

**BOROUGH COUNCIL SPECIAL MEETING  
NOVEMBER 25, 2014  
7:00 PM**

The November 25, 2014 Borough Council Meeting was conducted on Tuesday, November 25, 2014 at 7:00 P.M. The Meeting was held in Borough Council Chambers, 2<sup>nd</sup> Floor, 304 South State Street, Borough of Clark's Summit, County of Lackawanna and Commonwealth of Pennsylvania. Council members in attendance were Mr. Patrick Williams, Mr. Vincent Cruciani, Mr. Jim Klein, Mr. Dominic Scott, Mr. Herman Johnson, Chief Chris Yarns, Mayor Patty Lawler, Virginia Kehoe, Solicitor Dan Mulhern. Absent from the meeting was Mr. David Jenkins.

1. **WORKSESSION:** **President Carey**

2. **PUBLIC COMMENT** **President Carey**

Tom Rose addressed Council about e-cigarettes. He saw a group of 15 year old kids playing around with them at a local establishment. Mr. Rose gave out packets with information stating that we don't know if they are safe at this point. There are areas that have already started banning these e-cigarettes. He is asking Council what their position is on e-cigarettes in public places. Virginia Kehoe asked if the Association of Boroughs has a draft ordinance, or a draft a letter to the state addressing our concerns. Vince Cruciani asked if Mr. Rose was looking for more restrictions with this. Mr. Rose said he was thinking the same rules as applies to smoking. Vince Cruciani asked if the private business owner would be the one to make the decision. Herman Johnson stated that he hates to see us draft up an ordinance that cannot be enforced. Research it and see what other communities are doing. Wait and see what the state is going to do. Mr. Rose stated that he just wants Council to look into this; he wants to see if this can be enforced. The high school has banned the use of the e-cigarettes. Next week Virginia Kehoe will update Council on any information she can find out.

- ZHB update: John Kazista chair of the ZHB updated Council. They don't have many meetings. On average they have about 6 meetings a year. He stated that they find that when people come to present their case they are unprepared. They don't know how to present their case properly. They have a problem with that because they can only lead them so much and they can't present situations for them. There are certain criteria that they must fit into for the ZHB to rule on it properly. This is just for individual residents the board will guide them and help them but watch their boundaries. There are professional people that are not prepared. Virginia Kehoe has taken it upon herself to talk to those people to guide them as to what they have to do. It is a legal proceeding, she tries to explain the procedure and make sure they are not wasting their time and money. Herman Johnson stated that he thinks that their needs to be some kind of policy to inform these people. Not fair to the citizens that they don't understand the procedure. There should be some kind of mechanism so these people are semi educated about this process. It is \$700 and that is a lot of money for someone to go to that meeting and if they waste that money. He understands that Virginia Kehoe tries to give them a little information is that a conflict of interest.

Doesn't know what the answer is but unfair to our citizens. Ms. Kehoe stated that when they do the application they receive a whole packet from Code Enforcement Officer Lori Harris. The first thing in the packet informs people that this is a legal procedure and the five standards that the Zoning Hearing Board has to get to meet to justify the variance but you cannot make somebody read it. That is why Virginia Kehoe talks to people so they are aware. Herman Johnson stated that some people that cannot interpret that packet. Ms. Kehoe tells them to read the materials and suggests a lawyer be present. John Kazista stated that the ZHB has new members on the board. They have situations where on any given night new people can be handling situations that concerned him. Did call a meeting and they did talk about each member is prepared for each session. You have to know in advance as much as you can. There are limitations as to where they can get their information. There are some legal complexities. Make sure that the new people were as aware as possible. They have a master book of the coding enforcements. He has taken advantage of courses offered by the state; he suggests that they all go anytime possible. He stated that they are quazi-judicial body. The only way that can be reversed is Lackawanna County Court. Don't want them to do something that would get them into any trouble. Bob Kranick who is on the board, he is a wealth of information, has many years on the ZHB. He presented quite a bit at that meeting for these to learn from. Solicitor Dan Mulhern asked if there is a phone number for the Lackawanna County Bar Association phone number on the information given. Virginia Kehoe stated that she would check with Lori Harris about this.

- **Border Realty:** Mark Young addressed Council. Border Realty signed an agreement with the Borough to run the extra sewer lines through the Borough when they finally get the project going. Solicitor Dan Mulhern was given a draft to work with. Mr. Young stated that the original agreement was drawn up by the Solicitor that is in Glenburn and Solicitor Mulhern, utilizing the original agreement that they had. That agreement contemplated that there were going to be two pump stations and two separate sewer systems which is one of the very things that the DEP said no to; the less pipes and pumps that better. They went back to Glenburn with that information and they finally agreed to own the sewer lines and work out a deal to work with South Abington Township to connect to their sewer lines and utilize the same pump. The original agreement said that they would put in a flow meter so that Clarks Summit Borough can measure the flow from Glenburn. The flow meter will be measuring the flow from the pump station which is going to be both Glenburn and South Abington flow. They know that one concern with any excess flow is it coming from Glenburn or South Abington. They are going to put the flow meter in and for one year that will give the flow from South Abington only, maybe two years. They will have data as to what is coming out of South Abington. Wherever they connect the sewer line to the South Abington main line they will put in a man hole in where they can put in a meter device in to check the flow. Gerrie Carey asked who checks these inspections. Mark Young stated that the manhole will be Glenburn's they would own those lines that would be their port to inspect. Engineer Bob Naegele stated the Borough if they want to request the data, it is not going to be someone from the Borough. Herman Johnson stated that would have to be put in the agreement if we want this data. It should not be on our dime. A lot of this is between South Abington, Glenburn, and Border Realty. Solicitor Dan Mulhern asked Engineer Bob Naegele what the bottom line is

with the agreement. Bon Naegele stated that we will have base flow data from South Abington for an extended period of time. First thing needed is for the new pump station to be installed. It is imperative to have that first flow data because without it you don't know what the projected outcome should be for that next phase of the project. At a minimum if there is some factor of increased flow that looks suspicious want the ability to check it out. If it happens continuously the Borough will want to see where the problem is coming from. There should be some kind of recourse to fix a problem. Mr. Naegele stated that from an engineering perspective it is sound conceptually. Mr. Young stated that the agreement does say that. What are the benefits to Clarks Summit, taking a load off of what is known to be an overloaded system where it can be more adequately handled? The second thing is they are providing a method for those who can't hook up to the sewer main. There are properties on Gravel Pond and Lackawanna Trail can hook up. Herman Johnson stated that this has all been discussed before where Council instructed Solicitor Dan Mulhern to get the agreement but they keep on repeating ourselves, let's get this agreement in place. Let's get it going, he thinks people are confused because this is gone over and over. Vince Cruciani state that he is concerned asking if there is a storm water plan for this area being developed. Mark Young stated that there has to be a storm water plan. With the removal of the trees the runoff is going to come into the Borough. Mr. Cruciani stated that one of our biggest problems is with the storm water management, if they have preliminary storm water plans showing that there would not be an adverse effect. That property does not come into the Clarks Summit water shed, it goes to Tunkhannock. Mr. Cruciani stated that he wanted a professional opinion and an email stating that. Engineer Bob Naegele stated that we should not have any adverse effects from this. Solicitor Dan Mulhern stated that he would make the amendments and talk to Mark Young and they would have to talk to Dave Gromelski.

- **Open Tan Bids:** Virginia Kehoe stated that our policy has always been to open the bids at the work session and look them over and vote at December 2014 meeting. Ms. Kehoe opened up the bids and discussed the bank and the percentage. Ms. Kehoe would look into this and make sure everything is apples to apples. The TAN is \$300,000. Ms. Kehoe stated that the Borough requires no prepayment penalty because we usually pay it off in the fall once we know we've got the money in from the real estate tax collection and we are covered for the winter. Herman Johnson asked if the TAN has to be \$300,000. It doesn't have to be that is what feels like we need to make payroll safer to go this way. This cannot be withdrawn from Capitol Reserves to make payroll.
- **Police Staffing:** Virginia Kehoe stated that Matt Karam, the Borough's new part time police officer has been sworn in but will be coming to the next meeting to be officially sworn in, in front of Council. So he can meet everybody also. Herman Johnson asked if we have any more information on police staffing if we were able to hire another full timer. Mayor Lawler stated that as she understands it we have to wait until 2016. Council had also asked for a second name for a part timer. Virginia Kehoe stated that the Civil Service Commission has been asked to meet, waiting for David Jones to call her back. Dominic Scott stated that he spoke with David Jones and he will get in touch with Virginia Kehoe. The question is with the status of Wes

Dunn. She doesn't know where he is or how to reach him. At this point Dominic Scott and David Jones will work together and move on with the process. Herman Johnson stated that we have to get this moving, everything falls on deaf ears, we have to keep on moving forward, can't let something stop, appoint an alternate.

- Sewer collection payment & draft verbiage for insert: Virginia Kehoe stated the bills are going to go out on or before January 1, 2015. Need the insert finalized by December 15, 2014 so they will be printed in time. Mr. Cruciani went through the information on the insert which is intended to inform the residents of the increase and why it is taking place. This insert provides websites and information concerning the increase. Mr. Cruciani does think that it is something that they should sign off on together. Ms. Kehoe stated that maybe we could suggest for people to call the office if they don't have computer access etc.
- Amendment to animal ordinance: Virginia Kehoe stated that we had a request from a resident who wants a pet pig; our ordinance doesn't allow pigs as pets. They are asking for a zoning amendment, needs direction. Vince Cruciani stated that the weight restriction is most important. There are different kinds of pigs, Herman Johnson stated that years ago the Borough had a big lawsuit concerning geese, if they change that are they opening up that lawsuit again. He'd like to see every child have a pet but he is concerned if they change the ordinance for this lady. Vince Cruciani stated that the distinction is if you treat a pig the same way you treat a dog it wouldn't be granting an exception. A goose is a different story as they wouldn't live inside the house and it doesn't domesticate. A pig would domesticate. The Borough has a limit of 5 dogs or cats in the house. Mr. Cruciani stated that he the key is the weight restriction; they are not filthy if you don't let them get filthy. You would have to treat it like a dog. Pat Williams stated that Mr. Cruciani is way off on this. Mr. Williams stated that at the turn of the century, there were concerns with horses and chickens. Mr. Williams asked if Mr. Cruciani is willing to have a growing community like this and kids, who will ask for anything and parents who will give it to them. Pat Williams stated that he didn't even want to debate the subject of having pigs as pets. Vince Cruciani stated that he wanted to debate this because that is part of legislative government. Mr. Williams stated that if we are talking about 2014 and letting pigs on properties, you are opening up a can of worms. Mr. Cruciani stated that all of Mr. Williams's examples are of agricultural animals; this would be a domesticated animal. Mr. Williams stated that he doesn't want to see pigs at any houses here and that Mr. Cruciani is way out of line. Mr. Cruciani stated that how can a pig that has met the same standards as a dog the same cleanliness standards, containment standards, and with a weight limit not be considered. Mr. Cruciani asked what the adverse effect of having a pig is. Mr. Williams stated that aesthetically it doesn't even sound right, and it shouldn't be allowed in a growing community. Virginia Kehoe stated that the ordinance right now says that pigs are not allowed. We are being asked by a resident to amend the ordinance to allow a pig and Vince Cruciani is suggesting that if we were to consider it we would have to do it as a domesticated animal not as a farm animal. Ms. Kehoe asked if we want to forward this onto the Planning Commission. Dominic Scott suggested that we don't move forward with this. Vince Cruciani stated that the point of the ordinance is because you don't want a nuisance, how would that be a nuisance. Mr. Williams stated that he doesn't care what kind it is or

what it looks like it's a pig. Jim Klein stated that if we allow a pig, what is next. Virginia Kehoe asked if this should be on the agenda for a vote. Pat Williams said no, Dominic Scott and Gerrie Carey agreed. Gerrie Carey stated that we already have an ordinance for that. Vince Cruciani asked what the gray area was in the ordinance that was referenced. Virginia Kehoe stated that you are allowed to have household pets and they could argue that a domesticated pig that is intended to be raised inside the house, a pig is not specifically eliminated. Pat Williams stated that you can read anything in or out of an ordinance. Ms. Kehoe agreed and said if you have a lawsuit you need to understand this. If we say no to them and there is a gray area. Herman Johnson stated that he is not agreeing or disagreeing, we need to process cautiously that we don't open up for a lawsuit. Herman Johnson suggested putting it on the agenda so Council can vote. Pat Williams suggested not doing that because you will be bringing up more discussion he said to forget about this and this is not something they should be legalizing in the Borough of Clarks Summit. Virginia Kehoe's concern is that this is a residents request and Council has to formally vote on it. Mr. Johnson thinks so to and that is why he said we have to put it on the agenda, because they have a formal request and every council person can vote the way they want to vote. Pat Williams asked if Virginia Kehoe could just call the lady/mother and tell her that we decided not to do that. Ms. Kehoe stated that to say that council decided on something that means council came to a majority decision which means a vote took place. Herman Johnson said put it on the agenda and that's that, Solicitor Dan Mulhern stated that he agrees with Mr. Johnson. Vince Cruciani stated that if they are really that adamant about it they should come to the meeting and defend their case.

- Curative amendment - 3 Front St: Virginia Kehoe stated that Charles Hibble contacted the property owner and said that he is no longer interested in the property and there is no request any longer for that. Herman Johnson asked if that would have been considered spot zoning. Virginia Kehoe stated that a similar request has come along and Solicitor Mulhern has been looking into this.
- Curative amendment - 110 Maple: The next request is the rezoning of 110 Maple from R1 to CC. Solicitor Mulhern did a site visit. Next to car wash across from Kost Tire and a hair salon and behind it is a parking lot. It is not completely surrounded by commercial zoning. It is immediately behind the car wash on Maple. Virginia Kehoe stated that the family that owns the house said the mother that lives there is elderly and living in the house right now. They said at one point it was zoned commercial at one time and was rezoned R1. Their concern is that when the mother is no longer there they will need to sell it and it is appropriate as a CC not R1. Solicitor Dan Mulhern stated that the spot zoning issue is not clear either way. Solicitor Mulhern stated that Attorney Goffer should just present his case to the governing board. He would have to look into it further. Herman Johnson stated that if they change it to him that would be spot zoning that is his opinion. Virginia Kehoe stated that with this you would be changing the border of the commercial zone. Vince Cruciani stated that there is no street or alley in between. That is why it is gray, not black and white. Maybe it is a legitimate request, but Herman Johnson would like to see some kind of an opinion, because there have been quite a few properties throughout the year and he wants to make sure that they are headed in the right direction where they are not

looking to upset anybody or to create a lawsuit. Pat Williams stated that in the past we have done that but we have always been reluctant. Mr. Williams asked if anyone has talked to the people next door. Mr. Williams stated that the neighbors should not be put into that position. We shouldn't start infringing the commercial area into the residential area. Virginia Kehoe stated that it is up to them to show that it is improperly zoned. They are saying that this house should be R1. There is not proof. Mr. Johnson suggested waiting for the public hearing, get input. Virginia Kehoe stated that they would have to go through the Planning Commission and have the same zoning ordinance s to meet etc.

- 2015 budgets – General Fund, Sewer Fund, Debt Service Fund, Liquid Fuels Fund
- Ordinance 2014-07 TAN
- Ordinance 2014-08 General Fund Millage
- Ordinance 2014-09 Sewer Billing
- Ordinance 2014-10 Debt Service Millage

Virginia Kehoe stated that the fund accounting recommendations that we get from the state does not have a line item for the contribution from the police towards their pension. So every budget does not reflect that they are giving a match towards their pension. So when they put that match back in against the cost of the MMO, that was \$11,000 right there that wasn't being reflected in the budget, but it should have been. Vince Cruciani stated that the budget does include the entire police contribution. Ms. Kehoe said yes. Vince Cruciani stated that next year is they don't raise the debt millage to pay the monthly minimum obligation they either need to refinance the debt to either extend the term of the debt or raise the interest rate in order to lower the monthly payment, or they need to maintain the current financing and borrow what would amount to about \$50,000 from the General Fund and that is just a factual reality. Virginia Kehoe stated that when we took the loan we got the much better rate but we are paying it off a year early, our monthly payment is higher than we've been on since 2010. So, 4 mills does not give us enough money to make the higher monthly payment for the full year. Next year we are carrying over a balance. We will be leaving the year without enough carry over to make it in 2016. Mr. Cruciani stated that not only will we not have enough carryover but not enough carryover to complete the year. In 2016 we will have to take money out of the General Fund to make the first couple of payments of 2016. Because it is collected with our property taxes it is assuming the same rate as our collection of taxes. Virginia Kehoe stated that we assume 95% tax collection, if we continue with that trends then Vince's numbers are correct. If for some reason we get a higher collection rate, then Vince's numbers will be high. If we have a lower collection rate the numbers will be even worse. Gerrie Carey stated that we have to see what next year brings us. Herman Johnson stated that there are a lot of older people that cannot afford the increase, but we are put on notice right now. We should start making a plan now. We need to stick to the plan, either a 3 year or 5 year. You don't know what was going to come up, don't assume anything. Gerrie Carey stated that we do have time to look into things and see if there is a better direction to go. Vince Cruciani stated that the quicker the debt is paid off the quicker the residents have that burden off of them and if we need to appropriate funds to meet whatever matters come up in the future, we also do not have that debt burden also. We do mathematically not have to address it until next fall so we can walk away with 4% and not be in trouble but next fall it has to get addressed.

- Resolution 2014-33 CDBG funding: Virginia Kehoe stated this is just to allocate the 2014 CDBG money to Depot Street. We pretty much decided we are going to do it. Voted to support it but now we have the final numbers for 2014. The County needs this passed next week. Herman Johnson asked if the county came back with a response to our letter that was sent to them. Ms. Kehoe stated that she wrote a letter to Mr. Kelly and asked for a response by today and didn't get a response. Herman Johnson asked if we can do a follow up to the county commissioners. She did but will do so again. Mr. Johnson is worried that when we were waiting for the CDBG money hopes that is not the same situation as the pave cuts. Vince Cruciani stated that even though we were disappointed that we weren't able to do it this past summer at least we will be able to it with all of the money available.
- Update from Dan re: Parking meters: If we want to make a change to the map or specific meter parking we would have to amend the parking ordinance just so it can be enforced by the police. If we just go ahead and put cones up and take meters off enforcement would be an issue for liability purposes. They can be moved wherever we want they just have to amend the ordinance. Vince Cruciani stated if you just took the meter away then it would just be an area that you could park; you would have to make it no parking. There is a safety issue with an area. To avoid liability you may want to put a red x there or on the sidewalk just so you don't run into a design flaw, but if it is a state road we would have to talk to pennndot and get their engineers out here.
- Drone Ordinance: Solicitor Dan Mulhern did go to a local class on drones, new law amazing how quickly coming into play. It has good uses and negative uses. No state regulation, but the state is working on that. The Borough could act if it wanted to. Don't think you would have an inherent right to fly an audio or visual drone over someone else's property without their permission. The drones give a different vantage point which you wouldn't have which could violate some of your 4<sup>th</sup> amendment protections. The bottom line is that the Borough could act if they wanted to. Vince Cruciani stated that he would like to work with Solicitor Mulhern on this. Doesn't want to restrict adult behavior but spying on someone isn't right either.
- Draft Ordinances (peddlers, newsracks and trash): Vince Cruciani stated that with all of the financial work that sits on the table for next week they should wait for February to discuss matters from the Planning Commission. They chose not to address specifically the food trucks; they incorporated that into the peddler's ordinance. They felt that they couldn't make a recommendation on the nuisance ordinance. Vince Cruciani stated that when you read the peddlers ordinance, he wants to remove number 6 but wants council to look at it first. Solicitor Mulhern will look at it too and have a legal opinion. Pat Williams was against the removal of number 6.

3. **REVIEW OF DECEMBER 3, 2014 AGENDA**

4. **ADJOURN:**

**President Carey**