request= \$1,571.71

Upon approval from Borough Council, PennVest Pay Request No. 17, in the amount of \$1,571.71, will be executed. A motion was made by Mr. Spinos and seconded by Mr. LaMonaca to approve pay request No. 17 in the amount of \$1,571.71. Motion carried.

#### **MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT**

**2016 DEP Inspection** - DEP conducted an inspection of the Borough's MS4 Program on June 20, 2016. DEP required the preparation of a written plan of action to address recommendations. EADS submitted Windber Borough's MS4 Action Plan to DEP on September 20, 2016. [*Unchanged*]

**2017 Permit Renewal Application** - The current five year permit term is ending on March 16, 2018. Permit renewal applications are due on September 16, 2017. The Permit Renewal package is complete and will be submitted to PA DEP on September 13, 2017.

#### **FLOOD PROTECTION PROJECT**

**SWIF Program** - A Letter of Intent (LOI) for conditional extension of Public Law (P.L.) 84-99 (rehabilitation eligibility) while a System Wide Improvement Framework (SWIF) is being developed for the Windber Flood Protection Project is currently being completed by EADS and will be submitted to Manager Furmanchik for review in September.

**Cash Bal./  
Treasurer  
Report** There were no questions at this time.

## Council Liaison Reports

### Holden/ WMA

Mr. Holden said at the last meeting the WMA reviewed their profit and loss statements from January through August. They had good numbers for the park and pool this summer considering the weather. Their daily admissions were down from last year and so were their concessions but their memberships increased and revenues from special events significantly increased.

Mr. Spinosa asked if the Wing Offs they had helped. Mr. Holden said yes. When you wash out their expenses from last year, like the pool liner, they have realized a nice increase in revenue. They have some money set aside in like a capital improvement account to hopefully start getting some grants done. They had a great summer from raising funds.

Mr. Spinosa asked council if they thought we should have Mr. Holden go back to the authority and asked them for their wish list as to what they would like to see done at the park. Mr. Holden said before we do that the borough manager and council should go to them on things we would like them to address. We don't want to spend money right out of the gate.

Mr. Furmanchik said when we were discussing selling the property, he had gotten together with the recreation director and the chairman and went up to the park. He told them council had discussed paving the park road, replacing the roofs on the pavilions and addressing some electrical issues. He asked them to take those suggestions back to their group. There has been no rebuttal, and they seemed to be in agreement with it.

Mr. Holden said it is an opportune time to pave that road, especially with Mr. Roberts's plans we have to dress that park up because we will have an increase in traffic.

Mr. Holden said Gina Smith and Robin Gates addressed the Municipal Authority regarding a craft festival for next year which will solely benefit the Municipal Authority.

Mr. Holden said plans are being drawn up for handicapped access and an ADA bathroom for the dancehall. Mrs. Pekala said she noticed when she was there over the summer they had the handicapped ramp in the pool which was great but they took away the handicapped parking. There is not one space designated for handicapped parking. Mr. Holden said he will advise them of that. He believes they will address that too with the handicapped bathroom.

Mr. Furmanchik said if Mr. Roberts has events up there that require some overflow parking he thinks it would be nice if we could make a handshake agreement to allow him to use the one acre of property when it is not being utilized by the pool and park patrons and adversely if we are having large events Mr. Roberts would allow us the same. Mr. Roberts said absolutely if they let him know when there is a big event then he won't schedule something big at the same time.

Mr. Holden said the motorcycles on the playground need to be removed. They are in deteriorating condition. Mrs. Pekala agreed. Mr. Furmanchik said he mentioned it to them last spring. Mr. Holden said they are dangerous and should be removed or replaced.

Mr. Furmanchik said one thing he would like to see us consider is putting in a masonry fire ring.

This will keep the mess contained and 99% of everything burned up there are pallets and they are left with a pickup full of nails. Kids and people are walking around up there. At least if you have something of masonry construction about two feet high it could keep the kids out and be cleaned up. Mr. Holden asked Mr. Furmanchik to call Lee Concrete and see what they have.

**Mayor's Report**

Mayor Penrod was absent from the meeting. There were no questions at this time.

**Manager's Report**

**Little League Fields** - The Richland Township Supervisors approved the land merger at their August 21st meeting. The property has been advertised and we will be accepting bids until 4:00 PM on September 12th. Sealed bids will be open at our meeting, later that evening.

**25th Street Storm Sewer project**- The project has been rebid and awarded to James Excavating. My past experience with James is that all of their work is completed in an exemplary fashion. They are scheduled to start construction on September 11th and permanent restoration will be easily completed by the end of this construction season.

**Abandon vehicle roundup** - I have been working with the Chief of Police to arrange a mass clean up of junk/abandon vehicles throughout the Borough. On the first day there 56 violations found. Vehicle owners will be given formal notification by mail and seven days to remove the vehicles, before being cited.

**Emergency management budget increase** - The Emergency Management Coordinator is seeking a \$1,500 increase in the 2018 budget.

**2020 Census** - The Borough office is beginning preliminary preparation for the next census.

**Route 56 project** - Construction is to be completed between this writing and month's end.

**17th Street flooding** - We are working with Penn DOT and Rosebud Mining to resolve issues in the 600 block. PennDot will donate two catch basins and Rosebud will pay for the pipe and permanent restoration. The installation of the catch basins and pipe will be done by Public Works.

**Officer William Smith** - If you did not see my August 31st email, Mr. Smith has resigned and is under investigation by the Somerset County District Attorney's office. There will be more information provided to you at our meeting on Sept. 12th.

**Property Maintenance Officer** - Tyler Fisher has informed me that he will retire at the end of October. I would ask council to consider keeping this position intact, as together we have made significant advancements.

Mr. Furmanchik said blight is a huge problem. Municipalities that have the least amount of blight issues are municipalities that have property maintenance codes officers. He said he does not feel that we are in the position to entertain a full-time officer. He would like to have council at least consider retaining the two day a week officer like we have been doing with Tyler.

Mr. Furmanchik said between the two of us we have made some advancement. He said looking back, and he was part of the decision back then, one of the worst decisions we ever made was to do away with the codes/zoning officer. He said looking from the inside now, it was a bad move.

**Manager's Report**

Mr. Bryan said two students up at Windber had an assignment to talk to someone from local government and he was selected. He said he met with them at Mimos two weeks ago and was probably there about an hour and a half or two hours. One of them had 35 questions for him and the other had 20 some questions. One of the issues that concerned them was about the blight. They were concerned about what was going to happen and what kind of future are they going to have.

Mr. Bryan said he was impressed by what they were talking about and feels that same way. There is concern coming from our kids too.

Mr. Jerley asked if we need to jump on this right now. Mr. Furmanchik said once the snow starts flying property issues are usually at a stop with the occasional issue coming in. We can look at appointing someone early in March of 2018. Mr. Holden said he believes we should keep the position in the budget and payroll. He said we can look at filling it in the spring. Mr. Furmanchik agreed.

**Rail replacement and crossing reconstruction - Ongoing with no issues**

Mr. Jerley asked Attorney Green if with this abandoned vehicle ordinance, and no license plate, does it pertain to commercial properties. Attorney Green said he did not know he would have to take a look at the specific ordinance. In other municipalities it has but he would have to look at the ordinance. He said he knows that Ferndale, Vintondale and the City of Johnstown never really did much with that but where it applied were car repair shops. There is a 1955 Chevrolet sitting there hasn't been run for 20 years and in both instances what we told them was to just move it inside.

Mr. Furmanchik said he believes there is verbiage in the ordinance in regards to if the vehicle is being repaired and it is not registered or inspected it is permissible. Attorney Green said it had to be active repair.

Mr. Jerley said what if these have been used car lots forever or previously used car lots. Attorney Green said it would still have to be an ongoing car lot. Mrs. Pekala said it can't be just sitting there. Attorney Green said right. Even with a used car lot you have to have at least a current inspection on it.

Attorney Green said he would be more comfortable if he read the ordinance. Mr. Jerley asked if the same ordinance pertains to both commercial and residential property. Attorney Green said typically they do unless there is an exclusionary in the ordinance; for example: (this ordinance is excluded for commercial type automotive business or that type of thing).

Mr. Furmanchik gave Attorney Green a copy of the ordinance. Attorney Green read Section Three; This section shall apply to dealers in automobiles who are licensed by the Commonwealth of Pennsylvania, it does not apply to those in the business of collision or automotive repairs provided that the vehicle in question is in process of being repaired and is

not periodically being dismantled for the purpose of parts. Attorney Greene said this answers the question, yes this pertains to all; commercial, private and public areas.

## **Manager's Report**

Mr. Jerley said if he towed an abandoned vehicle in for the police department and it sat at his place for six months to a year and no one claims them then what is he supposed to do. It doesn't belong to him. Attorney Green asked, is it an impound, due to a criminal case. Mr. Jerley said it could be someone that quit making payments on it and it sat. Attorney Green said as soon as the legal action is completed that car should be released to whomever. Either the bank will come and get the car or the District Attorney will tell you they no longer need it as evidence and it can be returned to the owner.

Mr. Jerley said he has already been in the position where the bank does not want it because there is so much towing and storage fees on them. Attorney Green said he is not familiar with the specifics but he believes Sandy Pritt, the Notary would know the way of getting a form from the Commonwealth. Chief Frear said there are two forms to fill out to get the title from the state for the vehicle, then you can junk it. Mrs. Pekala said then the money he was owed for towing and storage he would get once he gets the title and do what he needs to with the vehicle.

Mr. Jerley asked if the ordinance requires a plate and an inspection or one or the other. Mr. Furmanchik said one or the other. It has to be either registered or inspected but we all know you can't get an inspection sticker without a registration.

Attorney Green said here is what abandoned vehicle means:

- a. Not being capable of being moved under its own power, or
- b. With a deflated tire or tires, or
- c. Without a tire or tires, or
- d. Upon blocks or jacks, or
- e. With broken glass, or
- f. Without a current inspection sticker, or
- g. Without a current registration plate, or
- h. Which in any other way in the discretion of the Chief of Police or his designee constitutes a threat to health, safety, and welfare of the citizens of Windber Borough.

You have to have inspection and registration Attorney Green said. Mr. Furmanchik said the way he reads it is that it is one or the other. He was told if you have a vehicle on your property and it is registered your okay. Attorney Green said that is not how he would read it. If the registered car is on blocks is that okay. All of these have to apply. If any one of these are applicable then it is an abandoned vehicle.

Mrs. Pekala said if Mr. Jerley gets called to tow an abandoned vehicle or impounded vehicle and brings it into his place, he can't get it registered or inspected because it is not his vehicle and they haven't picked it up because they owe money or whatever. She asked what are these people supposed to do then with that tow from the police or whomever? Attorney Green said they have to go to PennDot get a salvage title and get rid of the vehicle.

Mr. Jerley asked what if you don't meet all of the requirements but you have a dealer plate on it. You do not need an inspection for a dealer plate.

Attorney Green said the ordinance requires inspection. Mr. Jerley said a dealer plate does not. You can drive a car with a dealer plate or tow tag without having an inspection sticker. Attorney Green said he guesses that would be at the discretion of the Chief of Police.

**Manager's Report**

Attorney Green said it requires an inspection sticker. That is just a very literal reading of this ordinance. For example; if it is up on blocks and it has registration and inspection sticker and no broken glass it is still considered an abandoned vehicle, if it's not being actively repaired. You could meet every one of the qualifications here except for one and it is an abandoned vehicle. He said that is just the way it is written.

**Lions Club.** The Lions Club will be having a chicken barbecue October 14, 2017 in front of the Community Building. They will be turning in an event packet.

**Aspire Grant Writers.** Michelle Beener who operates Aspire, her daughter Ashley who talked to council was involved in an automobile accident and is in intensive care so we haven't had a chance to have a conversation with her. Mr. Furmanchik did tell her to make sure we move forward with the sewer grant application here in the fall. Josh from the SCEDC has also been advising Mr. Furmanchik on some other grants.

**Survey Property on Railroad Street.** Is ongoing.

**Redevelopment Authority-CDBG Monies.** Pertaining to demolitions Mr. Furmanchik and Mr. Fischer are looking at a third property for demolition and we had a conference call with their attorney today.

**Executive Session**

Mr. Jerley said he was going to have two executive sessions tonight. One would be for the mayor and council members only. The mayor is not here. Attorney Green asked what the subject would be for the executive session. Mr. Jerley said personnel. Attorney Green asked personnel for what department, public works personnel or police personnel? Mr. Jerley said police. Attorney Green said you would have to have the Mayor or the Chief of Police so we have facts.

Mr. Jerley looked at Mrs. Pekala and asked if they should allow the Chief of Police sit in, if not, then you cannot have it. Mr. Spinos asked Mr. Jerley why he was addressing Mrs. Pekala and not all of council. Mr. Jerley said because he is president of council and he is asking the question. Mr. Spinos said okay but why are you just addressing one individual council member? Mr. Jerley said he knows that Mr. Spinos will tell everyone everything anyhow. Mr. Spinos asked, who me? Mr. Jerley told Mr. Spinos not to start and to just go ahead and start if he wants to run the "expletive" meeting he will hand him over everything right now. Mr. Furmanchik interrupted saying we need to get back to business at hand. Mr. Jerley said he wants an executive session with council members and the Chief of Police.

Council went into an executive session at 8:10 p.m. for personnel.

Council reconvened from an executive session at 9:05 p.m.

**Approval Non-uniform MMO**

A motion was made by Mr. Holden and seconded by Mrs. Pekala to approve the MMO for the Year 2018 in the amount of \$17,936. Roll call vote: Mr. Holden, yes; Mrs. Pekala, yes; Mr. Bryan, yes; Mr. Jerley, yes; Mr. Mash, yes; and Mr. Spinos, yes. Motion carried.

- Approval Police MMO** A motion was made by Mr. Mash and seconded by Mr. Holden to approve the MMO for the Year 2018 in the amount of \$45,780. Roll call vote: Mr. Mash, yes; Mr. Holden, yes; Mr. Bryan, yes; Mr. Jerley, yes; Mr. LaMonaca, yes; Mrs. Pekala, yes; and Mr. Spinos, yes. Motion carried.
- Budget EMA** A motion was made by Mr. Spinos and seconded by Mr. Bryan to approve to budget \$2,500 in the 2018 budget for Emergency Management expense. Roll call vote: Mr. Spinos, yes; Mr. Bryan, yes; Mr. Holden, yes; Mr. Jerley, yes; Mr. LaMonaca, yes; Mr. Mash, yes; and Mrs. Pekala yes. Motion carried.
- Bank Acct. EMA** A motion was made by Mrs. Pekala and seconded by Mr. Spinos to approve opening a separate checking account for Emergency Management. Motion carried.
- Resignation Ofc. Bellak** A motion was made by Mr. Spinos and seconded by Mr. Mash to accept the resignation of Officer Jerry Bellak from the Windber Borough Police Department effective August 14, 2017. Motion carried.
- Resignation Ofc. Hillegas** A motion was made by Mr. Holden and seconded by Mr. Mash to accept the resignation of Officer Shawn Hillegas from the Windber Borough Police Department effective August 10, 2017. Motion carried.
- Resignation Ofc. Smith** A motion was made by Mr. Holden and seconded by Mr. Mash to accept the resignation of Officer William Smith from the Windber Borough Police Department effective September 1, 2017. Motion carried.
- Officer Wright** Officer Wright accepted a 32 hour position with Meyersdale but would like to continue to work for Windber on a part-time basis. A motion was made by Mr. Mash and seconded by Mrs. Pekala to remove Officer Mathew Wright as a 32 to 39 hour officer per his request and place him on the Windber Borough Police Department part-time roster. Motion carried.
- Officer Meden** A motion was made by Mrs. Pekala and seconded by Mr. Mash to approve Officer Jeff Meden as a 32 to 39 hour officer on the Windber Borough Police Department roster. Motion carried.
- Officer Interviews** Council discussed interviewing two officers to fill the part-time vacancies on the Police Department Roster on September 26, 2017.
- Next Meeting** Next Council Meeting will be on September 26, 2017.
- Adjourn** Meeting was adjourned by Council President, Barry Jerley at 9:15 p.m.

Respectfully Submitted By:

Robin S. Gates