

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, FEBRUARY 2ND, 2005
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The regular February Meeting of Borough Council was conducted on Wednesday, February 2nd, 2005 at 7:00 P.M. The Meeting was held in Borough Council Chambers, 2nd Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna, Commonwealth of Pennsylvania. Council members in attendance were Council President Donald H. Moyer, III, Council Vice President Timothy D. Rowland, Councilman Richard W. Armbrust, Councilperson Gerry Carey, Councilman Roy Davis, Councilperson Margaret (Peg) Jackson. Councilman Patrick Williams and Mayor Wesley W. Dunn, Sr. were Absent. Also attending were Borough Solicitor, Malcolm L. MacGregor, Officer in Charge, Louis Vitale, and Borough Secretary, Barbara Grabfelder. There being a quorum present the Meeting was called to order by Council President, followed by a brief period of self-directed mediation and then the Pledge of Allegiance

President Moyer announced that Council had held two prior Public Hearings and Special Meetings. The first was on Ordinance 2005-01 enacting the Emergency Municipal Services Tax and Ordinance 2005-02 regarding the police "killed in service" benefit; and the second was on our Community Development Block Grant.

APPROVAL OF AGENDA:

Motion made by Mr. Rowland and seconded by Mrs. Jackson to approve the Agenda as presented. Discussion: None. Motion carried 6 – 0.

APPROVAL OF MINUTES:

December 29, 2004 – Public Hearing & Special Meeting – Ordinance 2004-09. Motion made by Mrs. Jackson and seconded by Mr. Armbrust to accept. Discussion: None. Motion carried 6 – 0.

January 5, 2005 – Regular Borough Council Meeting. Motion made by Mrs. Jackson and seconded by Mr. Davis to accept. Discussion: Motion carried 6 – 0.

Approximately 7:05 PM – Officer in Charge, Louis J. Vitale arrived and joined the meeting.

BIDS & QUOTATIONS:

None

BOROUGH TREASURER'S REPORT

The Borough Treasurer's Report, as prepared by Treasurer Dee Ann Stephens, as of December 31, 2005 was before Council. Motion by Mrs. Jackson to approve the Report as presented. Second by Mr. Armbrust. Discussion – None. Motion carried 6 – 0.

PUBLIC COMMENT & INPUT:

Grandview Street:

Solicitor MacGregor gave an overview of the litigation and the general time frame of events for the benefit of the audience and Council. Judge Mazzoni had directed Mr. MacGregor to go to Council and update them on the motion that had been filed by Mr. Noto and Mr. Amato. An Executive Session was held by Council on January 10, 2005 as requested by Judge Mazzoni and Mr. MacGregor updated Council on the terms of the motion by Mr. Noto and Mr. Amato. The motion itself was seeking dismissal of the petition. Essentially, Mr. Noto and Mr. Amato would utilize Grandview Street solely for the purposes of providing access for 39 single-family homes in the R-1 section of the development. Mr. Noto and Mr. Amato would abandon the use of the right of way to Grandview Street beyond the 1,100 foot point and not permit any further access to Grandview Street from either an extension of Country Club

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Road (currently a private road) or any other roadway that might be developed so as to deny any traffic access over Grandview Street to or from the proposed townhouses and Abington Executive Park. Mr. Amato as the owner, will convey to Clarks Summit Borough a two-foot (2') wide strip of land across Grandview Street at approximately the same 1100 foot point where it will be abandoned and extend the two-foot (2') wide strip along the Southerly edge of the right of way of Grandview Street approximately 1100 feet back to the South Abington Township and Clarks Summit Borough line to help insure that access will be denied on Grandview Street.

President Moyer asked Solicitor MacGregor if this agreement that they offered would be a permanent barrier and not a gate. Mr. MacGregor replied that that is correct; this offer is not a gate and it is limited to the 39 single-family homes only.

Solicitor MacGregor reported that when Judge Mazzoni issues his decision, one party or both parties might take this to a Board of View Proceeding. For instance, Mr. Amato would make a claim for his alleged loss and the value of his alleged loss. Mr. MacGregor's role as Solicitor is to let Council know what could happen in this situation.

Mr. Patrick Lavelle presented Council members with a copy of the amended motion of Mr. Noto and Mr. Amato seeking to settle this matter and a map indicating the proposed changes. Mr. Lavelle stated that he appeared before Council on November 5, 2003. It was the recommendation of the Borough Solicitor at that time, that in order to avoid having traffic come from the Morgan Highway, from the Salt Park, and from Shady Lane Road, through Grandview Street into Clarks Summit, that they were initiating the action that they did. We felt that we had indicated to Council at that time that it was never the intention of Noto and Amato to allow such traffic. Nonetheless, the Borough obviously felt uncomfortable with this position and it instituted the action to dissolve the right of way and close Grandview Street. Unfortunately we all had to go through this process. The amended motion that you have in front of you seeks to guarantee that access to the 39 single-family homes alone will be from Grandview Street in Clarks Summit to these 39 homes. Amato and Noto shall submit the Preliminary Subdivision Plan to South Abington Township for approval, which shows that access to the thirty-nine (39) single family homes will be provided from Grandview Street and that this extension of Grandview Street will end at the approximately 1,100 foot point, beyond which Amato and Noto will both erect a barrier preventing any further access from the extension of Country Club Road (currently a private road) or any other roadway that may be developed so as to deny traffic access to proposed townhouses, the Abington Executive Park, the Morgan Highway and Shady Lane Road and petition South Abington Township to abandon the right-of-way for Grandview Street beyond the 1,100 foot point. Amato and Noto will convey to Clarks Summit Borough a two (2') foot wide strip, which is identified on the attached copy of the Amato Noto Preliminary Subdivision Plan, which strip shall commence at the Clarks Summit Borough and South Abington Township line immediately adjacent to the edge of the right-of-way for Grandview Street and run along the edge of the right-of-way in a Southwesterly direction approximately 1,100 feet at which point the two-foot (2') strip would then proceed in a Northwesterly direction across the right-of-way for Grandview Street and end where the abandonment shall commence. This conveyance is intended to insure that access would be denied on Grandview Street from any of the adjoining Amato and Noto property beyond the 1,100 foot point and all along the Southeasterly side of Grandview Street. The Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for the thirty-nine (39) single family homes must incorporate this Court's Order restricting access over the remaining portion of Grandview Street solely for the thirty-nine (39) single family homes and no other part of the adjacent or contiguous lands of Amato and Noto. This Declaration shall become part of the subdivision plan to be presented and approved by South Abington Township and shall be recorded in the Office of the Lackawanna County Recorder of Deeds. This Declaration shall provide that it shall run with the land and the portion relating to the restriction of access from Grandview Street shall not be amended without this Court's approval. The Declaration of Covenants, Conditions, Restrictions, Reservations and Easements shall be specifically referenced in each Deed conveying an interest in all of the thirty-nine (39) lots of the subdivision. This Court shall retain jurisdiction over the enforcement of this Order.

Judge Mazzoni wanted to hear from Clarks Summit Borough Council before making any decision on this matter. Mr. Lavelle asked Council to make a sound, business decision on this motion and you will KNOW what the result will be, rather than waiting for the Court's decision and going to appeals and possible Board of View action. He

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asked Council to settle the matter along this basis. If there is any doubt in your mind as to the participation of South Abington Township, I can only assure you that, in front of Judge Mazzone, Attorney Jones assured the Court that South Abington Township will join you in this settlement. With this settlement, you have accomplished your goal; you have assured that access will NOT be forthcoming from Shady Lane Road, from the Morgan Highway, from the Salt Park, and that access from these 39 single family homes alone will be provided from Grandview Street.

President Moyer asked Mr. Lavelle for assurance that there was no way possible for any cars to come down Country Club Road and cut through any of the 39 single family lots. Mr. Lavelle said there was no way for that to happen. If you want a two-foot strip along the entire line around the 39 single-family lots, Mr. Lavelle will see that you get it.

Mr. Moyer stated that the \$130,000 that the Borough has spent has stopped the "by-pass" that would have been created from Shady Lane Road through to Grandview Street. Mr. Lavelle replied that that is correct and that essentially that was the same settlement that was proposed on November 5th. Mr. Rowland stated that unfortunately, South Abington Township was NOT on board with vacating the road after the 1,100-foot mark before Clarks Summit decided to go to litigation with this to protect the residents. Mr. Lavelle agreed and stated that there was no question on that matter. Mr. Armbrust asked, for verification, if South Abington has now agreed to vacate the road and Mr. Lavelle replied in the affirmative.

Mr. Charles Martin, a resident of the Borough, stated that he would like to see that in writing. He reminded Council that a letter was sent by Clarks Summit Borough Council to South Abington Township and Council never received a response. Mr. Moyer stated that any motion would have to include that Clarks Summit Borough would not accept a settlement unless South Abington was fully on board.

Mr. Rowland stated that Council has looked at these motions several times over the last couple of months. We're looking to make a decision here tonight whether we go forward and let the judge rule or whether, in the best interest of the Borough, we settle this thing out. So obviously, any settlement agreement that we authorize tonight if South Abington said, at one of their meetings officially, said, no we're not buying into that, then that agreement is off the table and we go back to Square One. Mr. Lavelle replied that yes, that's understood.

Dr. Michael Patrician asked if a government entity under certain circumstances, could seize property, including houses. Would the right of eminent domain affect these lots and allow South Abington to somehow gain access through a lot to Grandview Street? Attorney Appleton, a Borough resident, replied that the reason that would not work is that this issue would be governed by a Court Order. Lackawanna County Court would supersede. Mr. Appleton urged Council to settle the matter. If this case goes on and Mr. MacGregor's worst-case scenario goes forward and all the appeals and Board of View proceedings come, then the \$130,000 that the Borough has spent will be just a drop in the bucket. You will be looking at 5 mills, maybe 6 to pay for it. This is a good deal for the 5,000 resident of the Borough.

Mr. Van Wie, Grandview Street, told Council that months ago, he would have agreed with what Attorney John Appleton just said. But then, Clarks Summit hired an engineer who told us that you have a traffic problem now. Adding to it is totally unacceptable. You have a dangerous situation. Opening the road is going to, possibly, require the widening of the road and open up eminent domain issues.

Mr. Moyer reported that over the weekend, prior to this meeting, he listened to all the tapes pertaining to Grandview. Out of the tapes, everything that was talked about, at the special hearings, was about a possible "bypass". Nothing much was discussed about the 39 homes. This settlement STOPS the bypass, no matter what.

Attorney John Appleton agreed and stated that Attorney Preate was right; if we loose this, we'll have a bypass from the Morgan Highway, down Country Club Road, down Grandview Street, down Center Street, onto Lackawanna Trail and out. That's absolutely what is going to happen. Before, what was proposed was a simple gate, and a gate would not have worked. This is a permanent solution.

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Mr. Charles Martin asked Solicitor MacGregor if there was a lawsuit regarding Commonwealth Telephone Company. Mr. MacGregor responded that Commonwealth Telephone Company wanted to remove the barrier to allow them to upgrade service to Clarks Summit Borough residents by upgrading the Remote Switch Location along the undedicated Grandview Street in South Abington Township. Clarks Summit Borough did not want to remove the barrier because we did not want to jeopardize our position in the pending litigation. Commonwealth went to court and Judge Mazzoni allowed them to move the barriers and assured all parties that the litigation would not be affected in any way.

A resident asked how these 39 new homes will receive fire and police service since they are part of South Abington Township. Mr. Rowland replied that for fire and ambulance, they will probably do what they do for the parts of South Abington that are North of the Borough and have Clarks Summit go there first. The police, however, will come through the Borough. Mr. Van Wie asked if we will be paid for that. Mr. Rowland replied that the fire company would definitely want to be paid. Mr. Van Wie asked how these homes will have their roads plowed and their leaves pick up; will Clarks Summit do that? Mr. Moyer replied that at least as of right now, the Borough will not take care of those activities; the homes are in South Abington Township. Mr. Moyer replied that they go up other Clarks Summit streets to get to parts of South Abington Township. On the other side they do Northern Spy and Westwood, Teaberry. They go through our town all the time.

Mr. Ray Davis, a Borough resident, asked Mr. Lavelle, that if Council agrees to this and South Abington agrees, would your clients stipulate that there would be no further court action in this matter? Mr. Lavelle answered in the affirmative.

Solicitor MacGregor stated that in his opinion, there is not just one single document and say, oh yes, that's the magic answer. I agree with what Mr. Lavelle said, that Council can authorize exploration of this settlement. Number 1, regarding South Abington's participation, that is a big issue.

President Moyer asked Mr. Lavelle about the original document mentioning a "gate". Is Mr. Noto and Mr. Amato offering any money to maintain the "strip"? They were going to leave \$20,000 or \$30,000 to maintain it. Mr. Lavelle questioned what would need to be maintained? Mr. Moyer replied that he just wondered if they were offering any money to maintain the "strip"? Mr. Lavelle replied that no money was being offered right now.

Mr. Van Wie asked Mr. MacGregor how the land can be abandoned in South Abington Township; will they need a referendum? They don't have a Municipal Authority set up. Mr. MacGregor responded that that question was brought up with Judge Mazzoni. Judge Mazzoni felt fairly confident that that could be accomplished through deeding, but that issue and case law needs to be researched.

Mr. Rowland stated that he thought that the strongest point of the settlement agreement is that T390 will be vacated from the 1100 foot point out. In other words, if South Abington agrees, which they wanted to do back in 1990, that's it; no traffic would be coming through in any direction. And then the language that goes into the settlement agreement by whether the land strip could be deeded to us without a referendum, that stuff will all have to be worked out, as Mr. Appleton said, by many, many lawyers, and shame on them if they can't come up with language that works for us.

Mr. Van Wie asked if a portion of Country Club Road would also be vacated. Mr. Moyer responded that according to the map in front of them, there was no way for Country Club Road to be hooked up to these homes.

Mr. Rowland asked all the residents here at the meeting from Grandview Street, if the road could be vacated and appropriate safeties could be installed so that nothing else besides the 39 homes could go in there, how many people are opposed to it at that point? Mr. Van Wie replied that the engineer that was hired by Clarks Summit Borough told us point blank that no more traffic should be allowed on Grandview Street. Mr. Van Wie said that prior to hearing

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that from the engineer, he would have been all over this deal. Mr. Moyer stated that the traffic from the 39 homes will not all go down Grandview; they will travel down other roads to get to their destination.

A Borough resident stated that Clarks Summit is getting more traffic, more safety problems, more headaches. South Abington comes out great. What about putting some of the property into Clarks Summit Borough so that we get some tax base out of it or some compensation? Mr. Moyer stated that he agreed and that the only thing this settlement stops is the bypass. It stops you from getting traffic from the townhouses and from Shady Lane Road, and the industrial park without a gate. We can stop a bypass here.

Mr. Rowland asked what would happen if we proceeded, and we win in court? And the judge says the road is closed and then we go before the Board of View and they go from zero to two million dollars for the value of that land that we just took off of Amato and Noto and all of a sudden they go before the Board of View and we spend another \$50,000, \$60,000 to \$70,000 with engineers testifying about the roads and then they're going to spend money and hire engineers to say the exact opposite of what ours does. Then we're faced with having to pay Amato a million dollars for this thing. We can't pay that. So what happens then? Do we open the road up? The fact of the matter is, you'll have a thousand more cars going through there. You've got to look at what is best for the WHOLE Borough.

Mr. Charles Martin responded that there is no cost to Mr. Noto. At least to the extent that we haven't taken the land from him. He still has the land.

Mr. MacGregor replied that this is an issue of law. That's the whole purpose of the Board of View. Remember, that's the issue we will be facing, as most people know, the Board of View, obviously, we'd be saying, Mr. Noto could go another way. But the fact is that the guy bought a parcel of land that had a road that was open on it; he had a right to rely on it. He's going to say he's lost something.

Mr. Van Wie stated that when Mr. Noto bought the land, it was not zoned residential. You can't go before a Board of View claiming a hardship. Mr. MacGregor said that he's not limited to that.

Mr. Moyer asked Mr. Lavelle if the 40-foot setback with a 25-foot wooded area on the upper right side of Grandview is still on the table for the settlement. If the other lawsuit is not settled, those people could cut right to their back wall. At least this way they have some protection.

Mr. Lavelle stated that he would not be an obstacle to settle any lawsuit. If it takes the creation of a 40-foot wide barrier along the strip that borders Oakmont Terrace and that's what we previously offered, we'll stand by the offer. He thought the original offer was 35 feet but if the offer was 40 feet then they will stand by it.

Mr. Raymond Davis felt that the increase in the number of cars from the 39 homes would be minimal, especially when you look at the fact that this is no "slam dunk" as far as the Borough winning the lawsuit, and especially given the fact that you could very well have a "bypass" going through there. The figure of 120 cars will mean nothing if the bypass happens. If I lived there, I might not be real happy with this, but I certainly would be happier with it than what the alternative is, which would be a lot more time, a LOT more money, and a "bypass" situation.

Mr. Rowland asked if the price range these 39 new home will be in the \$300,000's, would that not increase the value of the homes on Grandview? Mr. Charles Martin responded that in March of 2003, the homes were \$200,000; the next meeting with Mr. Noto, they went up to \$300,000; several meetings after that they went up to \$400,000. Mr. Lavelle reported that the TOWNHOUSES will start at \$200,000.

Mr. Martin stated that he was agitated about this. The only reason that he got started in this whole thing is very simple--that they were talking about 39 houses in South Abington Township. He lives in Clarks Summit Borough. Very magnanimous of the 39 \$400,000 houses to be built over there but where is that tax money going, gentlemen and ladies. It is NOT coming here to the Borough. But we will get the traffic. I live on Grandview Street and I

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walk there every day. I see the new families with the little kids. I don't particularly want to have an additional 240 cars with the lawn service people, South Abington Fire Company, South Abington Police, South Abington Maintenance coming down my street. No, I don't want it. As I said before, if we can get the tax money, that's one thing. I'll bite my pride and say, OK, we'll take 39 homes. But we're not getting the money. What we're getting is a deal. It's this close for the judge to make a decision. We have spent \$130,000 to defend Grandview Street; let's see what the judge says. We have rolled the dice.

Mr. Rowland asked why Mr. Martin thinks that Noto and Amato want to make a deal. Mr. Martin replied they want to deal because they are concerned. Mr. Rowland asked Mr. Martin why the Borough wants to make a deal, why the seven Council members want to make a deal? Do you think this Council is not concerned?

Solicitor MacGregor wanted to clarify that there is no "deal". There has been no "deal" made. They have filed two motions with the Court and we are required to get back to the Court. That's it. The comments that you have heard tonight plainly reflect the fact that there is no deal. I don't want someone walking out of this meeting thinking that scheming lawyers had a deal. That's just not true. The reason that judge Mazzoni brought us in six times and banged both of us over the head is because in any litigation both parties realize that there is a lot to lose when a judge makes a decision. You can win and you can lose and also you can lose and you can lose.

Mr. Van Wie argued that there is no guarantee that at some point in the future that road, T390 can't be opened. Mr. Moyer stated that this will be a Court Order. A reference was made to the road at the top of Oakmont where it connects to Sunset; that was supposed to be blocked. Oakmont was supposed to be a cul-de-sac. All of a sudden, Sunset connects to it. Mr. Rowland stated that he chaired the Planning Commission when that went in. There was no dead-end on any of that. This road closure will be part of a Court Order.

Mr. Van Wie stated that everyone here heard that the public safety is not going to be served by having the police and fire vehicles drive all the way around to Grandview Street to get into those 39 homes. Mr. Moyer stated that the situation already exists: South Abington already drives through Clarks Summit, up Meadowview to get into Petty's development to get to Elden Drive. That opened up in that last several years.

A resident asked if this settlement does progress, and at some point due to the increased traffic, Grandview has to be repaired or work has to be done on it, Clarks Summit Borough has a rule in place on how wide roads have to be. What is the risk of losing property here? Mr. Rowland answered that the new regulations only pertain to NEW roads being put in, not roads that are repaired. Mr. Van Wie stated that there are still problems with sight, and problems with sidewalks.

A resident commented that even though the planned houses are in the \$400,000 range, her property now is bordered by woods. Her property is more valuable with the woods than with the \$400,000 house.

Mr. Appleton stated that the development that borders Oakmont has a setback of 15 feet and Mr. Moyer stated that they can clear right to the wall. Mr. Appleton said that his setback is only 15 feet but they're offering 40 feet. Mr. Van Wie agreed with Mr. Lavelle, that Mr. Van Wie doesn't think it is a 40-foot setback, he thinks it was 25. Mr. Moyer reported that the Borough was told 40 feet by Judge Mazzoni. A Borough resident asked that in the spirit of true negotiations, if we wanted a 40 or 50 or whatever foot setback, that this would be the time for that request? He stated that if there is a permanent barrier on the end of that map, where there is no way that that road could ever be opened up, then I think our interests are somewhat protected. We still have an issue that there is going to be more traffic, more maintenance, more safety issues, but if we could get some kind of compensation from South Abington, whether it be some of the tax base, maybe the first road going up could be deeded over to Clarks Summit, it may be a more feasible option. Mr. Rowland replied that that would be up to the property owners to appeal for annexation.

Mr. Moyer recessed the meeting at approximately 8:10 PM to move to Executive Session.

Mr. Moyer reconvened the meeting at approximately 8:36 PM.

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Mr. Tim Rowland made a motion to authorize the Solicitor to engage in a settlement with the plaintiffs for the 39 homes specifying that all approvals come from South Abington Township and that all details appropriate to the preserving the fact that Grandview Street will forever only be open to those 39 homes and whatever details have to be worked out for that and also including some financial consideration for our costs. Second made by Mrs. Jackson.

Question: Mr. Raymond asked if this means recovering some of the costs of the lawsuit? Mr. Rowland answered yes.

Mr. Martin asked if we recover some of the costs of the lawsuit, will that mean a decrease in the millage? Mr. Rowland said that might be a possibility.

A Borough resident stated that if you are going to pursue that settlement that you include the 40-foot setbacks. Mr. Rowland stated that would definitely be done. In order to protect the residents of Grandview, can the proposed 1100-foot road be bent into the cul-de-sac? Mr. Rowland agreed and stated that in fact, we could probably call that entire 1100-foot road and the last cul-de-sac "Grandview".

Mr. Rowland said that when we started this thing, we had a road that went through to either the Morgan Highway or to Shady Lane, we had townhouses, and we had a bypass. For \$130,000 we got what we wanted. We don't have a bypass. Mr. Moyer stated again, that when he listened to the tapes of the previous meetings, 90% of the testimony was on the bypass.

Mr. Carl Noakes stated that he believed that 100% of the testimony was directed toward safety. Tell me how this isn't unsafe. There was to be NO traffic; not a bypass, NO traffic.

Mr. Van Wie repeated that all our public officials, the mayor, fire, police, engineer, all say that there should be no more traffic on Grandview Street. ANY further traffic will put a further burden on Grandview Street.

Mr. Noakes asked Council to take a look at his driveway and tell him how he and his family is going to get out of his driveway without having an accident. That is a horrendous burden. Mr. Rowland questioned, for just 39 homes? Mr. Noakes replied, he didn't care if it was ONE home. There have already been accidents on the street. You're going to create another accident. Sooner or later; it is the law of averages.

Dr. Michael Patrician asked for a number to be put on what we're proposing for the opposition to counter with. Just because Mr. Noto and Mr. Amato have floated a proposal, why is it that we have to take it in blanket fashion? Counter the proposal. Now is the time to negotiate. Put a number on it now. I'm a taxpayer here. I won't have an increased number of cars coming by my house.

Mr. Moyer emphasized that this lawsuit totally has split this community. He told that to the Judge and he is telling it to everyone here tonight. When you go on the other side of town, those people are screaming. They're saying they currently have more traffic than those people are going to have on Grandview.

Mr. Noakes stated that the Grandview people were told by some of you candidates, before you were elected, that you were behind us 100%. It had nothing to do with a bypass. I'm a taxpayer. I would support those people on the other side of town if they were faced with this situation. We need your support now. Three months ago I stood here and the magical number of \$50,000 came up. My question was, is that as far as we're going to go? And how much, each and every one of you, how much is one accident, one person, one child, worth? You are now putting a dollar value on it. You need to stand fast and say that this is not a safe condition. Public safety is a major issue.

Mr. Moyer replied that Public Safety is a major concern of his. If that road is opened, completely, then you people will be bombarded with traffic. And that is always, from day one, what I have gone on. When the "gate" came

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about, I thought the gate was almost a good thing. But then, you told me that the gate could be knocked down. This is a permanent barrier. This is something different.

Solicitor MacGregor asked to address the issue of financial cost or consideration. From a negotiating standpoint, I would not advise Council to put a number; it would be foolish. If they felt there was a cost factor, with the way this motion is now, that is something that could be pursued, but Mr. Noakes is right, too. Above all other things, this whole thing has been about public safety. The way that Mr. Rowland's motion was worded, it was such that that would be one of the issues for discussion.

A resident asked if Mr. Rowland's motion to pursue this was to lay the groundwork and that once everything was worked out, will an additional final motion be required from this table for it to be accepted. Mr. Rowland replied no, he authorized them to settle. His motion was to authorize them to settle.

Solicitor MacGregor said that his understanding was that Mr. Rowland's motion was based upon the proposal that has been presented, but that it would be pending South Abington's approval, and the details that Mr. Lavelle and Mr. Rowland referenced before. Whether it was South Abington's approval, or some other issue that came before this Board that was not satisfactory, the deal would be done. There would be no agreement.

Mr. Moyer stated that with this motion we're saying Clarks Summit will own a permanent barrier at the end of that last cul-de-sac, no other traffic, no townhouses, no traffic from the Morgan Highway, no traffic from anywhere else to come through there.

Mr. Noakes asked that if the last lot were vacated, by choice, of the developer, is there any way anyone could get use that and get through? Mr. Moyer said no, because that's what we want in the settlement. If we don't get that, we don't settle. Mr. Moyer wants a guarantee that only the 39 homes have access and there is absolutely no way for any other access. That's what Mr. Noto and Mr. Amato are agreeing to when they say they want to settle.

Mr. Lavelle stated that if Council wants an additional barrier to go all the way around the 39 homes to raise your comfort level, then he would recommend that to his clients.

Mr. Martin stated that he would like to see Mr. Rowland take back his motion until you have everything fully settled in writing by all parties so that all here can hear it. Let's see that we get dollars back and that things are not changed by the other side from what they originally stated.

A resident of Electric Street asked if the Judge makes his decision and Clarks Summit loses. Is this Grandview litigation is ever going to end? She is tired of seeing all this money thrown into this. This is a settlement. I'd like you to take it.

Mr. Moyer replied that if we do win. Lets say the Judge rules to close the road. We go to the Board of Review. The people on the top of Oakmont, all the way up, their setbacks are gone; they're back to 15 feet. Not only that, if they want to build further up, and all those homes come through, you're going to have a disaster.

Mr. Rowland stated that his motion is very simple. It shouldn't be scary. It is the concept of protecting the road only to be open to the 39 homes. It's very basic. Whether we negotiate some money to cover our legal costs, I'm confident we can leave that up to the attorneys.

Mr. Appleton stated that it will require legalese to assure the protections that Clarks Summit Borough is looking for. Several people here have their own agendas. This should not be put off. Settle it for the Borough. Settle it for the residents. He feels that Mr. Rowland's motion was a good one and he should stay with it.

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Mr. Rowland stated that his motion is to authorize our Solicitor to settle the Grandview Street litigation. In other words, the Solicitor can go to Judge Mazzoni tomorrow and say we have a settlement; we're working the details out. If at some point, that settlement requires it to come back to us for a vote, then so be it. Second by Mrs. Jackson.

Mr. Noakes stated that safety is his paramount concern. Everyone said Grandview cannot stand any more traffic. You have no idea what goes on in our neighborhood. For somebody to walk in here from the other side of town, or for anybody on Council, to tell him that the fight on Grandview Street isn't worth it, then you're not worth a lick. This is safety. Just so this Borough knows, I want to go on record; my driveway was originally on the opposite side of my house. And I was told by Mr. Lewis, the Borough Manager, that I could not get a permit for my driveway on that side of my house because I would be entering into an intersection. This is before Carnation Drive was completed. It was an 8-foot drop, dirt road, sanctioned road. I had to reverse. So my driveways are where they are because of the Borough. Please spend some time in our neighborhood. Tell me that there is never going to be an accident. And also, the stop signs on Grandview are not adhered to. And you're not going to control the traffic. Look at that 1100-foot strip. They'll fly down that last cul-de-sac; they'll have a thousand feet of straightaway and come to my turn.

Mr. Van Wie stated that you have rendered Mr. Noakes driveway inaccessible. He could possibly take you to a Board of View saying that his property is no longer usable.

Mr. Charles Martin spoke and said that he has personally been in court about 80% of the time. We spent \$130,000. There are a lot of citizens who took time out to support Grandview Street. We came to Council before when it was community unity, and all signed a pledge to defend Grandview Street. If you're going to go down this path of least resistance, this man is standing here saying, "Take my deal, please". I don't hear anything from Council saying if we take his deal, how much are we going get? I want to hear MONEY. Are we going to get a 40-foot barrier all the way around this thing? I don't think that's going to happen. How long will it be before South Abington looks at this and says that's baloney because I can't get my people in there for fire and police emergencies. Don't rush into this. Wait for the Judge to make his decision.

Mr. Noakes asked what makes Council think that the decision will go against Clarks Summit. Mr. Rowland answered that if we win or we lose—we lose. Because if we win we go before the Board of View, if we lose then the road is open. This deal was not on the table before we went to litigation. If this deal WAS on the table before we went to litigation, then I would have voted not to go to court; I would have settled for the 39 homes back then.

The roll call vote was taken and votes recorded as follows: Mr. Rowland – Yes, Mr. Armbrust – Yes, Mrs. Carey – No. Mrs. Jackson – Yes, Mr. Davis – Yes, Mr. Moyer – Yes. Mrs. Carey wanted to record a comment that she would like to see it move forward but she would want to look at everything finalized and then have a final vote.

COMMITTEE REPORTS:

Resignation of Susan Grady from Library Board –Motion made by Mr. Armbrust and seconded by Mrs. Jackson to regretfully accept letter of resignation. Discussion: None. Motion carried 6 – 0.

Withdraw name of Steve Evers from the Joint Sewer Authority – A clerical mistake was made showing incorrectly that Mr. Jenkins' term on the Joint Sewer Authority was up and Mr. Steve Evers was named to the Authority. Motion made by Mr. Rowland and seconded by Mr. Moyer to withdraw the name of Steve Evers from the Joint Sewer Authority. Discussion: None. Motion carried 6 – 0.

POLICE REPORT

Officer In Charge, Louis Vitale, gave the January, 2005 Police Report, and summary of police related activities.

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Mr. Stoltz, a Borough resident from 332 Maple Ave., made comments to Borough Council that he felt the salary being offered to the new Police Chief was too high.

BILLS TO BE PAID:

Motion by Mr. Rowland and seconded by Mrs. Jackson to approve payments of \$216,632.29 from the General Fund, \$44,954.39 for Payroll, \$170.00 from Sewer, and \$5,923.28 from Capital Reserve Account between January 5, 2005 and January 31, 2005. Discussion: None. Motion carried 6 – 0.

OLD BUSINESS:

Mark Young and David Botscheller – Border Realty on Sewer Survey Results

It was originally suggested that William Karam Associates do the survey. It was felt that Mr. Karam would have a conflict of interest in this situation, and so a “Study of Sewer Service” was conducted by Mr. Paul Milnes, an independent engineer, of Milnes Engineering, Inc. of Tunkhannock, PA. The results of the survey were presented to Council.

Border Realty is proposing to develop their land and send sewage down through our lines, which would come down Lackawanna Trail, and then go to the railroad tracks. Right now, the sewage that comes from South Abington Township at Northern Spy, is pumped over the hill at Noble Road and comes down to Winola Road. When we have heavy rains, there are people on Hosfeld and Florence that can't use their sewers because of that flow. Border Realty is proposing to take this sewage and bring it down to Lackawanna Trail and then to the railroad, which is a bigger line. This would actually help those people on Hosfeld and Florence. Mr. Moyer reported that Border Realty had “cameraed” the line. Mr. Moyer requested that Mr. Milnes provide a copy of that tape to the Borough. This is an 8” pipe – gravity flow, giving approx. 200 gallons per minute. Mr. Milnes stated that the capacity needs to be increased, in his opinion, to a 12” line to handle about 310 gallons per minute.

The major concern of this Borough would be that additional sewage would not put a burden on the sewer line that we have.

Three alternatives were investigated by Milnes Engineering. The best alternative is to pump the existing sewage somewhere else where the existing lines do have the capacity to handle the flow. The benefits to Clarks Summit would be that it relieves the situation that exists on Haven Lane, Hosfeld, and Florence. Also, Clarks Summit would get the pass-through fees. The new pumping station would be owned by South Abington.

It was noted that this proposed pumping station would require South Abington Township's approval; it would require the Joint Sewer Authority's approval. An agreement would have to be set up stipulating how much Clarks Summit would receive and how much South Abington would receive in pass-through fees. Because it is a “Pumping Station”, Act 537 would probably require DEP's approval, also. It was also noted that this inter-municipal agreement would have to contain a stipulated number of EDU's would come from this and that nobody else could hook up. If at a later time somebody DID hook up, Clarks Summit would require knowledge of that. We want to prevent a recurrence of South Abington Township just hooking up properties and not notifying Clarks Summit.

The hook-up would occur at the end of Greenwood and tie in to the Borough's system.

Mr. Milnes stated that the Borough should not look to see any sewage from this for at least a year or two.

Motion made by Mr. Moyer and seconded by Mrs. Jackson to:

1. Allow the pass-through of the sewer by the proposed Botscheller and Young development based upon the study submitted by Mr. Milnes, pending the inter-municipal agreement

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- mentioned above, and approval of the DEP, the Joint Sewer Authority Board, and the other municipalities involved, and
2. Obtain a secondary engineer to represent the Borough's interests in this matter, and
 3. That the fees incurred by Clarks Summit Borough to have our Solicitor review these agreements/plans will be paid by Mr. Young and Mr. Botscheller.

Discussion: None. Motion carried 6 – 0.

NEW BUSINESS

A. Mr. & Mrs. Jaditz, 209 Electric – request to remove one EDU and waive \$250.00 fee –

Motion made by Mrs. Carey and seconded by Mr. Davis to remove one EDU from Mr. and Mrs. Jaditz, 209 Electric Street and to waive the \$250.00 change of use fee. Discussion: None. Motion carried 6 – 0.

B. Resolution 2005-02 – Act 511 Tax Resolution –

Motion made by Mrs. Jackson and seconded by Mr. Armbrust to adopt Resolution 2005-02 changing the wording of our Earned Income Tax Resolution to retain the tax for Fiscal Year 2005 and into the indefinite future or until such time as Council shall rescind or change the rate. Discussion: None. Motion carried 6 – 0.

C. Resolution 2005-03 – Commonwealth of Pennsylvania, Pennsylvania Emergency Management Agency-Designation of Agent.

Motion made by Mr. Rowland and seconded by Mrs. Jackson to adopt Resolution 2005-03 naming Mr. Donald H. Moyer, III as the Agent for the Borough of Clarks Summit in completing and filing documents for the purpose of obtaining financial assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Discussion: None. Motion carried 6 – 0.

D. Request that the Clarks Summit Planning Commission review their procedures and update fee structure to cover the Borough's costs.

Mr. Moyer indicated Council's desire to have the Planning Commission establish a set of procedures to be followed by an applicant who wishes to appear before the Planning Commission and to update the fee structure to cover all Borough costs.

E. Amend the 2005 Tax Rate –

Mr. Rowland made a motion, seconded by Mrs. Jackson, to "roll back" the 2005 Tax Rate of 24.75 by one mill so that the new 2005 Tax Rate would stand at 23.75 mills. Discussion – None. Motion carried 6 – 0.

F. Hire Mr. James Vones to update the Borough Website –

Motion made by Mr. Rowland and seconded by Mr. Armbrust to hire Mr. James Vones, Sr. and pay him at the hourly rate of \$45.00 per hour to update the Clarks Summit Borough Website. Discussion – None. Motion carried 6 – 0.

G. Renew the Tax Collector's Bond –

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Motion made by Mr. Rowland and seconded by Mr. Armbrust to renew the Surety Bond on the Borough Tax Collector, Judy Belch, at a cost of approximately \$435.00. Discussion – None. Motion carried 6 – 0.

BOROUGH SEWER OFFICE REPORT:

The January, 2005 Sewer Office Report by Dee Ann Stephens was before Council. Motion by Mr. Rowland, to approve the Report as presented. Second by Mrs. Jackson. Discussion – None. Motion carried 7 – 0.

President Moyer reported that he had held discussions with the railroad and we are going to be allowed to move our sewer line to the other side of the tracks. That will eliminate some inspection and bypass fees. Council suggested that our Solicitor, Mr. MacGregor, send a letter to the railroad, asking them to waive or assist us by lowering their inspection fees.

SOLICITOR'S REPORT:

None

CORRESPONDENCE:

DCED Seminar offered on "Neighborhood Improvement Districts" in various locations.

EXECUTIVE SESSIONS:

President Moyer reported that one Executive Session had been held on January 5, 2005 for Personnel and Litigation matters; one was held on January 10, 2005 regarding a Status Conference requested by Judge Mazzoni pertaining to Grandview Street Litigation; one was scheduled for February 2, 2005 on Personnel and Litigation matters, and none were subsequently scheduled.

At approximately 10:25 PM, Mr. Moyer recessed the meeting to move to Executive Session.

RECONVENE:

At approximately 11:20 PM, Mr. Moyer reconvened the meeting.

Motion made by Mrs. Carey and seconded by Mr. Roy Davis to hire Warren Watkins and Kurt Grabfelder on an as-needed basis to provide administrative and secretarial assistance at the hourly rate of \$10.00. Discussion – None. Motion carried 6 – 0.

Motion made by Mr. Armbrust and seconded by Mr. Rowland to establish a Cafeteria 125 "Premium Only Plan" for the non-uniform employees Healthcare Payments through William Krugar of Ceridian in conjunction with C.C. Young. There is a one-time fee of \$400.00 with an annual \$125.00 review fee. Discussion – None. Motion carried 6 – 0.

Motion made by Mr. Armbrust and seconded by Mr. Rowland to pay up to \$146.00 for this one time only, paying the employee's taxes on the medical reimbursement for 2004 that was paid to Officer Yarns and Officer Orzalek due

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to the fact that it was the Borough's mistake in paying the amounts through the A/P rather than through Payroll and deducting the appropriate taxes. Discussion – None. Motion carried 6 – 0.

ADJOURNMENT:

There being no further business before Council the Meeting adjourned at approximately 11:35 PM.

Respectfully submitted,

**Barbara R. Grabfelder
Borough Secretary**

**Donald H. Moyer, III
Council President**