

Borough Council Regular Meeting December 10, 2019

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

Pledge of Allegiance.

The following Council Members were present: Mike Bryan, John Holden, Dr. Doug Ledney, Joe Pallo, and James Spinos. Pete LaMonaca and Ron Mash were absent. James Furmanchik, Borough Manager was available through telecommunications. Mayor, Mike Thomas was present. Attorney Joe Green was present.

Approval Minutes A motion was made by Mr. Spinos and seconded by Mr. Holden to approve the Minutes of November 12, 2019 meeting. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

Recognition Visitors Andrew Folmar introduced himself to council. He and his wife are the ones on the agenda asking for approval of a conditional use permit tonight to use the property located at 2400 Jackson Avenue as a bakery and office space.

Isabell D’Arcangelo Mrs. D’Arcangelo told council there was so much ice at the corner of Jackson Avenue and 12th Street and at the parking area of First National Bank and the doctor’s offices located there. She said someone could slip and fall. She asked where that water is coming from. It is running down 12th Street and today it was like a river.

Mrs. D’Arcangelo said she wanted to come before council early and ask to have their street reviewed for paving. She said down at the bottom where H & R Block is the macadam is all broken up. She asked that someone look at it.

Mrs. D’Arcangelo said her concern is if we are getting a new spa in town people will be coming in from all over and we are promoting Windber, so you need to fix the street. Mrs. Gates said the borough is putting a list of roads together to review for paving so we will look at it.

Mrs. D’Arcangelo said next door to her a management company bought the house a year ago and there is a sofa on the porch and a garbage can. There is no way to get into touch with these people and she warned the borough these management companies are coming into Windber. She saw on Sunday another management company purchased a property in Windber.

Mr. Furmanchik said a couple of years ago the water company repaired a leak straight down from the main entrance to the First National Bank Office. Last year they looked and could not find anything, and it was contributed to piled up snow melting. Obviously, this isn’t the case now. He will contact the Water Authority tomorrow and have them check the situation. We do have several areas with underground water issues.

Mr. Furmanchik asked Mrs. D’Arcangelo to give the borough office a call when she notices a build up of ice there and we will have the borough truck come down there and salt that area.

Mr. Furmanchik also noted he will have public works look at the road as far as paving goes this week. He said if it is something simple, we can put in some temporary material. Mrs. D’Arcangelo said they had already repaired that twice. She said the water comes up in the summer and it has nothing to do with the snow. Mr. Furmanchik said he will contact the water authority tomorrow and have them investigate.

Mrs. D’Arcangelo asked if people are allowed to have garbage cans on their porches. Mr. Bloom said 12th Street is being dealt with. You can not stop someone from keeping trash on their porch inside an approved container. There are issues there being dealt with, some are within legal constraints and some are just nit picking. Mrs. D’Arcangelo said there is a lot of traffic coming into town and that is what they see.

**Violet
Patrick**

Ms. Patrick said she was just here to observe.

Jim Serrian

Mr. Serrian comments to the borough manager was that he read the article in the paper and the opportunity was missed to bring up other issues. Nothing was mentioned about the development. We need to make point of their name, not to say we believe there is an alternative source to the issues that are relating to all of their issues down in the Jackson Avenue area. Nothing was said and that would have been a good opportunity to send up a red flag to investigate other reasons. In that article it felt like it was based just on weather conditions.

Mr. Furmanchik said it was brought up and he left a phone number to contact residents. They probably didn’t want to fuel the fire. Mr. Serrian agreed. He said Mr. Furmanchik mentioned in the article that \$200,000 was being allocated from the taxpayers to toward this situation down there. He said he is not sure they want to know that we are spending that kind of money on something that should be taken care of by another municipality. Mr. Furmanchik said it is clear we have done everything we can to make the problem go away down there but we do not get anywhere pointing fingers at anyone.

Mrs. Gates said the reporter also emailed her and she gave him Mr. Serrian and Mr. Gyurik’s name. Mr. Serrian said they called him. Mrs. Gates asked if they talked to him and then still did not put anything in the article. Mr. Serrian said that is correct. He said the reporter called and he called Mr. Gyurik and the next day it was in the paper. Mr. Serrian said he wanted Mr. Gyurik and possibly Mr. Rugg to be a part of it and not just be from his side and the next day it was in the paper. He said he wouldn’t have brought up their name but would’ve made a point to mention the ongoing issues since the development has gone in.

Mr. Serrian said he is not being unappreciative. He just thinks something needs to be done and get it finished. Mr. Holden asked if there were other agencies involved in this? Mr. Furmanchik said yes DEP and Keith Largent from the county conservation district. He said he has had multiple conversations with him, and his biggest concern is with the runoff from up there and he promised him the situation would be resolved by next spring or summer.

Mr. Furmanchik said we have done everything we could do to alleviate the problem. Mr. Serrian said he is frustrated; he has articles from 2006 from DEP that says the state said the problems were corrected and approved additional work for subdivision days before the May 31st flood.

It was supposed to have been taken care of then, and now they say they are going to take care of this by next summer.

Mr. Serrian said he has a Right to Know form and asked to whom does he turn it in to? He wants to know who to send this form to, to find out who stamped off on this project up there. It is obviously leaking and infiltrating.

Mr. Furmanchik said he understands Mr. Serrian is disheartened by it and one of the things he is disheartened by is when he spoke to DEP and they tell him they only got complaints from two residents. Mr. Serrian said he is with Mr. Furmanchik on that. Mr. Furmanchik told Mr. Serrian we need to rely on each other and move forward to resolve the problem.

Mr. Serrian asked what Mr. Furmanchik's resolve is going to be to the infiltration of sewer blowing off the manhole covers. Mr. Furmanchik said the water authority had the section of the pipe televised and they did find one deficiency. He does not know where it was, but if the borough engineer was here, he could tell you about it. Mr. Furmanchik said we can't speak to how the water authority spends their money, but since you have flow meters in place you have an excessive amount of flow into the sanitary system. If you have infiltration into the sanitary system of stormwater runoff and you have a great amount of product in the sanitary sewer system sometimes you must upsize the pipe. Being that you do have a lot of product on the hillside that empties into the sanitary sewer system which heads to the treatment plant, at some point may have to be a consideration.

Mr. Furmanchik said stormwater infiltration into the sanitary sewer system is a huge problem with every municipality around here. That is because they are all old communities and when it was installed it was installed with mostly terracotta pipe. Water makes its way into the ditch line and into the terracotta pipe. In the past two years the rain that we have had, Mother Earth can only hold so much water and then must find another way to go.

Mr. Serrian agreed it has been more dominate over the past few years. He said his family has lived there since 1960. Its only been the last 15 years of the craziness going on down there. Before that there was no history of flooded basements. There has only been one change.

Mr. Bryan said he feels Mr. Serrian's frustrations. We are making efforts and we know you know that. He said as far as who stamped off, he does not know. Mr. Furmanchik said he spoke with Lisa Milsop of DEP and he had to basically twist her arm to keep them involved.

Mr. Serrian said he is here to keep the issue going. They appreciate the storm drains going in down there but is it going to solve everything, they don't know that. EADS is here but they are the ones who installed everything up on the hill too. So, there is no warm fuzzy feeling from these guys. We don't know if this will solve our problem. If we are going to take all that water off the hill and direct it to the stream below our homes now, and it floods the entire stream over its banks then we have another issue.

Mr. Furmanchik said that might not be 100% fixed but it will surely alleviate some of those issues. He said we have stood behind you and talked about this over and over but at this point he is not sure there is anything else we can do. If you think we are not doing enough tell us what you need.

Mr. Serrian said the engineer of the development up there oversaw it and now we are paying them to fix a problem they created. Mr. Gyurik mentioned it earlier, it is a big conflict of interest having an engineer in three different municipalities and the development.

Mr. Furmanchik said what is confounding to him is Paint Township has a sanitary sewer system and no involvement with their public works people to handle maintenance. They contract out. Every time it changes hands information is lost.

Mr. Bryan asked who Mr. Serrian should send his right to know request to. Mr. Furmanchik said the document should be on file in the Paint Township office. Attorney Green said there should be approval maps at the Somerset County Court House.

Mr. Gyurik said EADS Engineering is representing all three entities. He said we petitioned Paint Township over the summer to get the flow meters installed. EADS was nice enough to go through our neighborhood with us and he was cordial and gave us the different options. They rented the flow meters for three months and EADS installed them. Wouldn't you think if the borough residents and the residents of Jackson Avenue have been continuously working for 10 years complaining about the runoff coming from Ramblin Hills that one of those flow meters would have been installed in line to either verify where the issues are or eliminate it as an issue. They did not install one flow meter coming off Ramblin Hills. They installed two flow meters coming off Rummel and then a third one.

Mr. Gyurik brought that to Paint Townships attention. You'd think they would install them where everyone is pointing fingers. DEP gave them till late spring, early summer to get all their stormwater controls in place and they are supposedly being fined and threatened with incarceration if they don't. So, if you don't install a flow meter there now and wait until they have the controls in place, guess what they will say there never was a problem in the first place. Do it now and verify it.

EADS is doing their part to help us out, but they are also doing their part to maintain a job with Paint Township. Paint Township already signed off and is liable for the sewer lines so far installed by the development. If there are deficiencies found Paint Township is on the hook for them and their engineer of record is the one who is going to nail them to the wall. Do you think they are going to do that? Mr. Holden asked Mr. Gyurik if he was accusing EADS of unethical business practices. Mr. Gyurik said yes, and he wants it on record that he is against having the same engineering firm represent this borough knowing what they are doing for Paint Township.

Mr. Furmanchik said they have nothing but trust and respect for Mr. Paczek and EADS Engineering would not intentionally give us any bad information. We can assume, but we are moving forward with a project and doing the best we can.

Mr. Furmanchik asked why this wasn't ever brought up before? Mr. Gyurik said they were just made aware of this at the last Paint Township Supervisor's meeting. Mr. Bryan said they were unaware of any of that.

**Pastor Rick
Smith**

Pastor Smith said he was there to assure council they were going to take care of the water situation between the church and the Berkey's. They are getting some estimates and talked to a contractor and put some more money towards getting it fixed.

Mr. Spinosa asked what the suggestion was from the contractor? Pastor Smith said to dig up what was put in years ago and put a larger pipe in. Mr. Spinosa asked if that would travel directly down to the creek? Pastor Smith said yes.

Pastor Smith said hopefully replacing it with a larger pipe will take care of the problem. Mr. Spinosa said there has always been a natural spring there and the residents are excited about the bakery coming in they just want the water problem taken care of.

Alex Trevorrow Mr. Trevorrow said he is a sales associate with CNC Real Estate. He is involved with the church and the bakery. He just wanted to let borough council know what they will receive in when the property goes into taxation. Windber School District will receive \$2,700, the borough \$1,500 and the county \$1,300.

Correspondence

1. Windber Area Authority Minutes of October 9, 2019.
2. Windber Municipal Authorities Report of October 15, 2019.
3. PA Municipal Code Alliance Report.

Mr. Furmanchik said the Windber Area Authority was approached by Brad Clemenson who represents the 911 National Memorial Trail. The proposed route will encompass the old trolley line which runs along Paint Creek from Carpenters Park to Scalp Level Borough. That involves a good bit of the Windber Area Authorities right of way. The Windber Area Authority approved them to proceed with the planning process of the trail. This speaks volumes and adds validity to future economic growth here in Windber.

Approval Payroll A motion was made by Mr. Spinosa and seconded by Mr. Pallo to approve payroll for November 8 and 22, 2019. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

Approval Bills A motion was made by Mr. Spinosa and seconded by Mr. Pallo to approve bills for November 2019. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

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

Council Liaison Reports

There were no reports at this time.

Mayor's Report Myself and Mrs. Gates attended a seminar on Strategic Management planning sponsored by Somerset Trust Co. The program was presented by Mr. Michael Foreman, Local Government Policy Specialist with DCED's Governor's Center for Local Government Services. The information presented dealt mostly with municipalities that in dire financial situations.

On November 21st the Windber Area School District held a high school assembly, celebrating the National Blue-Ribbon Award, presented to the district for outstanding performance in secondary education. Mrs. Gates and I represented Windber Borough. I

presented Mr. Kimmel a proclamation declaring November 21st. National Blue Ribbon Day in Windber.

Windber Borough hosted the Somerset County Boroughs Association's meeting at Rizzo's Restaurant, November 21st. Most members of Council, along with Mrs. Gates attended. I was honored to give the welcoming comments. The turnout was great. The next meeting will be in March in Somerset for anyone interested in attending.

I've been invited by JARI, to participate in a ribbon cutting ceremony tomorrow at Positive Images Spa Shoppes. This is a new business located at 427 park Place. Great to have another business in town.

A reminder, Christmas for Kids will be held December 19, 2019 at the Windber Community Building at 6 p.m. It would be great to see members of council attend and assist with the program.

Manager's Report

Jackson Avenue Storm Water Project – EADS is moving forward and preparing for the bidding process, which is projected to begin in February 2020.

Railroad Crossing at 17th Street and Graham Avenue – The property owner has failed to make the proper repairs in the time that was allotted to him by PennDot and the PUC. These two entities have told me that PennDot will now make the repairs and seek restitution from the property owner.

710 / 712 Graham Avenue – This property has burdened us with various property maintenance issues over the past year. The property owner is identified as David Wayne Powell, who resides at 405 22nd Street. At a recent hearing at District Magistrate Seger's office, Mr. Powell agreed to turn the property over to the Borough. There are a few ways to handle this situation and we will have further discussion at our December meeting.

If the we use CDBG monies to demolish the property, we cannot sell the property for 10 years. It is our understanding that one of the neighbors is interested in purchasing the property. We could have Attorney Green move forward with a title search and move forward with obtaining bids for demolition. We could then use money from our Capital Improvement Fund to demo the property. Then the property could be put out for bid. Council agreed to move forward.

A motion was made by Mr. Spinos and seconded by Mr. Holden to obtain bids for demolition for 710 and 712 Graham Avenue and proceed with Attorney Green doing a title search and make sure there are no mortgages on the deed. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

New Police Vehicle – The best price that we have received is from Tri-Star Motors in Blairsville. The new vehicle is a 2020 Dodge Durango with a bottom-line amount of \$29,876. The cost of up fitting the new vehicle will be \$7,965.63. The 2016 Ford Explorer, that the Dodge will replace, is to be put in use by our Codes Enforcement Officer and the 2009 Chevrolet Impala that is currently driven by Anson will be put out for bid.

W.A.E.D.C. Grant – I have been informed by the Community Foundation of the Alleghenies, that the Windber Area Economic Development Committee will be the recipient of a \$10,000 grant. The grant application was prepared by Travis Hutzell, of the United Way. I would offer a gesture of special thanks to Robin, who assisted Travis with preparation of the grant application. The money will be used to subsidize a feasibility study for total rehabilitation of The Ballroom at Windber Recreation Park.

Solicitor for Planning Commission and Zoning Appeals Board – Immediately following our November meeting, I had communication with five attorneys regarding this opening. All were asked to include their qualifications, and hourly rate. Currently, we have three letters of interest.

Officer Jason Knipple - Apparently the possibility of approving a letter of resignation by Mr. Knipple has surfaced. I have had conversation with the Teamsters Union as well. Chief Frear and I will share our opinions, in executive session at our next meeting.

Officer Joseph Marsh – This recently approved new hire has turned in his resignation.

Conditional Use Permit – At a recent Planning Commission meeting, on November 25th, the Commission ruled in favor of granting a Conditional Use Permit to Patrice and Andrew Folmar, for the property located at 2400 Jackson Avenue. Anson will have more information for you at the December 10th meeting

Refurbishing Restroom Floors – Robin and I have discussed the possible need to update the floors in the office restrooms. I am waiting to receive proposals from three local contractors to see if the affordability is there.

Mr. Furmanchik offered his best wished to all those in attendance for a Merry Christmas and Happy New Year.

Solicitor Report

Maffeo – the case was resolved by the commonwealth court. He called their attorney two weeks ago, and told him they were going to start fining them \$500 a day and he still has not received a phone call back.

He learned tonight from Anson that the Magistrate does not want to accept any of these violations until he talks to him so he will speak with him tomorrow. If the \$500 fine doesn't get them moving our next route would be to file an injunction on them and then he will file with the courts to be reimbursed for attorney fees.

At the October meeting Mr. Ledney brought up a vaping ordinance and it caught him off guard. He wasn't sure about how to enact that. He said it will not be a vaping ordinance but a tobacco possession and use. Under tobacco he can also list e-cigarettes and vaping devices. We can make it a summary offense and he will also talk to magistrate Seger to see if he would accept such an ordinance. He will try and write the ordinance relatively quick and get Mrs. Gates to advertise it so we can vote on it the next meeting.

A motion was made by Mr. Holden and seconded by Mr. Spinosa to approve to advertise a tobacco Ordinance No. 2020-1, to be approved at the January 14, 2020 meeting. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

Codes/ Enforcement Mr. Bloom gave a quick synopsis of the year; there were 250 cases reported 180 had substance to them, 30 traveled the legal route as you heard with regards to Graham Avenue. The next big one will be the mansion which has until the 13th to comply. A certified was sent and the owner promised to take care of it, and nothing has been done. He will be cited after the 13th.

Mr. Bryan told Mr. Bloom he has been doing a good job staying on top of things in the community and wanted to publicly acknowledge him.

Manager Mr. Furmanchik said we spoke about this before at the previous meeting about repairing the concrete near the side door at the community building near the newly paved parking lot. The glaring concern there is water runoff that may go in through the door and damage the new gym floor. Mr. Grohal said it would have to go before their board when Mr. Furmanchik asked if they were willing to split the cost. Mr. Spinos said we need to move forward because we are running out of time with regards to weather and either way whether they split it or not it has to be done. Council has three quotes in front of them.

1. Danchanko Inc. - \$2,275.00
2. Moyer Concrete - \$3,800
3. IHG General Contractors - \$1,775

A motion was made by Mr. Spinos and seconded by Mr. Bryan to approve IHG General Contractors at a price of \$1,775 to do the concrete work at the Community Building. This will be paid for from the Windber Borough Capital Improvement Fund. Roll call vote: Mr. Spinos, yes; Mr. Bryan, yes; Mr. Holden, yes; Mr. LaMonaca, absent; Dr. Ledney, yes; Mr. Mash, absent; and Mr. Pallo, yes. Motion carried.

Conditional Use Permit Keith Vasas sent the following letter to council regarding the Windber Borough Planning Commission Hearing and Letter Application for Conditional Use Permit Property located at 2400 Jackson Avenue Proposed Use is Bakery and Office Space

December 2, 2019; Dear Borough Council:

The Windber Borough Planning Commission met on Monday November 25, 2019 at 7:00 PM in the council chambers of the James E. DeBiase Municipal Office Building located at 1401 Graham Ave. Windber, PA in order to review an application submitted by Patricia and Andrew Folmar for the above referenced conditional use.

Planning Commission members in attendance at the meeting were: Keith Vasas, Michael Balchin, and Richard Burgess. Also attending were Robin Gates, Anson Bloom, and Solicitor Jeff Thomas.

The Commission by a vote of three (3) in favor and zero (0) against made a motion to recommend conditional approval of the application for conditional use permit. The conditions of the motion are as follows:

- 1) The applicant will limit their use of on-street parking to the spaces that are available immediately along their property line on Jackson Avenue. (The applicant stated that the off-street parking adjacent to 24th Street is more than adequate for their needs

since the business will only occupy the lower floor of the building. This limit related to on-street parking was agreed to with the understanding that businesses in a residential zoning district should not impact residential use of on-street parking).

- 2) The applicant or owner will provide repairs or place money in escrow to correct the stormwater runoff issue that is impacting the adjacent property. (It was reported at the hearing that a spring was identified during construction of the Church. A pipe was placed at the end of the spring to drain the water to the stream. It is understood that the pipe may have failed, or some other issue may have developed that is causing the runoff issue. The applicant suggested an escrow of \$10,000 to \$15,000 dollars. There was no information to confirm the cost of fixing the issue. The issue was understood to be a failure of a drainage facility and not a general matter related to natural surface runoff).
- 3) The applicant must comply with all ordinance requirements for the proposed use.

This concluded the Planning Commission's action on the application for conditional use permit. If you have any questions, please contact me. Signed: Keith C. Vasas, Chairman

A motion was made by Mr. Spinos and seconded by Dr. Ledney to approve the conditional Use Permit for Patricia and Andrew Folmar to use the property located at 2400 Jackson Avenue as a Bakery and office space with the three conditions addressed in the Planning Commission letter from Keith Vasas, Chairman. Roll call vote: Mr. Spinos, yes; Dr. Ledney, yes; Mr. Bryan, yes; Mr. Holden, yes; Mr. LaMonaca, absent; Mr. Mash, absent; and Mr. Pallo, yes. Motion carried.

**Approval
General
Fund** A motion was made by Mr. Spinos and seconded by Mr. Pallo to approve the General Fund Budget for the Year 2020 in the amount of \$1,696,564.73. Roll call vote: Mr. Spinos, yes; Mr. Pallo, yes; Mr. Bryan, yes; Mr. Holden, yes; Mr. LaMonaca, absent; Dr. Ledney, yes; Mr. and Mr. Mash, absent. Motion carried.

**Approval
Sewer
Fund** A motion was made by Mr. Spinos and seconded by Mr. Pallo to approve the General Fund Budget for the Year 2020 in the amount of \$214,300.00. Roll call vote: Mr. Spinos, yes; Mr. Pallo, yes; Mr. Bryan, yes; Mr. Holden, yes; Mr. LaMonaca, absent; Dr. Ledney, yes; and Mr. Mash, absent. Motion carried.

**Approval
Liquid Fuels
Fund** A motion was made by Mr. Spinos and seconded by Dr. Ledney to approve the Liquid Fuels Fund Budget for the Year 2020 in the amount of \$129,002.95. Roll call vote: Mr. Spinos, yes; Dr. Ledney, yes; Mr. Bryan, yes; Mr. Holden, yes; Mr. LaMonaca, absent; yes; Mr. Mash, absent and Mr. Pallo, yes. Motion carried.

Tax Millage A motion was made by Mr. Spinos and seconded by Mr. Bryan to approve Ordinance No. 2019-7 levying a tax of 17.92 mills for the Year 2020. Roll call vote: Mr. Spinos, Mr. Bryan, yes; Dr. Ledney, yes; Mr. Holden, yes; Mr. LaMonaca, absent; Mr. Mash, absent and Mr. Pallo, yes. Motion carried.

Council convened to an executive session at 8:20 p.m. for personnel matters.

Council reconvened from an executive session at 8:26 p.m.

Approval Solicitor A motion was made by Mr. Holden and seconded by Mr. Spinos to approve Attorney David A. Raho as the Attorney for the Planning and Zoning Commissions at a rate of \$90 hourly. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

Approval Resignation A motion was made by Mr. Spinos and seconded by Mr. Holden to accept the resignation of Officer Joseph Marsh a part-time officer from the Windber Borough Police Department effective December 5, 2019. Two absent, Mr. LaMonaca and Mr. Mash. Motion carried.

Next Meeting Reorganization Meeting, January 6, 2020 at 7:00 p.m.

Adjourn Meeting adjourned by Council President at 8:30 p.m.

Respectfully Submitted By:

Robin S. Gates
Administrative Assistant