

**BOROUGH OF CLARKS SUMMIT  
BOROUGH COUNCIL REGULAR MEETING  
WEDNESDAY, JUNE 4<sup>TH</sup> 2003  
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A regular meeting of Borough Council was conducted on Wednesday, June 4<sup>th</sup> 2003 at 7:00 P.M. The Meeting was held in Borough Council Chambers, 2<sup>nd</sup> Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna, and Commonwealth of Pennsylvania. Members in attendance were Council President Edward M. Bush, Sr.; Council Vice President Donald H. Moyer, III; Councilman Robert Bennett, Councilman Thomas Bradley; Councilperson Gerry Carey, Councilperson Linda Jenkins; and Councilman Patrick Williams. Also attending were Mayor Robert W. Kester, Borough Solicitor Ernest D. Preate, Jr.; Chief of Police Joseph English; and Borough Manager/Secretary James G. Vones. Sr.

The Meeting was opened with a moment of self-directed silent mediation, followed by the Pledge of Allegiance to the Flag.

**APPROVAL OF AGENDA:**

The Agenda for the Meeting had been approved prior by Council President Bush.

**APPROVAL OF MINUTES:**

The Minutes of the May 07th 2003 Regular Meeting were before Council. Motion by Mrs. Jenkins to approve the Minutes as presented. Second by Mr. Bradley. Discussion – None. Motion carried 7-0.

**BIDS & QUOTATIONS:**

None

**BOROUGH TREASURER'S REPORT:**

The Borough Treasurer's Report, prepared by Dee Ann Stephens, as of May 31<sup>st</sup> 2003 was before Council. Motion by Mr. Moyer to accept the Report as presented. Second by Mrs. Carey. Discussion – None. Motion carried 7-0.

**COMMITTEE REPORTS:**

Mr. Moyer reported on the heavy rain and associates stormwater flooding on Sunday, June 1<sup>st</sup> 2003. There was 4 inches of rainfall within a short period of time. Flooding conditions were noted on Winola Road, Florence Street, Electric Street, Center Street and Bedford. Barbara Ann Lake within South Abington Township and adjacent to Winola Road overflowed. There were two sanitary sewer problems on Carnation Drive, when excess flows caused problems. Also noted was the fact that the residents of a portion of Hosfeld Street could not use the sanitary sewers, due to the high stormwater levels. Mr. Moyer reported the work that was done in 2002, (with funding from both the Federal and State Governments) in the Lansdowne area handled the heavy stormwater flows well and no flooding problems were noted. Mr. Moyer noted that much of the flooding problems resulted from heavy flows coming from up grade in South Abington Township. Mr. Moyer also reported he took many pictures during the day and they were being developed and a copy would be on file at the Borough Offices.

President Bush noted that over the past several years Council/the Borough had been working continuously to improve the stormwater system. While some people did get flooded on Sunday, this was a vast reducing on the number that use to be flooded. He stated the Borough would do what it can to help the residents that were flooded.

Mr. Moyer again stated that a lot of stormwater came the Lakeside area of South Abington Township. This was a problem of stormwater flows from another municipality impacting the Borough. He stated he would seek out Grant money to continue the Borough's stormwater work and help the residents. Mrs. Rose ??? of 718 Hosfeld Street stated that every time there is a heavy rain she gets flooded out, they're whole backyard, her in-ground pool and the ground level living areas.

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Mrs./Professor Anita Appleton observed that if the water is coming from South Abington they should help resolve the problem.

Mrs. Davis again, stated that she has lived at 718 Hosfeld since 1970 and continues to be flooded out!

President Bush and Mr. Moyer explained that the Borough had tried to address this area a few years ago. They had had the Borough Engineer develop plans and begin an application to the Pennsylvania Department of Environmental Protection. The major point here being a constriction on the flows across two private yards. The homeowners wanted a pipe while PaDEP wanted an open stormwater swale. Even if PaDEP would allow a pipe, it would be so large the landowners would not permit it. Without this cooperation, the Borough had abandoned the project.

The homeowners of 105 Carnation next spoke. They reported the sanitary sewer problems they had on Sunday. Their home and 103 Carnation both had major sanitary sewer issues that must be resolved.

Mrs. Drake of Hosfeld Street reported on her sanitary sewers problems and the inability to use the sewers on Sunday. She asked if she could see/review the proposed stormwater project information. She was advised she could, as it was a Borough Record and subject to the Pennsylvania "Open Records Act".

Mr. Moyer stated he had obtained a list from the Fire Company on all the homes they had pumped out on Sunday.

Mr. Bennett reported that he has been in contact with the Lackawanna County Recycling Center. J.P. Mascaro, the Borough's hauler, was currently 34 tons short on recycling collections delivered to the Center. They had delivered 16/17 Tons, but were still short. He stated that Borough had required monthly slips/reports from Mascaro on their recycling efforts and none had been received. If we correct this, the Borough can take credit for this tonnage in the 2003, in its State Recycling Performance Report.

Mr. Bradley also noted that while Mascaro is collecting aluminum in the Borough, the majority of recycling taken back to the Lackawanna Recycling Center is paper. This is much less value on the recycling market than aluminum.

Mr. Williams reported on the Borough Parks. He stated that all the grass had been cut; improvements were being made at the Carnation Drive Park. Dead trees were being replaced at both the Carnation and Hemlock Drive Parks. He also reported he had been in contact with the Chief of Police about junk cars within the Borough.

Mr. Bradley reported that there would be an Abington Council of Governments (COG) Meeting tomorrow. Nine municipalities had committed to a joint bid for trash and recycling collection. Mr. Bradley also reported that the COG was planning a recognition event for police, fire and public safety personnel in the fall and this would be an exciting event.

President Bush stated that the existing trash/recycling collection contract with J.P. Mascaro & Sons expires on December 31<sup>st</sup> 2003. The Borough's contract with them was for an initial three years with two one-year renewals for a total of five (5) years. This five-year period would expire on December 31<sup>st</sup>. Five years ago the Borough had joined with Clarks Green Borough and South Abington Township and put out a joint Bid. He stated that unlike some municipalities there was no extra charge for residential collection and this charge was budgeted into the Borough's General Fund Budget each year.

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**POLICE REPORT:**

Mayor Kester gave the Police Report for the month of May 2003. Mayor Kester publicly thanked the Fire Company, the DPW and the Police Department for their fine work and extra effort during the flooding this past weekend.

Mayor Kester additionally requested a meeting with the Council Public Safety Committee, about outstanding issues. He and Chief would attend. President Bush stated that a meeting would be arranged and Mr. Bradley (Chairman of the Public Safety Committee) would get back to him about the date and time.

Mr. Bradley asked about the twelve (12) warnings during the month, and what they were for? Chief English responded for offenses were a ticket was not issued, but rather a Warning.

Mr. Bradley asked about the 156 hours of overtime during the month? Chief English responded that Officer Kopicki was still out on workers comp and the shifts had to be filled.

Mr. Bradley asked about the use of Part Time Officers to fill these vacancies. There are three (3) Part Time Officers? Chief English responded that according to the Labor Contract all the Full Time Officers had to refuse an overtime assignment, before he could offer it a Part Time Officer. Chief English further explained that of the three (3) Part Time Officers currently "on the books", one was on a medical leave from his full time employer, another was now working full time as a Police Officer in Scranton and only Jason Kizer was available and he was employed by three other communities. The Chief stated that at times some shifts were left unfilled. President Bush noted that while one shift may be left unfilled there was overlapping coverage of shifts and Borough always had 24/7 coverage by the Police Department.

Mrs. Jenkins clarifying the Kyle Kemp matter, asked if he was now full time with the City of Scranton as a Police Officer? Chief English responded yes.

Motion by Mrs. Jenkins to terminate Kemp as a Part Time Police Officer with the Borough. Second by Mr. Bennett. Under discussion the Borough Chief of Police would write to Kemp and notify him of this action and obtain the return of any Borough Police items issued to him within thirty (30) days.

Mr. Bradley also directed the Chief to contact Part Time Officer Herman Johnson and determine his medical status and ability to work for this Department.

Mr. Bradley asked about the parking meter tickets. He noted that only twenty-four (24) were issued during the month of May 2003. Chief English responded that the tickets, if left on a windshield and out in the rain, become un-readable. The Chief also said a number of meters are broken and in need of repair. Mr. Bradley asked if the Police Department had hoods to place over the meters that were broken? The Chief responded, we have some but not enough.

President Bush noted that a Borough Purchase Order had just been authorized to Duncan Industries for the necessary repair parts.

The Chief also noted that the batteries in the meters should be changed and new ones installed just before the winter season, when the cold affects the battery life. The Chief stated that Barbara (Blackledge) keeps a form in the Police Department on broken meters and sends that information to George Carros. The Chief noted that when the Borough purchased the current/re-conditioned parking meters to coin holes were not large enough for quarters and often quarters would "hang up". Mr. Carros as he makes the repairs is manually enlarging the coin holes slightly.

Mr. Bradley asked about the status of the cell phone investigation. The Chief responded, Tom, these plans change almost weekly, we were to get together last month about this and no meeting was held.

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Mr. Bradley, in closing stated that the Police Budget Report, as of the end of May 2003 was excellent and they were right on track and he thanked the Mayor, the Chief and the Officers for their efforts in this area.

**BILLS TO BE PAID:**

Motion by Mrs. Jenkins to pay the current obligations of the Borough, specifically \$121,704.55 from the General Fund; and \$18,814.43 from the Payroll Account. To additionally approve the payments made between May 13<sup>th</sup> and May 27<sup>th</sup> 2003, specifically \$101,544.38 from the General Fund; \$ 22,591.63 from the Payroll Account; and \$ 91,641.12 from the Sewer Fund.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**Resolution 2003-10 (Address of New Fire Station)**

Resolution to assign 321 Bedford Street as the address for the new Fire Station. Motion by Mr. Bennett to adopt the Resolution. Second by Mr. Bradley. Discussion – None. Motion carried 7-0.

**Resolution 2003-11 Destruction of Old Financial Records**

A Resolution to destroy old financial records of the Borough in accordance with the State's Record's Retention Act. Motion by Mr. Moyer to adopt the Resolution. Second by Mrs. Jenkins. Discussion – None. Motion carried 7-0.

**Resolution 2003-13 2003 Police Deduction for Police Pension Plan**

A Resolution to keep the Police Pension withholding at 2% for 2003. Motion to adopt the Resolution by Mr. Moyer. Second by Mrs. Carey. Discussion – None. Motion carried 7-0.

**Fieldstone Estates Phase IV**

Motion by Mr. Moyer to approve the Final Subdivision Plan of Fieldstone Estates, Phase IV. To include the extra landscaping detail plan and with the stipulation that no infrastructure was being expressly or implied being accepted by the Borough with the approval of Phase IV. Second by Mrs. Carey. Discussion – None. Motion carried 7-0.

**Request For Waiver Of Performance Bond**

Florey Homes/Florey Lumber had requested a waiver of the requirement for a Performance Bond on Phase IV. Based upon the recommendation of the Borough Manager/Secretary motion to deny Mr. Bradley made the request. Second by Mrs. Jenkins. Discussion – None. Motion carried 7-0. President Bush noted that Mr. Richard Florey, Jr. and Attorney Lavelle were present and would abide by this decision.

**Preliminary Land Use Approval – The Waffle House**

The Borough Planning Commission had reviewed the Preliminary Land Use Plan for a new Waffle House to be constructed at the old WEIS Markets area off South State Street. They had recommended approving this Preliminary Land Use, if a number of conditions were met by 5:00 P.M. on Wednesday, June 4<sup>th</sup> 2003. The Borough Manager/Secretary stated that both Attorney Lavelle and their Engineer, E.P. Mancinelli & Associates had responded in time and met the conditions for recommending approval. Motion by Mrs.

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Jenkins to approve the Preliminary Land Use Plan of the Waffle House. Second by Mr. Bradley. Discussion – None. Motion carried 7-0.

**2003 Donation for 4<sup>th</sup> of July Fireworks**

Motion by Mr. Bradley to make a Five Hundred Dollar (\$500.00) donation to the Abington Rotary for this year's 4<sup>th</sup> of July Fireworks Display. Second by Mr. Bennett. Discussion – None. Motion carried 7-0.

**Submissions For Council Action**

President Bush noted that Council, at one time, had a submission deadline established. Now that was being abused, and things were coming into the Borough the afternoon of a meeting. This did not allow adequate time for review and preparation by the staff, the Solicitor and/or Council members. He suggested re-establishing a cut off day, and stated at one time had been five days prior to the meeting. Discussion followed, and it was determined that seven (7) days would be even better. Motion by Mr. Bennett that any matter requiring action by Borough Council would be submitted to the Borough Office seven (7) calendar days prior to that Meeting. If submitted in less that time, it would not appear on the Agenda until the next months meeting. Second by Mr. Williams. Motion carried 7-0.

**BOROUGH SEWER OFFICE REPORT:**

The May 2003 Sewer Office Report, as prepared by Dee Ann Stephens, was before Council. Motion by Mr. Moyer to accept the Report as presented. Second by Mrs. Jenkins. Discussion – None. Motion carried 7-0.

**SOLICITOR'S REPORT:**

Solicitor Ernest D. Preate, Jr. reported there had been no action on the Jackson vs Police Pension Board/Borough matter.

Solicitor Preate reported his actions regarding a stop sign/encroachment complaint at Lansdowne Avenue, during May and had requested a survey of the area (Lansdowne and Poplar) to determine the exact extent of the Borough's right-of-way and the Stop Sign placement. That was still pending.

Solicitor Preate reported receiving a report from the Borough Manager on May 14<sup>th</sup> 2003 about barriers being erected at Hemlock Drive and Front Street that now block access to the old WEIS Market parking lot. He reported he had begun his research on this matter. He was to have a meeting tomorrow with the current owners of the property KARF, LLC and was research Deeds, Titles, Covenants that ran with the land. He believed that that placing of "Jersey Barriers" to block the area might present a public safety issue for police and fire vehicles responding to emergencies. He was just alerting Council about a potential problem here.

Solicitor Preate reported he had been requested to provide a letter to the Borough's Independent Auditors.

Solicitor Preate stated he had just recently received a draft resolution from Attorney Cali, regarding a Liquor License Transfer from Lake Ariel into the Borough. He had not yet reviewed it, since he only received it yesterday. Should have more information by the next Council Meeting.

He reported working on a draft Ordinance to close Grandview Street. The dirt pile placed on Grandview Street in 1995, from the land survey, was well within South Abington Township. He had worked on the Land Survey with John Hennemuth, had reviewed the work of the Borough Manager, and had attended meeting of the South Abington Township Board of Supervisors dealing with the re-zoning issue of land from commercial to residential. The Supervisors had re-zoned the land into a R-1 and R-3 Zone. He noted that he had not discussed this matter with Attorney John Appleton, and any legal action taken by him, on behalf of some of the landowners, within the Borough, was separate.

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President Bush noted that the Borough already considers Grandview closed. It was done in 1995 at the request of South Abington Township. The Solicitor is now doing research and fact finding for the Borough. Council does not want to prejudice itself, if South Abington Township returns here and asks that the road be re-opened. Solicitor Preate is doing title searches and determining the extent of the Amato land, purchased in South Abington Township.

Motion by Mr. Moyer to authorize the Solicitor to continue his efforts. Second by Mrs. Jenkins. Discussion followed. Mr. Charles Martin of Grandview Street presented more signed Petitions. Mr. Martin stated that we think the road is closed, but it was closed informally. What is South Abington Township now wants it re-opened. He believes this Borough should move as quickly as possible to adopt a formal Ordinance to close Grandview Street.

Solicitor Preate once again advised Mr. Martin and the residents that they have overlapping interests with the Borough, yet separate and they should obtain their own legal representation to protect their interests in this matter and property rights.

Attorney John Appleton stated he had filed an appeal in court to the decision of the South Abington Township Board of Supervisors to re-zone the land. The suit/appeal names South Abington Township, Amato and Noto. He was never allowed; at any public hearing conducted in South Abington Township to cross-examine anyone. He would be in Court on Monday. He advised Council to look at the road (Grandview Street) closing. The Borough could join with him when they go to Court on Monday. He also noted that when Jacob Nogi and his wife purchased their land on Grandview Street it was with restrictive covenants, which now were violated.

Attorney Appleton further stated that his Law Firm (Appleton, Nogi & Rhen) was not representing Mr. Martin or his group. The lawsuit he was handling was on behalf of Nogi and Van Wei. He also advised that another lawsuit was also pending and would be filed next week.

Solicitor Preate stated, that at time Clarks Summit Borough is not named in any legal action.

Attorney Appleton stated that was true, but was asking the Borough to intervene in the matter. Chief English had provided traffic survey information about Grandview Street, which had obtained from the County.

Solicitor Preate noted that things would happen pretty quickly, after tomorrow.

Attorney Appleton stated that Council had been supportive in the past. They had supported gates across Grandview and had taken this matter as a public safety issue. They should intervene formally.

Solicitor Preate advised Council they could either postpone a formal Ordinance to close Grandview Street or could start the clock with a legal publication and Hearing. That would benchmark and protect the Borough's interests. He advised Council that they Subpoena power and could use it. He did not anticipate any level of cooperation from South Abington Township.

Solicitor Preate noted that while Grandview was effectively closed, (at the request of South Abington Township) in 1995 twenty-one (21) years had not passed since the closing. He was giving Council options they could exercise in this matter. Council could proceed with the publication of the Ordinance or hold on publication and just allow him to continue to monitor and research. When the process is started can have material bearing on the standing of the Borough. In the Nogi/Van Wei matter this is an equity suit based on land restrictions/covenants.

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**CORRESPONDENCE:**

The Borough Manager/Secretary reported on the following:

- A May 2<sup>nd</sup> 2003 DCED Letter to Lackawanna County re: Borough FFY 2001 CDBG Modification.
- A May 7<sup>th</sup> 2003 PLCB Letter to Borough re: License Transfer.
- A May 12<sup>th</sup> 2003 Library to Borough Thank You Letter.
- A May 15<sup>th</sup> 2003 PaDEP Letter to Sewer Authority about by-pass events at the Plant in Chinchilla.

**EXECUTIVE SESSIONS:**

President Bush announced that no Executive Sessions were held prior and one would be held during this Meeting.

**PUBLIC COMMENT & INPUT:**

Councilman Williams asked about the Police Report for May 2003. He noted while several Officers had a lot of overtime during May, Kopicki, Shedlock and Williams (Eric Williams) had none. He knew that Kopicki was off on Workers Compensation but asked that the Chief of Police distribute the overtime more evenly.

Councilman Bennett reported he had received complaints about 119 Maple Street. People were bringing trash in pickup trucks from outside the Borough and placing it there for the Borough contractor to collect. If this is not a violation, then it should be.

Councilman Bradley asked the Chief where are the Pedestrian Crosswalk Signs and why were they not out? The Chief responded due to the bad weather they were not put out. Mr. Moyer commented that if nothing else they should be placed at the pedestrian crosswalk on Winola Road near Don's Market, as the school kids load and off load there from the school buses.

Mrs./Professor Appleton observed that if the Borough is doing well with its planned budget expenditures, Council should reconsider the donation to the Library it cut last year. President Bush noted that was already addressed in late 2002.

Mrs./Professor Appleton stated she had been receiving some strange telephone calls at her home and became concerned. She had an ADT alarm system install. Five times the police responded to false alarms from the system. ADT subsequently made a repair and everything is working OK now. She wanted the five false alarms wiped from her record. President Bush assured her that she should not be concerned about the record of the number of false alarms.

**RECESS:**

Council recessed into an Executive Session for litigation and personnel matters at approximately 9:12 P.M. and returned at approximately 10:18 P.M.

**GRANDVIEW STREET**

Motion by Mr. Bennett to authorize the Borough Solicitor to monitor and gather information regarding the law suit(s) about Grandview Street. Second by Mr. Bradley. Discussion – None. Motion carried 7-0.

Motion by Mr. Bennett to authorize the drafting and advertisement of a Borough Ordinance to close Grandview Street at/about the Borough/South Abington Township boundary line. Second by Mrs. Jenkins.

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The Public Hearing and Special Meeting for the Ordinance would be conducted on July 2<sup>nd</sup> 2003 at 6:00 P.M. Discussion – None. Motion carried 7-0.

**ADJOURNMENT:**

There being no further business before Borough Council the Meeting was adjourned at approximately 10:20 P.M.

**Respectfully submitted,**

**JAMES G. VONES, SR.  
Borough Manager/Secretary**

**EDWARD M. BUSH, SR.  
Council President**