

Borough of Windber Council Meeting
Minutes of August 8, 2022
7 p.m.

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

Pledge of Allegiance.

The following council members were present: John Holden, Pete LaMonaca, Dr. Doug Ledney, Ron Mash, Mark Portante, and Rich Rummel. Mayor Mike Thomas and Solicitor Joe Green were present and Manager Ron Allison was present. Joe Pallo was absent.

Approval Minutes A motion was made by Mr. LaMonaca and seconded by Mr. Rummel to approve the Minutes of July 25, 2022, Meeting. Two absent, Mr. Pallo and Mr. Portante, motion carried.

Recognition Visitors Mr. Hayes said he was not here to beg for ATV's to be on the roads but to give information how ATV's can benefit the economy. He was recently asked to be advisor for State Representative Schmidt of Altoona because of the current bill that just went through that a lot of the state representatives did not understand.

David Hayes Mr. Hayes said he has plenty of background on this. He was a project coordinator for the six county trail system that is being planned through the area. DCNR claims that on an average \$120 a day is spent by an ATV rider when they ride, between gas, food, snacks, and drinks.

A gas station in Carinbrook (Misty Gogas) informed him that she gets so busy on the weekend that she was thinking about hiring a second person to work those days during the summer because of ATV traffic.

Mr. Hayes said if you look at the last census 60,375 adults live in Somerset County. There are 5,213 registered ATVs in Somerset County (DCNR estimates 1 out of 6 is registered in the state). So just by doing the math and using the verified numbers you will see 1 out of every 11 adults own an ATV in Somerset County.

The average household income of Somerset County is \$51,255 (from the census bureau page) and the average price of a new ATV is around \$20,500 to just enjoy themselves.

PA Statutes Title 75, Section, 7722 Subsection © state Liability -There shall be no liability imposed on the Department of Transportation or any other state agency or any political subdivision of this commonwealth because of designating any highway, road or street as a snowmobile road or an ATV road as provided in subsection (a). Subsection A reads: the Department of Transportation on state-designated highways and local authorities on any highway road or street within its jurisdiction may designate any highway, road, or street within its jurisdiction as a snowmobile road an ATV road or both.

Now does it remove all liability the answer is no, but that's because you can still be found liable by negligence. Basically, the same exact thing a driver of a car can do.

People complain about noise. All ATV's by DCNR law must have a working muffler system that shall not exceed 99 decibels at 20 inches. Average sound of a stock muffler on ATV's are between 75-89 decibels. Compare that to a car which is 60-90 decibels or a bar on a Friday evening which is 79 decibels. Basically, its not as loud as everyday sounds. A riding lawn mower is 91 decibels. All this information can be found on 3m Noise Navigator.

Multiple municipalities have opened their roads already such as Paint, Ogle, Shade, and he was informed by Lindsay from Somerset Trails that Somerset is around 75% open roads to the point you can ride from Cambria County all the way to Maryland and West Virginia.

He is working with State Representatives Rigby, Kephart, and Armani now. He was contacted by Delegate Tolar from West Virginia and Representative Mike McKay from Maryland, along with Maryland OHV President, to help them create a tri-county connection. If we can get this moving ahead of time this is extra money that can be brought into these restaurants. This is economy we are lacking.

Mr. Hayes thanked council for their time and said he just wanted to provide some information about the possibility of opening some of the roads.

Mr. Holden asked Mr. Hayes if when he was talking about opening the roads, he meant trails? Mr. Hayes said trails and access to trails. Mr. Holden asked if legalizing ATVs like Paint Township and Ogle did if it included quads, side by sides and snowmobiles on the streets. Mr. Hayes said it is in mediation right now because this whole bill brought up that the legislators had no idea what they were voting on until they realized that for a \$25 fine that in the bigger cities, they can confiscate a \$35,000 machine and keep it.

Mr. Holden said they must have a registration, insurance, licensed and inspected like a car? Mr. Hayes said yes. Mr. Rummel asked Mr. Hayes if they had spoken with Berwind about their property use. Mr. Hayes said he had been working with Rigby when we started this trails system. He said the only way he would give them a letter of recommendation is if they went through Adams Township. Mr. Hayes met with Berwind and has been talking with them about it.

Mr. Portante arrived at 7:20 p.m.

Mr. Gyurik asked Mr. Hayes as far as the trails are concerned are you advocating access through Windber to get to the trail through Windber streets? Mr. Hayes said the trail they are looking at will come down towards Ogle field, and cut across Ogle Township, and down 56 to cut across. Adams Township is looking to give them access to a road. This is six counties. Mr. Gyurik said he understands they are trying to interconnect the trails, but he does not advocate that some people want to drive on the city streets to get to the trails. Mr. Hayes said they are trying to build it so people can cross over or stop at a restaurant or gas station.

Mr. Gyurik said he understands the economics, but he does not understand how you are going to separate people from getting to the restaurants in town with out driving on our streets. Mr. Hayes said the town will still have to open the streets to be able to do it they can't just come in and say they are doing it. State legislators are looking at doing a pilot program, by sticker pretty much and you can run the state highways and everything else up there. Now after the

last bill they are talking about Clearfield into Cambria then Somerset and West Virginia and Maryland.

Mr. Hayes said you must be inspected and have a DCNR registration to do it which is a boost to DCNR money which makes them happy. Say it is \$50 and it must be inspected so there is \$5, and the state gets \$20 and another \$5 over here and the remaining money goes into a pot that is split up between the counties. Extra free money.

Mr. Gyurik said they have been having problems the last couple of years which came to a head this year. Their alley at Jackson Avenue behind the old Windber Builders is being used by ATV riders, quads, and what not to access all the way up Village Street to cut across Graham Avenue and go to Horner Street to ride up behind the old track in the field. There are certain days, (not recently) in early spring they go up the alley and disrupt the peace and quiet of the neighborhood. He has had confrontations with one individual and filed a complaint with the police department and it stopped for a while then picked back up again.

Mr. Holden said he has a similar situation on his street but fortunately for him the neighbor is cooperating. Unfortunately, the police must see it and often the police visit them, and it calms down for a week. He said he doesn't care if they ride on the road, but he wants them to be neighborly and not run 60 mph till they get to the top of Cemetery Road. We have kids and elderly people walking. Mr. Hayes said that is what they fight against. Mr. Holden said unfortunately this is what you are up against. We do not have the manpower to chase them around. Mr. Gyurik said it is the small percentage that ruins it for the majority.

Mr. Holden thanked Mr. Hayes for his information and time.

**Karen
Lybarger**

Ms. Lybarger said she was there to discuss the blight of their neighbor. It's bad she said. there are freezers lined up along the yard and the grass is higher than an SUV. It's been like this for years. Although this year we are seeing black snakes, copperheads, and mice which are causing problems for the homeowners next door.

Mr. Bloom said the property they are talking about is a decade old problem and recently there are 20 citations pending. Ms. Lybarger said it is bad. It is very embarrassing to have folks come in from outside of Windber. Mayor Thomas asked her where she lives. Ms. Lybarger said she lives on the 600 Block of Railroad Street. She said if council drove by, they would be embarrassed as well.

**William
Lybarger**

Mr. Lybarger said he has the same problem as her. He owns the property right beside that house. He rents it out. His tenants want him to get rid of the copperheads. It needs cleaned up his hedges are 10 to 12 feet high or better. They were over his carport, and he had to go out and cut them down. He is not a young chicken anymore and at 72 and a stroke he can't be going out there and cutting these hedges.

Mr. Lybarger said he spoke to Mr. Bloom about getting something done and he asked him what he found out. Mr. Bloom said the property has been cited but his hands are tied because he must travel the legal side of things. This is a decade old problem; it has been appealed and they traveled the court system and paid fines, and this is not always the easiest road traveled. There are several citations pending as of now.

Mr. Lybarger said something needs to be done. His latest tenant has little nieces and nephews, and they don't know what a snake is, what happens if the kids get bit by a copperhead or black snake.

Mr. Bloom said right now, one of the biggest problems with society is blight remediation and a strategy and how you tackle that. If you go through the legal side, it can sometimes take two to three years to resolve, and no one wants to hear that. Through the legal system you have a right to appeal, and you can appeal it till the end of time. So, there must be other ordinances drafted to make it stiffer on people, and they are people of prominence, power, public opinion and respect and they are setting a bad example. The number one demise to economic growth is blight. So, if you don't want to get stringent on that you might as well take every economic idea you have and throw it out the window. The answer is not always to throw citations at someone. There must be council support and people ready to testify about those who make it bad to live in this manner.

Mr. Lybarger said when we first bought that place, we fixed it all up but now it becomes what's the use. If we must deal with this what's the use of putting our money back into our properties.

Mr. Holden asked Solicitor Green and Mr. Bloom if there is anything that can be done about the snakes and copperheads? Mr. Bloom said you must show where they are coming from. If you get a picture of where they are coming from you can take immediate action. Mr. Holden said he knows he wouldn't want to put his grandchildren in that type of situation.

Mrs. Lybarger said she would like to add she would not like to live next to something like that. It is a horrible site. It is almost impossible anymore to get someone to rent the house because of the condition of the next-door neighbor's property. Its right beside the driveway. He lines it up from the back clear down to the end with freezers and when the freezers are full, he is stacking it on top of the freezers, and he now has unlicensed vehicles sitting there. No one is doing anything about it.

Mr. Bloom said keep in mind that what is nothing to you is a lengthy legal problem. It doesn't mean that nothing has been done. Example: you can say that he is guilty, and the judge can say at the local level your guilty because the evidence does not lie. So, all they do is appeal that to the county level and the judge there can say your guilty and appeal it to the state level. You can travel this for three to four years. Its not that nothing is being done, some people are experts at playing the game. That is why the ordinances need to change and who can do what, needs to change.

Mrs. Lybarger said this has been going on long before them and Ms. Lybarger was trying to get something done and no one would do anything for her. Those trees are way beyond the limit of what the local ordinance has set for him to have.

Mr. Bloom said as of a year ago most of these infractions were a summary offense \$100, \$200 or \$300 fine and yes, they add up. The Act 90 legislation is really targeting blight, and it takes repeat offenders and those who have back taxes and gives it criminal strength. Citations are \$300 and \$500, and they are not allowed to purchase another property or obtain a permit. Act 90 is just a waiting game and now the summary offense becomes a criminal offense and that will hopefully get their attention.

Mr. Bloom said there are 47 properties in town that should come down by standards. Since he has been here, they have brought down 12. It's an up-hill battle because there is no money out there for it. If you raise taxes, you're hurting the economy instead of helping it. You're trying to get rid of blight to improve economic development. He did the remediation plan and we had hoped to bring down 18 houses and we only had enough to do nine.

Mrs. Lybarger asked why he can't cut those trees down. Mr. Bloom said he can, he just won't. Mr. Allison asked, they could hire a tree service and go to the property line and cut that. Solicitor Green said yes.

Mrs. Lybarger asked who they go after if one of those children are bit by a snake? Mr. Allison said it would be a civil suit with the property owner. Mr. Bloom said even if the person is found guilty, they can be set up on payment plan and pay as little as \$10 a month. Therefore, he put a lot of heart and soul into the Act 90 because as a criminal offense you have someone sit in jail for 30 days to think about things as a summary offense you do not. Sometimes it is a matter of traveling the chain and waiting for time to expire. Mr. Holden said we are not washing our hands, but we are doing everything we can to help your situation.

Mr. Gyurik said the sad thing about it is there are habitual offenders and if you cite them, they know they can make an effort to start the cleanup process and the courts look at that as making an effort until it goes by the wayside again.

He said they are going through the same thing with their neighbor. It's sad that you have habitual people out there that don't care about their neighbors or respect for them and do whatever the hell they want. He said they are so fed up they have started interviewing attorneys about the nuisance neighbor law because their property values have gone down because of people like this that do not have respect for anyone. The only thing you can do is file charges against them through civil suit because of our lost property value. Mr. Bloom said that is an advantage to them that he doesn't have.

Mrs. Lybarger said Ms. Lybarger has trouble backing out of her driveway because he parks on the sidewalk because his driveway is full of junk. Ms. Lybarger said you can't see around it to see the coal trucks coming down.

**Mark
Gyurik**

Mr. Gyurik said he saw on the agenda about the ATVs, and he just wanted to make a comment on that. He said he said his peace earlier.

**Jerley
Subdivision**

Randy Cortez property surveyor for the Jerley Subdivision Plan showed council a map of the property. He said Mr. Jerley is getting two small pieces from the rear of his property and attaching them to his property. It was approved by the Windber Borough Planning Commission.

A motion was made by Mr. LaMonaca and seconded by Mr. Mash to approve the application as approved by the Windber Borough Planning Commission with no conditions. One absent, Mr. Pallo, motion carried.

Correspondence

1. PSAB Fall Leadership Conference October 14-16, 2022. Mayor Thomas said he would attend that conference.

Approval Payroll A motion was made by Mr. LaMonaca and seconded by Dr. Ledney to approve payroll for July 29, 2022. One absent, Mr. Pallo, motion carried.

Approval Bills A motion was made by Mr. LaMonaca and seconded by Mr. Mash to approve the bills for July 2022. One absent, Mr. Pallo, motion carried.

**Cash Bal./
Treasure Rpt.** There were no questions at this time.

Council Liaison Reports

**Holden/
Library** Mr. Holden said the library did not have a meeting in July and their next meeting is next week.

**Holden/
Fire Dept.** Mr. Holden said he missed the last fire department meeting and the next one is next Wednesday.

**Ledney/
School** Dr. Ledney said school starts August 24, 2022.

**Ledney/
WAA** Dr. Ledney said there is a Water Authority meeting on Wednesday.

**Mayor's
Report** Mayor Thomas had no report at this time.

**Manager's
Report** **USDA GRANT-** Nothing to report currently. This Office has not received any new information. Mayor Thomas has requested the file be ready for his follow up efforts and it is prepared for his use.

12th St. Catch Basin- Public Works is completing this work prior to the start of the paving in this area to alleviate the water problem. Work taking place week of August 1, 2022

2022 Paving Contract- August 5/6, 2022, Quaker Sales is to be milling and paving and the approved work completed by weeks end.

MS4 Permit- On going work for compliance continues with the updating of information to the Boroughs Website, continued stenciling of the storm drains throughout the Borough. The borough garage has a floor drain that will also be made compliant before inspections and permit renewal. Follow up to the MS4 permit waiver. No appeal has been filed. It appears the items that would make the borough eligible for waiver would no longer exist in the next permit cycle. The next permit cycle should begin in March, but DEP still has not given EADS the specifics. We will be updated as information becomes available.

Changes made to the Borough Website were:

STORMWATER MANAGEMENT- MS4 PERMITTING

The following updates were made under the Stormwater Management section of the website as per Mr. Paczek:

1. The file "Windber Borough - MS4 Annual Report (9-30-2020)" needs to be replaced with the attached file "Windber Borough - MS4 Annual Report (9-27-2021)".
2. The file "Windber Borough - Stormwater Management Program (8-2-2021)" needs to be replaced with the attached file "Windber Borough - Stormwater Management Program (7-15- 2022)".
3. The text under "Upcoming stormwater related projects located in or sponsored by Windber Borough" needs to be deleted and replaced with: "Windber Flood Protection Project Debris Basin Cleaning -Work expected to take place between July and November of 2022."

Community Building – Invoice for Alarm System. – Mrs. Gates said we received an invoice from Barclay Electric concerning the installation of the new fire alarm panel, pull station and devices for the alarm system at the Community Building. She then forwarded it to Mr. Grohal the Recreation Manager because this was installed following the fire at the Community Building. Mr. Grohal felt the borough should pay for it and Mr. Allison feels they should pay for it.

After the fire they were not allowed to reoccupy the building unless the alarm system was installed. Mr. Grohal was unable to make the meeting tonight. He said they just put \$13,000 into the furnace down there and they may be willing to pay part of it.

Mr. Holden asked Solicitor Green if there was anything in the Agreement as to whom is responsible for what? Solicitor Green said no, it has always been done by a case-by-case basis.

Mr. Bloom said you can not have an occupancy permit and assembly without a working fire system and the fire system in that building was not functioning. It hasn't been upgraded or inspected for years. Fortunately, the fire was small but brought to light another problem.

Mr. Allison said we need to define our relationship with the Municipal Authority, and they hold all the events there and take in the income and we do not. Mr. Holden asked how much money is in the line item for Recreation? Mrs. Gates said \$500.

A motion was made by Mr. Rummel and seconded by Mr. LaMonaca to pay half the cost of Invoice \$3,795.62 from the Capital Improvement Fund. Roll call vote: Mr. Rummel, yes; Mr. LaMonaca, yes; Mr. Holden, no; Dr. Ledney, no; Mr. Mash, no; Mr. Pallo, absent; and Mr. Portante, no. Motion denied.

A motion was made by Mr. Mash and seconded by Mr. Portante to pay the \$500 budgeted for recreation and have the Municipal Authority pay the balance.

Roll call vote: Mr. Mash, yes; Mr. Portante, yes; Mr. LaMonaca, yes; Mr. Holden, yes; Dr. Ledney, yes; Mr. Pallo, absent; and Mr. Rummel, yes. Motion carried.

Solicitor's Report Solicitor Green said he reviewed the Stormwater Management Ordinance which is the subject of Line Item 10-a. He said it seems appropriate to him.

Solicitor Green said last month he reviewed our answer, physician statement, new matter and affirmed the defense in the Greg Hall matter. There is a mandatory negotiation session that is going to be coming up and the attorney wants to know who from Windber Borough will attend that. He said he will be the one who attends because he knows the most about it. he said when it comes up, he will need to have some type of authority. We can discuss this down the road in an executive session.

Codes/ Enforcement Mr. Rummel asked Mr. Bloom if he had a report? Mr. Bloom said no he could not give one due to the issue of someone who sits here is one of the defendants. He said he has no problem sharing what happens, but now that he has his own ORI everything must go through the judicial system. He must change the way he did reports in the past. He said he has no problem speaking with Mr. Rummel after the meeting.

Ballroom Mr. Holden said the ballroom project is moving on and hopefully there will not be any more hiccups with the building while we are moving forward. Mrs. Gates said we finally got the signed contract back from the state today. There are also nine conditions yet to be answered and submitted. A representative from the Office of the Budget is coming on August 24, 2022, to walk her through the submittal process for invoices so we can move forward.

Mr. Allison said GAP Vax was able to suck out all the debris such as leaves etc. from underneath the ballroom. There are still some larger debris such as plumbing parts that CNC will have to remove before they move forward with putting down the vapor barrier. GAP Vax did not have to utilize two days so that will bring the bill down.

Event Coordinator Mrs. Gates said we advertised for the position of an Event Coordinator for the ballroom. We received three resumes for the position. She passed out copies of the resumes for council's review and asked them if they would like to interview those three people on August 22, 2022? Council agreed to hold interviews on August 22nd beginning at 5 p.m. and running every 45 minutes. Mrs. Gates will set up the interviews and times.

Update Blight Ordinances Mr. Bloom said he would like to revisit the 2019-1 and 2019-2 Ordinances that he had drafted at the time. He said for instance, today we were on a property that was abandoned with dead chickens, cats, and dogs. We spent a significant amount of time up there. One of the big problems in town right now are these rental companies are buying up all these properties. The owner of this property resides in New Jersey and admitted they've never seen the property.

Mr. Bloom said this goes back to our original blight strategy where he asked for annual inspections of rental properties or at the change of tenants because these corporations who are buying up all these properties in town will openly tell you they do not have any idea what they look like. They buy it, send a contractor in that says it is ready to go, then you have cases like we had today.

Mr. Bloom said he would like to re-present that, but he does not want to go through all the leg work if council is going to shoot it down. This would call for annual inspections of rental properties or at the change of occupancy with a \$50 fee per inspection.

A motion was made by Mr. Mash and seconded by Dr. Ledney to move forward and have Mr. Bloom revisit the 2019-1 and 2019-2 Ordinances for inspection of rental properties at a workshop. One absent, Mr. Pallo, motion carried.

**Tax
Delinquency**

Mr. Holden said Somerset County advertised the Notice of Sale of Lands for Delinquent Taxes. The sale will be held on Tuesday, September 13, 2022, beginning at 9:00 a.m. Approximately 50 properties are going up for sale for delinquent taxes. Again, they can arrange a payment plan or pay their taxes off before the sale happens.

Mr. Rummel asked if it was possible to go to Somerset and ask them to stop putting this online to prevent these outside LLC's from coming in and buying up these properties? Mr. Bloom said there is a Freedom of Information Act. Mrs. Gates said this is the first online sale, in the past we always went to the Somerset. Mr. Bloom said he agrees with Mr. Rummel because this sort of thing defeats what he is trying to overcome. Solicitor Green said this is an upset sale which means any liens on the property goes with it, so we must be very careful. He said the last one we were trying to buy he did the title search on it. Mr. Portante asked what the advantages were on bidding on these properties? Mr. Holden said public safety. The property on 22nd Street would provide emergency access for Fire and EMS.

A motion was made by Mr. Rummel and seconded by Mr. LaMonaca to register for the Tax Claim Sale. Cost is \$100 to register. One absent, Mr. Pallo, motion carried.

A motion was made by Mr. Mash and seconded by Mr. LaMonaca to allow Solicitor Green to proceed with a title search on the properties chosen by Borough Council. One absent, Mr. Pallo, motion carried.

Council convened to an executive session at 8:41 p.m. for personnel.

Council reconvened from executive session at 9:04 p.m.

**Advertise
Ordinance**

A motion was made by Mr. Mash and seconded by Mr. LaMonaca for approval to advertise Ordinance No. 2022-3 Updating the Stormwater Management Ordinance. One absent, Mr. Pallo, motion carried.

**Next
Meeting**

Next Council Meeting will be September 12, 2022, at 7:00 p.m.

Adjourn

Meeting adjourned at 9:10 p.m. by Council President John Holden.

Respectfully Submitted By:

Robin S. Gates
Administrative Assistant

