

WINDSOR BOROUGH COUNCIL AGENDA
September 9, 2024
6:00 PM

Minutes from Previous Meeting

Citizens & Inquiries

Reports:

Codes Enforcement Officer

EMA

Mayor

Engineer – see agenda

Solicitor:

- Update on 109 E Main St
- Update on 34 N Penn St/99 School House Lane property
- Update on Handicap Parking rules

Council Members:

- Council members to decide about Handicap Parking permit for 138 W Main St

Secretary-Treasurer:

- Donna will be on vacation Tues Sept 10th through Friday Sept 13th

Maintenance:

Approve General Funds Bills



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MEMORANDUM

Attorney-Client Privileged and Confidential

TO: Windsor Borough Council

FROM: Dean E. Reynosa

DATE: September 9, 2024

RE: Solicitor's Report

Solicitor Report Agenda Items:

None

Old Business

We are working on drafting a proposed Burn Ban Ordinance and we will share that once complete.

Pending Plan Agenda Items:

None

Miscellaneous Items

- (1) (38 Water Street) – Robert Huska and I presented the civil complaint to MDJ Fishel on August 19, 2024. Judge Fishel determined that the owner was in violation of the zoning ordinance concerning the need for a building permit since the owner of the property never filed an appeal to the Zoning Hearing Board from the initial enforcement notice. MDJ Fishel imposed a \$100.00 fine, costs of \$128.43 and attorney fees of \$1,000.00. I attach a copy of the judgment notice. I understand that the individual has since filed a building permit application.
- (2) I fielded calls from R. Huska re: 109 E. Main Street. We are working with R. Huska in drafting an enforcement notice to be sent to the property re: violating the Zoning Hearing Board decision and having an excessive number of vehicles on the parcel.
- (3) I fielded calls from R. Huska re: 34 N. Penn St. / 99 Schoolhouse re: unclaimed strip of land. I explained that the tax records show that there is no unclaimed strip as the parcels adjoin one another. I explained that the tax records are not always accurate and that a

survey would be needed to confirm. I explained that this may be an expense that the landowners should undertake as it does not involve Borough property.

- (4) I fielded a call from D. Martin re: inquires re: the handicap parking space request and new ordinance. I exchanged messages with D. Martin re: our review/analysis. The message is attached.

Dean Reynosa

From: Dean Reynosa
Sent: Thursday, August 29, 2024 10:00 AM
To: djmwindsor@comcast.net
Subject: RE: 138 W Main St

Donna:

I checked with another attorney here who represents several boroughs and municipalities and he said that his municipalities do not charge for the application fee or a fee for the signs.

As I noted at the meeting when the decision to grant the request was made, the ordinance (as it existed) required the space to be reserved specifically for the applicant. The ordinance was amended to make that decision discretionary with the board (whether to specifically reserve the spot). However, the application was submitted under the old ordinance that provided specific reservation of the spot. I am not sure how far she would attempt to push that issue, but she could claim that she filed under the old ordinance that required the spot be specifically reserved for the applicant. Moving forward, any new applications do not require that the spot be specifically reserved for an applicant which is consistent with state law.

Attorney Rick Robinson reported that he never spoke with John Mead about ADA requirements or a handicapped parking space. Rick also said that he did not provide John Mead any documentation about handicap

1

parking. Reviewing the material provided by the Applicant, I copy the portion of 28 CFR Sec. 35.130 (f) which provides as follows:

"A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part."

My question would be are there fees for all signs that individuals request? No parking, "slow children" or other requested signs or are there fees only for handicap signs? How many handicap signs are there in the Borough? How many fees are collected each year from Handicap signs?

I asked Eric Holey to review the ADA requirements and the fees charged and below is a summary of his cursory research.

Based on the research I have done so far, this particular topic opens a can of worms as far as comprehensive research is concerned. This particular topic pits broad government authority at the municipal level against broad government authority at the federal level while also trying to balance those interests against the constitutionally protected fundamental rights of the disabled individual. So, the caselaw on the enforceability of ADA and RA regulations on a Borough does not provide any clear answers, and a comprehensive legal memorandum would be time consuming and expensive for the Borough.

That being said, my opinion is that the Borough should 1) issue the personalized handicapped parking space pursuant to the old ordinance (assigned specifically to applicant), and 2) enforce the application fee and sign fee requirements. While it is unlikely that the Meads will challenge the fees in court, if they do, their remedy (based on my cursory review) is an injunction, plus their legal costs. That's assuming they hire an attorney. If they file a pro se claim, the court will most likely dismiss the case. Generally speaking, the court disfavors "squeaky wheel" plaintiffs seeking unwarranted protection under the ADA. The borough has a strong argument that while the parking space itself is being provided to the disabled person on account of her disability, the application fee and sign fee are not and both are reasonable under the circumstances and non-discriminatory in nature to cover the costs IF such costs are standard for other non-handicap parking signs. However, does the Borough want to risk this possibility if the potential cost outweighs any benefit?

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3

From: Donna Martin <djmwindsor@comcast.net>
Sent: Wednesday, August 28, 2024 8:42 AM
To: Dean Reynosa <dreynosa@mpl-law.com>
Subject: 138 W Main St

Dean,
Mrs. Mead from 138 W Main St called me yesterday to discuss the handicap parking. Mrs. Mead is frustrated that it is taking so long to get the sign put up. Of course, every time I talk to her, I get confused as to what she wants. Mrs. Mead said she doesn't have a problem in paying the fee, yet her husband was saying that we can't charge for that at the last meeting. In listening to her, I think they really want a reserved space and want to ensure that it will be for their use only.

I told Mrs. Mead that we were waiting for advice from you. She said her husband spoke with Rick in your office and that is where they got the information from that was given at the last meeting. Hopefully you can figure out what the state/federal and ADA laws require.

Please note that the Sept Council meeting is on Sept 9th and Matt won't be there.

Thanks
Donna

WINDSOR BOROUGH COUNCIL MEETING
Monday September 2, 2024
ENGINEER'S PROJECT UPDATE

YCPC – MS 4 Program

- Continue monitoring & improving implemented programs.
- Review & update mapping with Steve (**working on**)
- Sch. Training/review/update meeting with Donna (**Sept.**)
- Review & update files with required monitoring forms (**Sept.**)
- **Prepare & submit MS4 annual report by end of September.**

Walnut Creek Development

- Phase I & II Final plan:
 - Processing building permit applications.
 - Certificate of use and occupancy – being issued.
 - Storm piping to the new stormwater basin needs to be completed. (to be completed by York Ex. Co.)
 - **Entry sign installed.**
- Phase III Final Plan
 - **Contractor is continuing with final utility improvements.**
 - **Discuss requested Borough letter to Robert Barclay (Wynthrop Partners) accepting contractors (YEC) Phase 3 improvements and allowing Lot sales & Issuance of Building Permits.**
 - **Need letters from Wynthrop Partners & YEC certifying that required Phase 3 improvements have been installed, inspected, and approved.**
 - **Coordinate with Steve Carr on water line installation.**

2021-2023 CDBG funded project (High Street)

- **Review/approve payment request No.2**
- **Contractor installing inlets & storm pipe and hydro-excavating to field locate/confirm water & gas services.**

Penn Street / Main Street signalized intersection geometric realignment

- Next Steps:
 - **Meet with Property owners (in August/September)**
 - **Review Traffic Consultant (TRG) updated proposal.**
 - **Proceed with permitting & grant applications- (Fall/Winter 2024)**

Grant Opportunities:

- Continue to research and gather opportunity information.
- Green Light Go Grant (Penn & Main Streets – 2024/2025)

Fishing Creek- Borough/Resident wall permitting:

- Coordinate including wall at 72 W. Main in permit (Matt has coordinated with Owner)
- GLB&A to follow up with Owner.
- Update permit application.
- Schedule another pre-application meeting with DEP
- Electronic filing of GP-11

YCCD Dirt, Gravel, Low volume road grant:

- Cold-In-Place Recycling Process started 9/3/24, completed 9/5/24.
- Inlet structure installation to start week of 9/9/24 and takes approximately 2-weeks to complete.

Local Share Grant for Bridges (Herman & Heindel):

- Subcontractor (HRG) have completed bridge inspections – (POOR/REPLACEMENT)
- Review and approve additional costs for (HRG) to prepare required cost estimate for grant application submission.
- Letters of support from Legislators – Review with Matt.
- Electronically submit Grant Applications by 9/30/24.

2024 – 2026 CDBG Applications:

- 2024-2026 CDBG grant awarded for – 2025 (West Main St. curb & sidewalk) 2026 (wall installation & playground mulch)

GLB&A Project Cost Tracking:

- Will be provided.

General Discussion Items:

Julito Ortiz
85 Schoolhouse Ln
Windsor, PA 17366
E: ortiz.julito1313@gmail.com P: 717-809-4819

Sept. 3, 2024
RE: Fencing Ordinance

Dear, Members of Windsor Borough Council:

I am writing to you regarding the ordinance of the fence height. I currently have a 4-foot-high fence in my backyard and would like to replace it with a 6-foot privacy fence. Unfortunately, due to the ordinances in place, I cannot have anything higher than what I currently have. However, I have 2 very large dogs (German Shepard and Cane Corso) who are very protective of the property and myself. While my dogs are trained, they are still animals and when someone passes by the property they will go up to the fence to protect their property and territory. Due to the very large dogs, and children in the neighborhood I do not want kids to come up to them or other passerby's and an unfortunate incident occurs.

I spoke to Bob Huska (Code Enforcement Official) a few months ago and he informed me that this request would not be allowed per the Solicitor. While my house sits on a corner, it is not on a main road and also has very minimal traffic, as it is only the residents who reside on the street who drive on School House Lane. I have talked to my neighbors and they are in full support of me replacing my fences to a higher and more sturdy fence to protect not only my animals but also those walking near my property. They stated that they would appreciate it more if my fences were higher and private for the animals.

I do believe that the ordinances are very antiquated and should be revised to accommodate specific situations. Bob Huska should still have the drawing and pricing of what it would take to make this happen. I hope you take this into consideration and approve a permit for me to upgrade my fencing not only to protect my animals, but also to protect public safety at large.

Should you have any questions, feel free to reach out to me.

Regards,

