

**BOROUGH COUNCIL SPECIAL MEETING  
OCTOBER 27, 2015  
7:00 PM**

The October 27, 2015 Borough Council Special Meeting was conducted on Tuesday, October 27, 2015 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 Mrs. Gerrie Carey, Mr. Vincent Cruciani, Mr. Jim Klein, Mr. David Jenkins, Mr. Herman Johnson, Mr. Dominic Scott, Mr. Patrick Williams and Mayor Patty Lawler, Solicitor Dan Mulhern, and Borough Manager Virginia Kehoe. Junior Council person Christian Orlando arrived at 7:17pm.

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| <b>1. WORKSESSION:</b>   | <b>President Carey</b> |
| <b>2. PUBLIC COMMENT</b> | <b>President Carey</b> |

Wayne Miller, our ARWA Representative was there to give a semi-annual update to Council. Mr. Miller stated the construction project is are on schedule. A lot of little things needed to be addressed; those things are being taken care of. Financials are terrific, groups that lent the money, everything is fine. They have been very cooperative. Project is something to be proud of. Some small issues have left them feeling a bit falling behind, like to have this done by the early springtime. The suppliers and vendors all are working together well. The big projects have been done, but inside the building there still is work to complete. All three communities have been involved and cooperative. Herman Johnson asked if they had a completion date, the answer was no, probably by springtime. David Jenkins asked what percentage they are complete. Mr. Miller said between 70%-75%. Vince Cruciani stated that now that it has been handed off to the operations element of it has the executive in charge, Lauren Elliott, has she developed a game plan a budget and a schedule, does she have her mind around where the transition needs to be. Wayne Miller said, yes very much so. Lauren Elliott is doing a marvelous job. Mr. Cruciani asked if she has developed a completion budget and are we on task to meet the budget. Yes they are on task with the budget. Dominic Scott stated that their last report it was said that they were coming in under budget, is that still the case. Herman Johnson stated that they had change orders are we under or over budget. Not over budget. Herman Johnson stated that the Clarks Summit Borough has supported this project from the start and he was wondering, if others have asked how they did this so successfully. No they have not been asked. They are comprised of three communities that were crucial. Each community around us has their own issues to deal with. David Jenkins asked if we are going to hear any more about the bypass that is going into the creek because the sewage treatment plant wasn't able to handle it. Vince Cruciani then asked what year's storm it is equipped for. David Jenkins asked can the treatment handle the influx of sludge/sewage coming in and also possibly rainwater coming in too, do we have the ability to take care of that or are we going to bypass. Mr. Miller said no they are not built to bypass. They are built basically to handle this. We have to keep in mind that there are some storms where we are hit hard. Nothing was altered in the compound of the

system. Virginia Kehoe asked about increases with the sewer billing. Will the sewer authority be building is increased EDU amount. Mr. Miller would call and let Virginia know.

- **Drone Ordinance:** Vince Cruciani stated that he had a chance to run this ordinance by the D.A.'s office, because they contacted him about it. Mr. Cruciani asked Solicitor Dan Mulhern if he had a chance to look at it and his opinion. Solicitor Mulhern asked a few questions. He asked is this intended to prevent someone on their own property from flying a drone. Vince Cruciani said no it is not. Second question was can a private citizen come down to the public right of way or go on public property and fly their drone around. Mr. Cruciani said yes. Solicitor Mulhern said that this is basically for the privacy of the home owner that we are looking to protect. What if a private property is on their own property and the drone goes up 100 feet and angles it's camera into someone's back yard. Vince Cruciani stated that it is what it is, it's a risk taken. Pat Williams suggested having a moratorium until they get more information from the state and the feds and then move forward. Mr. Williams said we seem to be jumping the gun, this can get very involved. Vince Cruciani stated that he doesn't disagree with Mr. Williams but if we have a moratorium on this it doesn't create a criminal trespass penalty and it doesn't give any kind of benefit to the property owner to defend against a criminal trespass penalty under the laws under the commonwealth. Pat Williams stated that maybe we should have something in effect, but we can make adjustments as the state and the feds make changes. Vince Cruciani stated that we could pass this and then pass a moratorium and then people would still have all of their rights available to them. Vince Cruciani said there are immunity issues if someone used the drone on public property but it was taken down or something was shot at it to take it down. You would have to accept the fact that if a drone was flying over private property and something happens where it comes down, the resident of that private property should have immunity to their property. Solicitor Mulhern stated that someone can still file a civil suit in the common pleas court in Lackawanna County and prevail, then the person that shot down the drone would have to pay \$1,500 towards the damages to replace it. Assuming that a judge would enforce this. Solicitor Mulhern also asked about section 2 part B, second paragraph the part that reads, "No details of the actual Drone path or purpose need to be reported to Council, though the details must be reported to the Mayor," take that out and just put at the discretion of the District Attorney. Vince Cruciani said no and that he talked to the D.A. about this. The Mayor is the head of the police department, so that is her elected role, the reason it has to be reported to her is that she would be a subject of the investigation because she is accountable for the police department. The numerical amount has to be reported to Council but not the actual details of it are because Council's responsible for the funding and it has to do with the use of resources. Solicitor Mulhern said any open investigation regardless of how large it is in the county, if we use our police force, it should be reported to the mayor. If the D.A.'s office flies the drone and it is owned by the D.A.'s office that is not the Clarks Summit Police Department. Solicitor Dan Mulhern stated that if the D.A.'s office is fine with it, that's fine, they are the chief law enforcement office for the county. Section 3 part A "Shall be considered an act of criminal trespass," can the District Attorney enforce that? We can't force the D.A.'s office to then prosecute these people. Mr. Cruciani stated that it would give individuals the ability to file a

criminal complaint with the magistrate and the District Attorney's office if necessary. Solicitor Mulhern said that would be a summary offence like a traffic ticket. Mr. Cruciani agreed that it would be a summary offence. Solicitor Mulhern stated that a person has to be involved in a criminal trespass, so we would have to say that a drone is a continuation of a person. David Jenkins said because the person is flying the drone. Vince Cruciani was advised that we would reduce liability by citing and staying within the bounds of already created state law. Solicitor Mulhern stated that we are essentially creating state law that should be created by the supreme court of PA or the legislature. Next section 3 B, Vince Cruciani stated that this means if you shoot down someone's drone and it falls and hits them, you have immunity but if the drone falls and hits a kid that isn't related to them then you don't have immunity. Solicitor Mulhern stated that he thinks this is creating a law that is un-enforceable, so the citizens might assume that they are protected. Section C we are creating precedent in the court system essentially. Vince Cruciani stated that he agrees with Solicitor Mulhern, but there is no law and we are not liable because we are telling the people that they have to act within the law. Solicitor Mulhern stated that he advises not to interpret the law just yet because what you don't want to see is people think that they can take down a drone at all costs. Vince Cruciani stated that we are trying to alleviate the burden from the property owner and put the burden on the drone owner. Virginia Kehoe stated that we the borough are not going to go around trying to charge these drone operators with trespass, we are just leaving a tool there for the property owners who are trespassed on to sue. The Borough is not enforcing this. Mr. Cruciani stated that people can file a private criminal complaint. Solicitor Mulhern asked what is the burden of proof? Solicitor Dan Mulhern stated that this is a completely new area of law and there is going to be questions, there are no easy solutions, he is not comfortable passing this the way it is. Mr. Cruciani asked where in this can we the borough get sued? Because if we can't get sued he is comfortable because it is not putting the borough taxpayers at risk. Solicitor Mulhern said that is a question that we need to research better. Mayor Lawler stated that this is the first time she has seen this draft, she asked if there is any other municipality that has a drone ordinance in Lackawanna County. The answer was no. Mayor Lawler stated that this is on the cutting edge of law and she asked about the police enforcement of this. Vince Cruciani stated that if a drone goes over his property and comes down on his property, he can press charges against the owner of the drone. Mayor Lawler doesn't know if it is that cut and dry. Call the police and have them come, then you can press charges. Mayor Lawler discussed this with Chief Chris Yarns and he said some of our ordinances, even a barking dog is hard to press charges on. Vince Cruciani stated that this is just like trespassing, like if someone was going through your yard it is the same concept. Either way it is a criminal trespass it's just your choice if you want to call the police. Mayor Lawler said enforcement would be difficult. Herman Johnson suggested tabling this, get a committee together and research it, but he thinks what Vince is trying to do is if someone has probable cause they can contact an officer, the magistrate can move forward or throw it out. Just to be safe to protect Council, police department and residents, research a little more and fine tune it. There is no other municipality in Lackawanna County; we are on the fighting edge of enforcing something. David Jenkins stated that there is no reason we can't be the first municipality to have something on the books. Vince put a lot of work in on this and he thinks we are onto something. Mr. Cruciani stated that he

thinks we have the ability to clarify rather than interpret because there isn't anything. Mr. Cruciani stated that if we are going to do this he would like to see this done in the next two to three months.

- **Chief's contract:** This will be for executive session.
- **Council Chamber windows:** Gerrie Carey stated that she spoke with Abington Heights Superintendent Mike Mahon and the teacher and students come down and this could be one of their projects. We would buy the material, they would do the work. It needs a vapor barrier. Gerrie Carey said she would contact Mr. Mahon and let him know this was discussed and he can call Virginia Kehoe. Herman Johnson stated that he doesn't have a problem with that. This has been going on for over 4 years. He doesn't want this beautiful building to have any more damage, how long would it take for this to get started and finished. Vince Cruciani stated that this is a risk if it doesn't get done timely. Ms. Kehoe stated that we did get a bid for the awning that was proposed. The high school would resolve the problem with the stone, we are finding out the cause of the leaking. If they can give us an analysis of what needs to be done and what materials are needed. If they can't actually do the work in a timely manner then it could be bid out. Herman Johnson stated that what we can do is at our next meeting, bring this back up. Update at next week's meeting.
- **Parking Meters:** Virginia Kehoe stated that Vince Cruciani sent out an email with his thoughts on the meter policy. Ms. Kehoe stated that we have already kind of made the decision to move forward with new parking meters. Ms. Kehoe needs to start drafting any ordinances that will affect what the cost will be and we need to assign the coinage because we need to know if we are taking quarters only or not. Vince Cruciani stated that he had been talking to Barry Kaplan and the ABPA would like to see two main things. First is that all of the meters in the borough have the same price per minute. They can be 2 hour or ten hour meters but the cost per hour should be the same. We have an ordinance already that technically prohibits you to remain at the same meter for over three hours. Second, every merchant that he spoke to was fine with .50 cents per hour. We can increase the fines where you change the period of time 72 hours. Change the fine for the late payer to \$15. So if the ticket is paid within 72 hours the cost is \$5, if it past 72 hours the rate would be increased from \$10 to \$15. This should happen when the current envelopes are all used up and the police needs to order more. Then there is the big question is it really about the ordinance do we spend money on the machines or order new machines. Mr. Cruciani's personal opinion is that we take the one that takes all of the currency. Pat Williams disagrees and said we should have only quarter machines. He thinks we should try to simplify things. As far as raising the penalties, Mr. Williams thinks the Chief and the Mayor should have some input on that. Pat Williams doesn't think Vince Cruciani should be talking to Barry Kaplan about budget issues; we are here to make those decisions. Herman Johnson stated that they are all elected officials and they think that they need to have the citizens and business peoples input too. He felt that buying all of these machines would be a burden on us for at least a couple of years. Mr. Johnson stated that he has been driving around the borough 3 or 4 times a week where the parking meters are and some days there are spaces available and some days there aren't. The last time we had our survey, there were a lot of stores on State Street and business people are making their properties beautiful, and that is our tax base. Everything should be uniform and what Vince came up with is consistent and

uniform. Pat Williams stated that he doesn't think there should be a penalty for people that are habitual violators. It will be too cumbersome to do the tracking. Vince Cruciani agreed with that. Vince Cruciani stated that the other issue is do we order machines with multiple coinage or not. This doesn't need to be decided yet. Mayor Lawler stated that George Carros said it is better to go with all quarters, the dimes and nickels trips the machines. Virginia Kehoe stated that the machines that we currently have work at a different rate, there is a cost in reprogramming them. We would have to take them down and ship them to have them reprogrammed. Right now a quarter buys you an hour. Ms. Kehoe stated that if we are buying new ones it is not worth reprogramming the existing meters. We might not even be able to because of the models we have. Vince Cruciani stated that it is \$60,000 to replace all of the meters; the new rate would bring in about \$35,000, so it will take two years to pay them off. As long as we take the money from Capital Reserves and then replenish it, not borrow it from a bank, he is on board with replacing them all and being uniform. The general consensus is that we are going to do all quarters, .50 cents an hour. Mr. Cruciani stated that we should put the change in fines in the ordinance, but don't enforce it until we get the new tickets printed. Ms. Kehoe stated that we should have it to vote on with the budget. Ms. Kehoe stated that the budget is available for review before the vote in December, only the millage rate gets advertised. Then there will be an amendment to the ordinance for the parking meters.

- **Senior Center:** Virginia Kehoe stated that after the Finance Committee met with Mary O'Donnell and Warren Watkins, the feedback that we have gotten so far is that Mary is trying to get someone to handle the lawn care and the plowing, Warren said that the board met and because they don't have any funds they are not entertaining other options this at this point. Vince Cruciani stated that he went in and read the contract with them and the initial contract was decent and then there was an addendum in 2002 which basically fixed the price between the borough and Telespond at the current rate and said if we want more money we have to go to the seniors. It is a year to year contract that goes to June 30<sup>th</sup> every year, with a 60 day notice if you are going to renew or not. Mr. Cruciani stated that what he would like to see the release of funds contingent for the non-obligated period, so that July 1, 2016 contingent on a vote in our April meeting. They need to know by May 1<sup>st</sup> whether or not we are going to renew the lease from Telespond, maybe we will get it worked out with Telespond before that and maybe not. Maybe we will get them to give us \$300 more maybe not. If we put a contingency in the budget for the release of the funds July 1<sup>st</sup> and after which is essentially is the renewal period on the lease for the remainder of the year. This allows for a vote in the April meeting that says do we want to keep Telespond or not and we either vote yes or no. Gerrie Carey stated that she agrees and that we should increase the rental on it. The building is aging and costing us more money. Mr. Cruciani stated that it costs us \$6,000 a year of taxpayer money. This way Telespond will be forced for the next 6 months to know that there is a possibility that they are not going to get the renewal and that they are going to have to talk to us. Virginia Kehoe stated that Telespond already knows what the dollar amounts are, what the losses are, they know what the target is. This gives us 6 months to hear back from them too. Vince Cruciani stated that there were 2 options given. The first was Telespond give \$500 more a month. Option 2 is we stop providing certain things, this utility that utility, take all of these variable costs will

keep these other baseline costs. This way it took the variables away from us and put it on them. Mr. Cruciani wants every member of council to directly vote on this in April. Ms. Kehoe will put this on the agenda for April so they can get back to us with what they can or will do. Herman Johnson asked how they are going since the state budget hasn't passed. They are having a hard time. Mr. Cruciani stated that the seniors that go there come from all over; he is fine with subsidizing the Clarks Summit Borough but not the seniors from the whole area. David Jenkins said that includes the seniors from Scranton.

- **Sewer billing – landlords:** Virginia Kehoe stated that they were talking about changing over the tenant landlord billing so that the landlords were responsible. Solicitor Mulhern is double checking this. Ms. Kehoe wanted to give Council an idea of the impact and what kind of schedule to set up. There are 54 different landlords that are going to be affected so in that case Ms. Kehoe feels that if they were going to do this that we should mail those 54 landlords in advance and notify them. David Jenkins suggested sending a post card with a brief rundown of the information, with our phone number if they have additional questions. Ms. Kehoe stated that of the 132 tenants only 22 are currently delinquent. It's not going to make a huge difference in what we do. Vince Crucian stated that we need to find out from Solicitor Mulhern what a reasonable window of notice is. Mr. Cruciani stated that he would imagine that this needs to be done by ordinance. Ms. Kehoe stated that is what Solicitor Mulhern is looking into. The ordinance says that the owner of the property is legally responsible for the bill. But billing isn't specifically addressed in the ordinance. But after we took this over, if the landlord wanted us to bill the tenant directly, we would do that. This may only be a policy change but we have to confirm that. Mr. Cruciani said last year we determined that there was no economic incentive for the borough to give a 2% discount and we are not doing that for next year. He suggested in the January mailer that the second quarter goes to the landlord. Ms. Kehoe stated that she would prefer to have a formal vote of this policy change before the letters were sent. This can be targeted for April 1<sup>st</sup>. This needs to be voted on no later than the December meeting. Herman Johnson wanted to make sure our ordinance is up to snuff. The ordinance was updated in 2012 and Solicitor Mulhern is working on it to make sure the billing part of it is covered. This will be for the residential and the commercial bills. Virginia Kehoe stated that the tenant has been billed since 2005. Vince Cruciani asked what the impetus that we change it is. Virginia stated that we didn't like the idea of forcing the tenant to come before council to plead for a payment arrangement. Charlotte Bellas was the impetus. Landlords have already negotiated their rental agreements. Vince Cruciani stated that he thinks this is just going to complicate everybody's lives. Gerrie Carey agrees, she thinks we should continue to bill the tenants. Ms. Kehoe stated that Stivala is an issue when it comes to payments and if we don't receive payments from him, then we would have to shut off the tenants, at least the tenants are working out a payment plan. What is the dollar amount for the 22 delinquent people is it high. No it is all on a payment plan. Mr. Johnson said leave it as is and maybe just notify the property owners. Ms. Kehoe will send a postcard out letting the owner know that they are legally responsible. Dominic Scott stated that he wants the property owner in here not the tenant coming in here. The legal implication of giving this back to the landlord is the issue. Vince Cruciani asked Solicitor Mulhern what is a reasonable amount of time that we could have landlords/businesses do this, is it a year? Herman Johnson suggested sending a letter

in detail telling the landlord that this is their responsibility, so when they do another contract they can include that in the contract with the tenant. This way the landlord will be on notice. Vince Cruciani stated that since we have a tenant registration, so they would be grandfathered in. Pat Williams said if all the people that own the property and the tenant doesn't pay, the landlord is responsible. The only thing we can do is put a lien. We made a policy that within 24 months we execute the liens. We can force a lien. Pat Williams likes Dominic Scott's idea. The landlord may be a little more selective with who they rent to if they are ultimately responsible for the sewer bill. Virginia Kehoe stated that after 10 years of allowing the tenant to pay we can't just change it. If we turn around and tell landlords without adequate time to inform tenants. We have to give reasonable notice. Herman Johnson said this is why we want to get a letter out to the owners because they have long term contracts and before the next contract they can maybe add this into their bill. Then all of this responsibility would go on the property owner. Vince Cruciani stated that a letter saying that we are thinking about it then it opens up the door later on. Wait for Solicitor Dan Mulhern to give interpretation of reasonable notice then we can take action from there, he is also going to look into the businesses also.

**3. REVIEW OF NOVEMBER 4, 2015 AGENDA**

**4. ADJOURN:**

**President Carey**

Executive Session Personnel