

**Borough of Windber Council Meeting**  
**Minutes of April 24, 2023**  
**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, Joe Pallo, Mark Portante, and Rich Rummel. Ron Mash was absent. Ron Allison, Borough Manager, and Mayor, Mike Thomas, were present. Attorney Joseph Green was absent.

**Recognition** Tracy Horner from 1301 Somerset Avenue in Windber Borough expressed his concerns  
**Visitors** about the proposed location of 1200 Somerset Avenue for a new Dollar General Store. He said he plans on living at 1301 Somerset for the remainder of his life and feels his neighbors and himself are being sold out for tax dollars. He asked the council for a show of hands of how many people would love to have dollar general next to their house right outside their kitchen window.

**Tracy** He said this council took an oath to do what is best for the residents of this borough and  
**Horner** nowhere in that oath does it say I am going to railroad a residential district and sell out to Dollar General for tax dollars. That is exactly what is happening. He asked the council to honor the oath that they took and respect the wishes of all the homeowners who live on that block and end this charade immediately.

**Amy** Amy Rummel said she lives at 1305 Somerset Avenue in Windber Borough. Dollar General  
**Rummel** would be three doors up from her. Mrs. Rummel asked council for a postponement of any decision to be made concerning Dollar General. There has been no information regarding this to the homeowners on that street. Putting this in the newspaper is not good enough for her because she does not get the paper and she is not on social media. She does not understand why there wasn't a letter explaining this to every resident on Somerset Avenue. There are probably 36 homes that should've gotten letters to be informed but they didn't.

Mrs. Rummel said this will affect every resident on that street with the parking. Most of the houses have on-street parking. Trash will be extra, loitering will be extra, increased traffic, humans and automobiles. She doesn't know if the council has ever crossed the streets on Somerset Avenue going from those side streets to 13<sup>th</sup> is absurd. Now you are going to add traffic from tractor trailers, and garbage trucks going through there to pick up all this trash. It is just not right. There are lights to worry about and noise.

Mrs. Rummel said this is a quiet private street. She has lived there for 13 years and at night when she goes home, she sits on her back porch, and it is just as quiet as everywhere you people live. It is her sanctuary. She sits there and decompresses from the day.

Mrs. Rummel said there are tons of little kids that play on that street and even if they are never allowed to play on that lot ever again, they ride their pedal bikes up and down her

street. This is a disaster waiting to happen, someone is going to get hit crossing those side streets.

Mrs. Rummel said if you want to change this, every resident should have a say and if you are changing the zoning, we have little knowledge of it, allow us the time to discuss and find out what type of impact this will have on our street and in our neighborhood. She would like to know what the depreciation of her home is going to be once there is a structure built there. Do you think someone is going to want to live there? She doesn't want to live there now? So, who is she selling her house to so she can get out and live where you guys live.

Mayor Thomas said he lives on 17<sup>th</sup> Street so 12 hours a day he puts up with coal trucks. Mrs. Rummel said they approved of that. Mayor Thomas said they did not approve that, it is a state road, so he must put up with it so don't say "where you live" because he does not live in an ivory tower. Mrs. Rummel said Mayor Thomas walks the streets, so he sees the little kids playing there. Mayor Thomas said he drives it every day. Mrs. Rummel asked Mayor Thomas if he thought it is difficult to cross Somerset Avenue to 13<sup>th</sup> Street. Mayor Thomas said it can be difficult, but it is not that hard.

Mrs. Rummel said she doesn't even know where we are at in this stage of things? Mayor Thomas said we are in the very beginning. Mrs. Rummel said then we are not voting to do this. Mayor Thomas said no. Mrs. Rummel said so then if she gets here fast enough or early enough maybe there will be another property that pops up somewhere that would be better suited for this. She said she drove around this town for hours the other day with her husband looking for somewhere else it could go.

Mr. Holden said when Mrs. Rummel was here the other night at the planning commission meeting, she heard Officer Bloom speak about the alternatives, and he will explain to her why it wasn't made public yet was because it wasn't official. We are not trying to hide anything or sweep anything under the carpet. The council did not know we were pursuing this until the last council meeting. Manager Allison said they made the application after the last council meeting. Mr. Holden said it is not like we are trying to hide anything or ram something down the resident's throat or the people of the neighborhood.

Mr. Holden said we are following the process to see about the possibility of approving a grocery store on Somerset Avenue. Traffic studies can be done to see how it will impact traffic. He knows what she means about people flying up and down Somerset Avenue, he sees it. It is not wide enough for two cars because of the people who park there on the street. Traffic avoids Graham Avenue because of the stop lights and people pulling out. Somerset Avenue has always been well traveled in the borough. When West End School was there, there was traffic.

Mrs. Rummel said they really do not see traffic after 7 p.m. Mr. Holden said Mrs. Rummel mentioned garbage everywhere. Mrs. Rummel said our Dollar General doesn't have trash receptacles. Mr. Holden said our Dollar General doesn't even have parking. The new Dollar General has to enough space for parking.

Mrs. Rummel asked how much parking will be in there once it is built? Mr. Bloom said you must keep in mind this is only an exploration. So, we do not have some of these answers. It is going to be about \$100,000 to draw up plans and stormwater. So, the exploration process

takes place to see if it is even viable. If there is community outlash and council is not in favor then it ends there but if there is community or council support then they draft plans and then we get to an official meeting, and then all the residents get official notification. Then everyone can truly have answers to your questions because we do not know if it is 10,000 square feet building or 25,000 square feet. It is just an exploration to see if it is a viable option because we are out of options.

Mr. Bloom said like he said Thursday our zoning ordinance heavily restricts the borough, and it is not clear and there are a lot of things that need to change and evolve and that is one of them. From a residential standpoint and a municipal standpoint this town needs to revolve before we lose it.

Mrs. Rummel said she is with Mr. Bloom on that, the tax thing she gets it. She does not want to lose the Dollar Store; we need that revenue because if not, we are going to pay for it. Mr. Bloom said we do not have a lot of those answers about parking spaces because we do not know what the anticipated store is yet.

Mrs. Rummel said there are other locations to look at like the top of 9<sup>th</sup> street where there is a big open field on the left. Mr. Holden said he believes that is owned by descendants of Berwind. Mr. Holden said he operates transparently, and the council operates transparently. She said she just wants to be informed. He said we are happy to answer any questions, call the borough office or himself.

Mrs. Rummel said she wants to make decisions also; like is she going to sell her house fast. Manager Allison said while you might not want to live across from it there are people that would love to have that convenience. Mr. Pallo said he lives on 15<sup>th</sup> Street, and he could stretch a tape measure to the Dollar General about 100 feet away from his house and his only problem is keeping his wife and kids out of the place.

Mrs. Rummel said she does not want to see it leave she just wants to see it in a commercial district. There is a big commercial lot up the street. She said she also didn't realize about the setbacks either. Mr. Bloom said most of the buildings down there came about before the zoning ordinance came about. The zoning ordinance now is restricted and each one would have to travel through the same process. So, if any of those buildings on Graham Avenue on Mrs. Rummel's side come down the chances of anything being approved to go back up there because of the railroad setbacks are few and far between. The brownfield is on the other side where the Whalley lot is, only a half an acre, and they are looking for an acre parcel. We know of only one other alternative and we know the history of that, there are three lots that only one person owns and just out of vengeance they would not do anything to aid economic development for the borough.

Mr. Bloom said it is the only one-acre lot and we are only in the exploratory phase that it is vacant and flat. It is only exploratory to see if there was community support and council support before anyone starts spending hundreds of thousands of dollars. Mrs. Rummel said she knows how this works, and this is what is going to happen its hard-to-get people to a meeting, and they are going to build, and those people are going to bitch, and they are not going to have a leg to stand on, so that is why she is here. It's her home, she has lived here for 25 years, and she likes it here. She wants the council to build just not there. She said she

wants the town to flourish. She found out from her neighbor who came to her house. So, when she was told about it, she got nervous because she needed to prepare too.

Mr. Bloom said the only thing that would happen tonight is the council would agree or disagree to move it to the zoning hearing board and that is when everything starts. Attorney Tokarsky said everyone who lives within so many feet will be notified by mail about the zoning hearing meeting and the plans will be here and you can see them and ask questions and that is when you find out about parking, stormwater, and lighting.

**Todd  
Koehler**

Mr. Koehler said he does not think it is the right place for a Dollar General Store. Before anyone spends \$100,000 on a study registered letters should be sent out earlier because for someone to spend that much money and the word gets out it is a smack in our face for even letting them invest that money.

Mr. Koehler asked who pays for that. Attorney Tokarsky said the Dollar General does. Mr. Bloom said we do not have anything in it yet, typically it is the clients Dollar General and the property owner. We are just overseeing the borough and moving it through the steps the right way. Mr. Koehler said you will lose the trees there and he feels the property could be of better use.

**Joe  
Felix**

Mr. Joe Felix said a conditional use is a convenience business in that district and that is even more restrictive than what he thought of it as a convenience store. So, you're down to a 1,000 square foot building within that property. He thinks that the intent of that zoning ordinance was to make sure whatever you have in residential stays within those uses or conditional uses. So now you are going to take a requirement that is 2,000 square feet and a building if you go by past practices of what they have the one in Elton is about 10,000 square feet. Take that building times five and flop that building into an R2 district. It is five times the size required for a convenience business. Attorney Tokarsky said it would take two variances for sure. Mr. Felix said there is the other thing you talk about if you put it within a commercial business on Graham Avenue you're worried about setbacks, but you can go through the same process with asking for variances. So, it's not like it is not a possibility to do that.

Mr. Bloom reiterated what he said at the planning commission meeting was the zoning ordinance was drafted in 1979 and reamended in 2009. It has not evolved. That square footage was set for the mom-and-pop shops that do not exist anymore that have been run out by the corporate chains. On Graham Avenue you have the railroad right of way. The thing hinging this whole thing and because it is in the exploratory phase is the time constraint. We have gone through just about every other option and this is the only one that doesn't have a building sitting on it right now and that is why it is being entertained.

Mr. Bloom said everyone needs to relax for a minute because we have the meeting so everyone can voice their concerns, and nothing should be decided without entertaining public opinion. This is only exploration to see if it is viable to move forward. If not, there is no use wasting everyone's time and money.

Mr. Felix said whatever you decide with this lot you're setting a past practice and that is something the legalese will say the next time that you allowed it for one and then not the other.

**Amy  
Rummel**

Mrs. Rummel asked what happens once the Dollar Store is built, and they drop off after 10 years? Mr. Bloom said there are many ways this can travel and that is why we are not going for rezoning classification is because it would be spot zoning and spot zoning is illegal. You do it under a conditional use and a variance. When the conditional use is approved it is approved for the owner and the structure. If anything changes, occupancy or owner than that variance is no longer good, and it would have to be restored to its original intent.

Mrs. Rummel asked what would be put in there. Mr. Bloom said the business that would purchase it next would have to go through the same procedure they are going through now.

**Attorney  
Green**

Mr. Holden read the letter from Keith Vasas of the planning commission. The planning commission concluded that the proposed Dollar General does not currently qualify as a conditionally permitted use in the R2 zoning district. The application requires further processing before the planning commission can consider a recommendation of being in favor or against the proposed project.

Mr. Holden deferred to Attorney Green. Attorney Green said in the fourth paragraph they are asking him to render an opinion of whether the Dollar Store is a suitable use in the R2 District. If you go to the R2 Zoning District, one of the conditional permitted uses is a convenience business. So, when we go to the definitions in the ordinance a convenience business is a commercial establishment that caters to and located to close proximity to or within residential districts without creating undue vehicular congestion, excessive, noise or other objectionable influences. Convenience use includes but may not limited to drug stores, beauty salons, barber shops, dry cleaning, and laundry pick up facilities. Those uses have to be under 2,000 square feet.

Attorney Green believes elsewhere in our ordinance the definition of a Dollar General or Dollar Store is included and that is called a convenience store. Convenience store definition is a small retail store selling a limited variety of fast-moving food and nonfood items groceries and snacks usually extended hours. The square footage is built up a little there at 2,500 square feet.

Attorney Green said granted, a convenience store in our zoning code is the central business district. Whatever applicant is going to be required to seek a use variance from convenience business to convenience store. They will also need to seek a square footage variance. That also encompasses the general principles of a variance.

Attorney Green said ultimately the zoning hearing board can make the decision whether the variance is permitted by law. This board can choose either to pass it off to the zoning hearing board or stop it now.

Attorney Green said his humble opinion is that those two variances will more than likely not be permitted by the zoning hearing board. There are certain factors. A variance isn't this color blue varies from that color blue. That is not what a variance is. It is a very specific legal definition. One of the problems of a variance is that the parcel land must be unique and by unique he means its topography, its location, and its size. Example: let's say we have a 40-foot lot somewhere in Windber and someone wants to build a house on that lot, and they want to build a house that's 25 feet by 25 feet. That would more than likely violate the setback

requirements. They would have to seek a variance and they would say this property is so unique it's only 40 feet wide and you can't build anything here or a home on here. Therefore, they seek a variance from those setbacks.

Another issue with variance is that the lot as it now stands cannot be used in complete conformity with the zoning code. We would have to be able to say you cannot put a structure on that land that wouldn't conform to the zoning code as it is now written.

Mr. Pallo asked according to what Attorney Green is saying there is no sense in moving forward or do you think Dollar General could rescind it and say we are only going to go 2,500 square feet or get a variance for 3,000 square feet? Attorney Green said the smaller the number the easier it might be because then you could appease the people by having shrubbery and trees in front of it, so it doesn't look as commercial.

Attorney Green said it is up to the council to see whether it should go forward. If you talk to any lawyer, they will have a different opinion on all of this. His understanding of the zoning code and variances in general, it is a huge uphill battle.

The question asked by the gallery was are you saying that lot is not big enough to put a residential lot on it. Attorney Green said no that is not what he is saying, you can put four residential units on it and not violate the setbacks. Mrs. Tokarsky said what is under the ground now is the problem. They collapsed the building into the building.

Mr. Koehler said there must be another spot on Graham Avenue eventually. Attorney Tokarsky said you have two brownfield spots, and you are not going to use those, and you have someone that won't sell in the other area. Mr. Rummel asked what if you throw money at the person who won't sell, and they will sell. Mrs. Tokarsky that is not providable. Mr. Bloom believes that they offered \$320,000 last time.

Mrs. Rummel asked how much it can cost to do a study for a brownfield. Mr. Holden said the old Boron station where the pumps are still there if someone moves those pumps, they are looking at, at least a million dollars in reclaiming the ground underneath because those pumps are still there. That is why no one wants to touch that property. Mr. Koehler asked when does that timeline ever end? Mrs. Tokarsky said it doesn't.

Mr. Lehman said something can be done with that property up there, just a little sample is needed to retest it. Mr. Lehman said a lot of people won't touch that stuff anymore, the superfunds went away, the brownfield went away, all that environmental went away but they are getting back into it now. If you do the studies and samples, you can build on it.

Mrs. Tokarsky said she is working on one at the office where a borough is trying to put the product together to try and clean it up and it is still going to be really expensive.

Mr. Bloom said they put in for grants for brownfields and he is not saying it can't be done. They are waiting for an answer. Mrs. Rummel asked who would do the samples then. Mr. Bloom said that would be the landowner and environmental.

Mr. Holden said what is in front of the council is the action to proceed or not to proceed in submitting the variance application to the zoning hearing board. Remarks: Mrs. Tokarsky said it is a variance, but you also must go back through planning with the site plan and all that, so

you have two different processes that the council must move forward. Mr. Bloom said you either move the project forward or do not move the project forward. Mr. Pallo asked if it costs the borough anything for that? Mr. Bloom said other than zoning hearing board fees cost is minimal for us. Dollar General would have to start drafting all the plans and blueprints and stormwater so it would be very costly for them.

Mr. Allison said he feels at this point it would be okay for the council to move to approve it moving forward, it will give them a chance to change some things and hear their side. That way they know what happened here tonight and they can make the decision on whether to advance beyond this or maybe they can do something within planning. He does not see any reason to stop it right here. There are still paths to move forward here and to stop it.

Mrs. Tokarsky said it is very preliminary. Applicant has to go to zoning and planning, and it is a step hill to climb. Mr. Holden said we have the final say.

Mrs. Rummel asked if they get to attend the zoning hearing. Mr. Bloom said if it gets approved to go to zoning hearing that is when it triggers all the requirements for landowner notification and adjacent property notification. Then they start putting all their plans together and then you get a lot of questions answered.

Mrs. Rummel said Attorney Green said this was going to be a difficult ride, not sure it will even pass but you are still willing to waste money and move forward. Mrs. Tokarsky said because the borough doesn't spend money the applicant spends money. They pay a fee to the zoning hearing board for the advertisement and notices. Attorney Green said the only thing it will cost the borough is the zoning hearing board solicitor.

Mrs. Rummel said if the zoning board approves this, and you said it comes back to here what is the purpose of it coming back to here if you are already going to approve it. Attorney Tokarsky said not necessarily, it would then have to come back to planning and that is where they would determine stormwater and parking and nuisance and all those things and then that comes to the council with the remarks and conditions. There are three more steps.

Mr. Rummel said whether the council goes through with this tonight or not, you said there is transparency and that was not the case. He said he did not hear about it until his mom and dad told him it was in the paper a couple days before the meeting. Mr. Holden said we talked about it at the last council meeting. Mr. LaMonaca said he found out from someone in the public. Mr. Holden said he disagreed with Mr. Rummel. Mr. Rummel said not enough people knew about it or they would be here. Mr. Allison said that is what this meeting is for and the next three if this advances. We advertised it and we are in strict conformance with the sunshine act. The application was received after the council meeting and then the planning commission meeting advertised. The next step requires neighborhood communication.

Mr. Rummel said step one was the other night, and no one knew about it. He also said this will set a precedence. If someone else wants to put a store up down the road and it is in residential all they must do is come down here and say you, did it for the Dollar Store. Mr. Holden said they would have to fill out an application and go through the same steps.

Mr. LaMonaca said he would make the motion if the council had the last say and residents within the location are properly notified cause if it comes down to it, he will vote no. A

motion was made by Mr. LaMonaca and seconded by seconded by Mr. Pallo to advance the project to the Zoning Hearing Board. Roll call vote: Mr. LaMonaca, yes; Mr. Pallo, yes; Mr. Holden, yes; Dr. Ledney, yes; Mr. Mash, absent; Mr. Portante, no; and Mr. Rummel, no.

**Reverend  
McGee**

Reverend McGee said there is lots of negatives but who presents the positives? Attorney Tokarsky said that will happen at the zoning and planning meetings. She said that is also the problem because people who are in favor are less likely to come out than those opposed.

Reverend McGee said it is difficult to hear the negative and vote. He has sat on boards that have received 100% negativity and there is no one to defend this and they say there is no good to this when there are always two sides to everything. He said he is not benefitting from this. He is just saying it is hard for this board to decide when presented with all the negative things. Put it on a board and state the negative and positive. Who does it affect here and there. It will bring in tax dollars and what is the benefit for the entire community of Windber and how we can help the people living next door. How can we put all this together to make in beneficial for the entire community. That's the goal to benefit everyone. Dollar General needs to say why it is beneficial to the community. All we have now is negative comments.

Mr. Allison said that is why it is a good thing to move forward and hear what they have to say. Mr. Holden said it will put a property back on tax rolls that hasn't been for years! Dollar General has a reputation to uphold and take care of their properties. Mr. Pallo said they went through the same thing with Sheetz but now its one of the nicest buildings. Mr. Rummel disagreed.

Mr. Holden said he agrees with Reverend McGee that there are positives to that building being there. Anson made the point that if we do not find them property by the end of 2024 they are gone. Mr. Rummel said they will not leave, they make money here, they will find a spot. Mr. Holden said we have tried to find spots.

Mayor Thomas said one thing everyone is forgetting about is there are a lot of elderly people in this town that can't drive to Richland. They depend on walking or someone giving them a ride. Mr. Rummel asked why can't we put it by the towers? Mr. Holden said that is not our property and Mr. Bloom said it is in the floodplain.

Mr. Holden said he does agree there are positives. Mr. Rummel said over the years he was gone for a long time. He came back, off and on and two things that really made him angry was when the Palace Hotel was torn down and replaced by a bank and the other was putting Sheetz in the middle of town. They could've built somewhere else.

Mrs. Tokarsky said you must realize there just isn't enough private capital to keep that building going. A building doesn't just sit. You must feed, water and maintain it and that building was not economically viable and it couldn't stay without a lot of public subsidies. That was a beautiful, historically contributing building but not in the practical matter. Mr. Rummel said knocking down a building is not in his nature. Mrs. Tokarsky said she agrees with him but there are several that are no longer here because they were not sustainable. It's not as simple as keep it or not keep it.



**Spring  
Cleanup**

Mrs. Gates told council that Pro Disposal called today and said they could do spring clean up for us but she needed to let them know tomorrow. The cost would go up to \$70 from \$60. No one had an issue with it, but this will need to go on the agenda at the next meeting for a vote.

**Next  
Meeting**

The next meeting will be May 8, 2023, at 7 p.m.

**Adjourn**

Meeting was adjourned by Council President at 8:06 p.m.

Respectfully Submitted By:

Robin S. Gates  
Administrative Assistant