

Borough of Windber Council Meeting
Minutes of May 8, 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, Ron Mash, and Rich Rummel. Mark Portante was absent. Ron Allison, Borough Manager, and Mayor, Mike Thomas, were present. Attorney Joseph Green was absent.

Approval Minutes A motion was made by Mr. Mash and seconded by Mr. Pallo to approve the Minutes of April 10 and 24, 2023 meetings. One absent, Mr. Portante motion carried.

Recognition Visitors Debbie Thomas she said she has been hearing a lot of chatter in the community regarding the Dollar General. She said she does not know how many people shop there but she is there at least once a week. Recently they had renovations there and the condition of that store is still deplorable. The company has now recognized the fact that we need a new one in town.

Debbie Thomas Mrs. Thomas said she can personally get into her car and go to Richland, Geistown or even down by Conklin Honda there is a brand-new store. She chooses to keep the business in Windber. How many people do not have that option to drive. If it moves out of town, we do not have anything like that here.

Mrs. Thomas asked if anyone remembered when West End School had 12 to 15 buses parked out front. Were any kids ever hit by cars? No never. She said she knows that the council is not making decisions tonight but just be aware that this is a great group of people who do not have cars and depend on walking to get the things that Dollar General sells rather cheaply. She said she was at Bilo today and four bags for \$51 with nothing to show for it.

Mrs. Thomas said what the store Dollar General wants to build will be a showcase. It will have off-street parking that will be much safer than this location. Now when there are tractor trailers parked in the middle of 15th Street you cannot go up or down. They will have off-street deliveries to make it easier so they will not have that hazard as well. When you are thinking about life, Mrs. Thomas said you need to think about it in total.

Karyl Shaffer Karyl Shaffer is a homeowner at 815 at the top of 13th Street. She is here to voice some concerns for the proposed, potential rezoning of the property between 12th and 13th Street on Somerset Avenue, from General Residential, in order to permit commercial retail development and occupancy.

The proposed rezoning would not appear to align with the objectives stated in Windber Borough's Zoning Ordinance; Part 1, Subsection 103 as follows:

B. To preserve the character of existing neighborhoods.

- C. To revitalize and consolidate the urban district. Residential uses will be encouraged in order to effectively use existing structures and add life and vitality to this district.
- D. To control the development of open areas of the Borough. Development that will adversely affect existing development will not be allowed. (Ord. 079-4, 10/31/1979, § 140)

Ms. Shaffer said she was unable to locate any economic development plan document. If that document exists she would appreciate being made aware of it, and it be publicly accessible.

Ms. Shaffer said the potential proposed zoning change appears to be contrary to the borough's development objectives. Are any of the following actions planned or under discussion:

1. Traffic impact study focused on anticipated impacts to traffic patterns and lights, on and off-street parking, projected need for increased traffic control measures and potential damage to any existing roadways and other infrastructure, particularly tractor-trailer traffic.
2. Is there an economic impact study planned under discussion to analyze anticipated adverse impacts to surrounding property and property values?
3. In light of undermining on the empty lot on Somerset Avenue as documented in the "Words" public administration map of Windber, will an engineering or geological study be conducted to estimate the potential damage to the lot, to any structures placed on it and to the surrounding infrastructure that could result from an undermined site experiencing construction or off patient activity.
4. With or without proposed study, will proposed occupant of the site agree to accept all liability for damage caused by known and unknown undermining as a standard for property transfer throughout our region.

Ms. Shaffer feels that Windber could be taking an unprecedented risk if they move forward with any potential for proposed rezoning of the empty lot on Somerset Avenue without the knowledge that any of those studies could provide.

Finally, she believes that the concern has been raised that alternative sites within our commercially zoned district are brownfields. The only brownfield site she could find within Windber Borough listed by the Department of Environmental Protection is on Railroad Street. Is there an engineering or assessment or other documentation classifying any other empty commercially zoned sites as brownfields in the borough? She would like to see that information if available.

Ms. Shaffer said no one wants to see a business stuck in a poor location forced out of the borough. However, she thinks there are potential concerns that we the community should address, and she intends to take these concerns to the planning commission and zoning hearing board.

Codes Enforcement Officer, Anson Bloom said it is not a rezoning classification. He knows Ms. Shaffer missed the first couple of meetings where they first started talking about this. To rezone a property from residential to commercial outside of a commercial district is spot zoning and that is illegal. No municipality should ever take on spot zoning because that would be an attraction and go against all the rules.

Mr. Bloom said there are things permissible by law such as conditional uses, and variances and there is a procedure they must travel for that. This is a 90-step process and the things she spoke of must be addressed.

Dollar General made it crystal clear in their planning meetings at the end of their lease in 2024 they are leaving, and he knows that is hard to believe but it came straight from Dollar General Corporate that if they do not find a suitable spot, they are leaving this town. What they are looking for is a one-acre spot. That is just over an acre. They do not have to do any demo or anything like that. They want an acre lot, so they have off street parking and loading and unloading.

Mr. Bloom said they looked at multiple properties and they cannot find anything other than the rumor mill and the undeveloped properties such as the Whalley lot which is a half-acre. We did put in for a study for the brownfields to determine whether these properties are truly brownfields or not. If they are brownfields, will we then be allocated the money to remediate and develop these properties that are sitting vacant. That comes from the county level. So, we have that process in play also to confirm or deny if these sites in town are indeed brownfields.

Mr. Bloom said the study such as undermining, stormwater retention, and the traffic study will be provided by Dollar General. They were given a list of things today they need to provide and when they provide that information then we will schedule the zoning hearing board meeting. There is a list of five conditions that must be met by the PA Municipal Planning Codes Act to grant a variance. Dollar General is not unfamiliar to the fact, they do this all the time. In speaking to them on the phone they know what they must do and as soon as they provide that data then we can schedule the meeting.

Mr. Bloom said he wanted it out to the public earlier because no rendering should be made without public input. Everyone should have the opportunity to speak their peace. We are kind of on a time constraint because yes, it is 2024 on the lease over here and there are a lot of back stories of why Dollar General wants to leave there, other than the appearance of the store and it hurts their image. It is not what they believe in or support. The time frame is restricted here. It doesn't say Dollar General is going there, that was the optimal site, and we want answers to all these questions, before the variances are approved.

Mr. Bloom is not saying that construction will start tomorrow. They must do core samples to see if they can even build there. There is a foundation underneath there and all that other stuff. They may decide not to because of the remediation process. The property is in a conditional sell, meaning all these things must go through and then they will pay for the property. If none of this goes through, obviously they are not buying the property and we will keep moving forward. If something presents itself before the end of 2024 such as there is no brownfield lot, and they would be okay with a half an acre lot, then maybe that is an alternative. Right now, we do not have an alternative because we are waiting on the state level, county level and federal level to provide a lot of answers we do not have. It is just exploratory at this point. That is why it is open to public opinion and public comment so people can voice their concerns.

Mr. Bloom said these are all the things that we take to the next meeting and that's why there is a list of people and who spoke. He did an impact study today of all the people surrounding the property that will be notified once the zoning hearing board meetings start. Any property

that borders potential development or variance of that nature has the right to speak. He believes in that and supports that. A lot of things laid out there by Ms. Shaffer must be addressed by the corporation and if they do not have those answers, it gets delayed.

Mr. Bloom said the reason it is beneficial to stay away from a zoning change is regulatory compliance. The zoning ordinance was drafted in 1979 and no one was a forecaster or looked at economic development and those kinds of things. The zoning ordinance is really restricted. If we were to rezone and say take everything from 9th Street to 18th Street and make it commercial, Businesses could come in and within reason do pretty much anything they want. If you grant a variance and a conditional use, you then lay out terms such as you will get this permit if there is not truck traffic after 9:00 p.m. or if there are trees that border the property or lights need to be dimmed by 10:00 p.m. This gives the municipality a lot of regulatory compliance for some of your concerns. If they violate that then you simply yank their occupancy permit because they are going against what you agreed to. That is way down the road, this is only a developmental process right now.

Abby Hoffman

Abby Hoffman spoke to the council about the 22nd Street Bridge Project. She made a lot of phone calls and did not get a lot of answers but she got a lot of information. She had also also reached out to Representative Jim Rigby again to see what information he may have found.

Ms. Hoffman said the reason she was here tonight was to find out what was happening with the property at the end of the street if the borough was able to obtain it. She said it is helpful, but it is not a bridge. She does appreciate that effort to give us that aid down there. She asked what the borough council was doing to find a solution.

Mayor Thomas said he reached out to Senator Stefano's office, and they said they would look into it, but he has not heard anything back. There may be a possibility of getting some state funding to address the property at the end of the street or to build a road.

Manager Allison said we do have a signed agreement on the property and once all that is formulated, we can use liquid fuels monies to pave the road down there. If this all lays out the way, we hope we will be able to provide some relief there. We have applied for some entitlement monies to demolish the property at no cost to the borough. When it comes to PennDot we do not control that. We have continued correspondence between PennDot and Representative Rigby's office but again no solid answers on whether there is any available help.

Mr. Holden said, to answer Ms. Hoffman's question, we will keep working as these guys are doing the best they can. We are not giving up on the bridge itself, but we pretty much found a band aide of sorts to relieve some of the issues. Ms. Hoffman said she will continue trying.

Ken Lowry

Mr. Lowry said he was here about the bridge also. If this does go the way people say it does are they going to use Jersey barriers? Manager Allison said the plans are not completed yet and he doesn't recall them ever saying about using Jersey barriers.

Mr. Lowry said that is what he heard. He said there is a Jersey barrier sitting on the bridge right now. He spoke to one of the inspectors from the Pennsylvania Turnpike and he said one Jersey barrier is 1,300 pounds. He said there is a 12 foot long one there now that is hanging

over the bridge. He does not know if that is a concern. It should be something for you to look at. Mr. Allison said, so far, they have not condemned it to the point it can't be used but it is coming.

Mr. Holden said he has had the same concern about what the Jersey barriers would look like. Certainly, we can look at that point when we enter the plans with PennDot. Mr. Lowry said you would want something decent, that kids can't move or get stuck in. Mr. Holden said a barricade only stops an honest person. Mr. Lowry said right now there is probably 1,400 lbs. sitting on that bridge.

**Todd
Koehler**

Mr. Koehler said he knows the empty lot at the 1200 block of Somerset Avenue was a school and that the buses came at 7 a.m. in the morning to drop kids off. He does not want to see the dollar store move but he doesn't believe that is the right spot. He would like to see it on Graham Avenue. He said there must be a better spot.

Mayor Thomas said if Mr. Koehler or anyone else has a better idea then let us know we have done everything to try and find a place. If you have a better idea, we are willing to listen. Mr. Holden said he has also driven around this town looking for lots and every place you look at is a brownfield thing like the Whalley lot where we have to go through the government red tape to see what condition it is in, and we have the property between 18th and 19th Street on Graham, which is prime location, but the property owner wants an exorbitant amount of money. Dollar General met with them a couple of years ago to try and get that lot and they walked away.

Codes Officer Anson Bloom said the history of that lot was the whole block was sold and it was a conditional sale much like it is now where everything must go through. The property owner owns three lots, and it was roughly \$120,000 per lot and so that was around \$320,000 they walked away from. No one is going to spend \$360,000 to build at this point if it is not feasible. We keep pushing that, but a lot of that property is in the court system.

Mr. Koehler said someone mentioned they lived on 17th Street, that is a state road. Mayor Thomas said he has lived there all his life 69 years. Mr. Koehler said that his point to the mayor is he chose to live there. The property on Somerset Avenue has been vacant for years. Manager Allison said there is a hospital two blocks away that brings in traffic and he never hears one complaint. The other Dollar General down here and that truck blocks that road constantly and that truck gets stuck trying to off load. Look at the whole overall picture.

**Nicole
Kephart**

Mrs. Kephart said she was here to voice concerns because her property runs diagonal 1300 across from the potential Dollar General. A friend of hers lives right across from the street. Krissy Mattis started a petition on Change.org. She got 163 signatures. That is the only news she must add to her last comments. She is not in a position to chase away the Dollar Store, she uses it as much as anyone. She goes there very often; however, her household is right across the street.

Mrs. Kephart said she has a large household and two special needs children. One who would be very thrown off by a bus stop change and if Dollar General was there, she doesn't know if that is where the bus stop would be anymore. She said these seem like minor things to council but major things for her life. She gets there are people that walk there to the current location and no transportation but there are buses. Mayor Thomas asked her if she wants

business to go out of town. Mrs. Kephart said her issue is that her family lives across the street and she has to worry about what is best for her family.

Mrs. Kephart said she is sorry if it makes it harder for other people but with regards to her property, traffic and debris would triple with more traffic there. Property value is also a major concern. When they moved in, they thought they were moving into a residential section of town. That was important to them to be in a quiet neighborhood with other families and children. Will it stay that way with a Dollar General there, she does not know. It is one thing if there is another house there, but it is different when it is a business.

Mr. Holden said they appreciate her concerns, and he understands about interrupting their lives, especially with special needs children. That is a subject that has stuck with him during the first planning commission meeting and if the bus stop does not have to change that is something we present to Dollar General. As far as trash goes do not compare the old store to the new store because they lease that space, and the landlord is responsible for what goes on there. Dollar General is a national chain from one end of the country to the other and they are not going to risk their reputation doing something like that. Mr. Holden said he has a handicapped nephew, so he is sensitive to what she is saying and wants to hear her voice at the upcoming meeting.

Mr. Holden said times, lights, noises, and truck deliveries, all that stuff can be outlined with Dollar General. Mr. Bloom said the petition is not a bad thing, but it does not carry any merit. The people that get a say are the impacted properties. Mrs. Kephart is on the impacted property list he saw that today and took the market value of your property and the assessed value of your property. All that goes on the impact list. They must have somewhat of a preliminary drawing for the Zoning Hearing meeting. This is where we look at it, is it esthetically, pleasing 24-hour retention and undermining. If it does not meet those conditions, then we cannot move forward. The last thing we want to do is tamper with someone else's livelihood. This is forthcoming, he spoke with them today and there are five conditions they must meet for a variance and three for a conditional use. They will be familiar with that, and they will have a drawing and a general idea of a site plan. Dollar General was very open to the community when they additionally came here.

Once Mr. Bloom has all that information the Zoning Hearing Board meeting will be scheduled, and all the impacted properties will receive notice and there will be a placard on the potential property. It will be advertised in the paper and on the web page. Realistically the meeting is probably 30 days away. All these things will then be discussed.

Correspondence

1. Minutes from the Municipal Authorities Meetings of February & March of 2023.
2. Minutes from the Windber Area Authorities January, February, and March Meetings.
3. Somerset County Borough Association Dinner Meeting Thursday, June 29, 2023.

Approval Payroll

A motion was made by Mr. Pallo and seconded by Mr. Mash to approve the payroll for for April 21, and May 5, 2023. One absent, Mr. Portante, motion carried.

Approval Bills

A motion was made by Mr. Mash and seconded by Mr. Pallo to approve bills for April 2023. One absent, Mr. Portante, Motion carried.

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

Council Liaison Reports

**Holden/
Library** Mr. Holden said the Windber Library received a grant from the Community Foundation in the amount of \$10,000 for an interior lighting project. They are going to replace most of the fixtures in the building. That grant plus a private donation from an estate for a total of \$13,000 will be made in improvements.

**Mayor's
Report** Mayor Thomas said Chief Frear and himself participated in a media event on Friday with Barry and Liz Jerley. The Jerley's, through the Ray DiBattista Trust Fund, donated a brand-new police cruiser to the borough, fully equipped along with a license plate reader.

They also built the new pole building at the Windber Recreation Park and have become involved in almost everything going on in town. They have been very generous to many in town with donations from the Raymond DiBattista Trust.

Mayor Thomas said in the PSAB Update newsletter today, PSAB notified everyone that on May 2, 2023, the Pennsylvania State House of Representatives passed House Bill 299 that would mandate public employees be subject to OSHA employee safety standards. This would represent the largest unfunded mandate on local governments in recent years. The bill does not provide any funding for local governments to implement the mandate.

Pennsylvania public employers already provide their employees with a safe working environment. Adding another expensive government mandate is unnecessary. PSAB suggests borough officials contact their state senator to oppose the bill.

Mayor Thomas urged the council to contact Senator Stefano and voice against the bill because it will cost us more tax dollars to implement.

**Manager's
Report** The shed has been delivered and the sidewalk has been completed. We are now ready for the back fill and landscaping to be completed. We are waiting for a date from Rosebud to haul the sediment up from the 17th Street cleaning of the levee system to be used for fill. The bid came in for the painting of the ballroom. We only received one bid which came in at \$25,000, which was over our required quote amount and out of our range. We need to rebid or use an alternative, perhaps a preservative. It may be cheaper to do it that way and we were given that opinion by two other paint contractors who did not bid on the ballroom because they have the same opinion.

Mr. Mash asked who else is left to reach out to. Mr. Holden said if anyone has a suggestion or knows of anyone let us know. Mr. Mash asked what the alternative was. Manager Allison said basically a clear coat that would last one to three years. With the treatment you may have a color change in the wood. Manager Allison said he would like to move sooner than later to preserve the wood. We also have a pest problem with wood boring bees. We have had pest control come in for that.

Mr. Rummel asked if the council would be opposed to buying the paint and getting sports teams to donate their time and donate \$1,000 towards their sport?

Mr. Koehler asked if this was rough cut they were talking about? Manager Allison said yes. Mr. Koehler said he would never paint that. He has dealt with rough cuts all his life. He said you can put stain or a clear stain on it and it will just keep getting darker. It will go from yellow to brown. It will turn so gradual you won't even notice the change.

Manager Allison asked Mr. Koehler if his suggestion was to just protect it from the insects and let it be. Mr. Koehler said a good stain, not necessarily with color in it but it will still get darker with time.

Mr. Pallo said he does not want to paint it; he likes it the way it is. Mr. Holden agreed. Mr. Koehler said there are ways to deal with bees. Mr. Koehler said he may be able to get the council some contact information. Mr. Holden thanked him.

Event Coordinator is actively booking events and bringing in income.

17th Street Project: Manager Allison said we received the proposal from EADS for the inspection and engineering work. We talked about this before. The remainder of this project is being paid through county entitlements. Manager Allison said he will sign off on it tomorrow and return it to EADS.

Stadium Drive/22nd & 24th St.- The agreement was signed between the borough and the homeowner of 200 22nd Street to purchase the property. The appropriate paperwork was filed for funding to demolish the building this year. We will be able to use liquid fuel funds to eventually install a road bridging 22nd Street and Stadium Drive. Manager Allison said the solicitor has begun the lien search and is preparing the closing. Quaker Sales is taking the requested core samples for EADs from 24th St.

BELLAS- Barclay Electric traced out the issues with the electric. We are going to separate the electric from Bella's and the streetlights and make it right at the beginning of this month. We believe it will not be deeply involved but will know more when we open things up. We're corresponding with the owner representative through the process.

**Codes
Report**

Mr. Bloom said 1601 Hillside is the only item not in his report and action has been requested under new business, Item E.

**Solicitor
Report**

Attorney Green said he has the paperwork almost completed for the purchase of the house on at 200 22nd and will be contacting everyone soon for the closing date.

**Ballroom
Update**

Manager Allison said we have covered pretty much everything in his report. Mr. Holden said Lauren has listed the number of event bookings and has many more showings coming up. Mr. Allison will be asking Lauren to speak with the Fire Department regarding the bookings and bartenders needed for the events.

Lauren is staging a Country Night on June 23, 2023, during Thunder in the Valley with live music and entertainment.

Discussion Discounts	Mr. Mash said he wanted to discuss the recommendations by Lauren for discounts for military, first responders and borough residents. Mr. Holden said he agrees they should be given a discount. Mr. Mash suggested 10%. Mr. Holden said we can put that on the agenda for the next meeting.
Spring Clean up	A motion was made by Mr. Mash and seconded by Mr. LaMonaca to approve Spring Cleanup cost to be \$70 per permit. Spring Cleanup will then take place June 15 & 16, 2023. One absent, Mr. Portante, motion carried.
Approval Stipend Chief	A motion was made by Mr. Pallo and seconded by Mr. Mash to approve a stipend amount of of \$300 for Police Chief Andrew Frear retroactive back to January. Roll call vote: Mr. Pallo, yes; Mr. Mash, yes; Mr. Holden, yes; Mr. LaMonaca, yes; Dr. Ledney, yes; Mr. Portante, absent; and Mr. Rummel, yes. Motion carried.
MOU/PT Captain	A motion was made by Mr. Pallo and seconded by Mr. LaMonaca to approve the Memorandum of Understanding with the Teamsters Local 110 regarding the Captains position from full-time to part-time. Roll call vote: Mr. Pallo, yes; Mr. LaMonaca, yes; Mr. Holden, yes; Dr. Ledney, yes; Mr. Mash, yes; Mr. Portante, absent; and Mr. Rummel, yes. Motion carried.
Approval Maintenance Pickleball Court	A motion was made by Mr. Pallo and seconded by Mr. Mash for approval to spend \$2,100 to pave a section of the pickleball court. Money to be taken from Capital Improvement Fund. Roll call vote: Mr. Pallo, yes; Mr. Mash, yes; Mr. Holden, yes; Mr. LaMonaca, yes; Dr. Ledney, yes; Mr. Portante, absent; and Mr. Rummel, yes. Motion carried.
Tax Forgiveness	<p>A request was submitted for tax forgiveness of back taxes owed on property located at 1601 Hillside Avenue to be purchased by Jorge Benitez. The property aligns with the blight and remediation project, Mr. Bloom said. This is another property that was an agreed upon transfer to put it back on the tax rolls but they need forgiveness for the preexisting taxes.</p> <p>Mrs. Sandra Star Taylor- Benitez said they will not be demolishing the house but remediating the blight by restoring the house.</p> <p>A motion was made by Mr. Pallo and seconded by Mr. LaMonaca to approve the request for tax forgiveness on the property located at 1601 Hillside Avenue to be purchased by Jorge Benitez and Sandra Star Taylor-Benitez. One absent, Mr. Portante, motion carried.</p> <p>The council convened to an executive session at 7:59 p.m. for police and personnel.</p> <p>The council reconvened from an executive session at 9:23 p.m.</p>
Rescind Motion	A motion was made by Mr. LaMonaca to rescind the motion from the April 24, 2023, reason for rescinding the motion to move forward with the Dollar General to the zoning hearing board was because Mr. LaMonaca said if this council has the last say he would make the motion to send it to the zoning hearing board. The zoning code states a conditional use comes back to council, but a variance does not. Motion to rescind was then seconded by Mr. Pallo. Motion carried; motion rescinded.

Dr. Ledney said he would like it if Dollar General came in and met with the council to discuss our concerns and their concerns. Mr. Bloom said he would reiterate that to them tomorrow.

A motion was made by Mr. Mash and seconded by Mr. Pallo to send the Dollar General proposal to the zoning hearing board. Roll call vote: Mr. Mash, yes; Mr. Pallo, yes; Mr. Holden, yes; Mr. LaMonaca, no; Dr. Ledney, yes; Mr. Portante, absent; and Mr. Rummel, no. Motion carried.

**Next
Meeting**

Next council meeting will be June 12, 2023, at 7:00 p.m.

Adjourn

Meeting adjourned at 9:30 p.m. by Council President, John Holden.

Respectfully Submitted By:

Robin S. Gates
Administrative Assistant