

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 1 of 27**

The regular January Meeting of Borough Council was conducted on Wednesday, March 2, 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, and Councilman Patrick Williams. Also attending were Mayor Wesley W. Dunn, Sr., Borough Solicitor, Malcolm L. MacGregor, 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 lead by Mayor Dunn.

APPROVAL OF AGENDA:

The Agenda was approved as presented.

APPROVAL OF MINUTES:

Minutes of February 2, 2005, Special Meeting and Public Hearing on Ordinance 2005-01, Emergency Municipal Services Tax (EMST), and Ordinance 2005-02 Killed-in-Service Benefit of Act 30 of 2002. Motion made by Mrs. Jackson and seconded by Mr. Armbrust to approve the minutes. Discussion: None. Motion carried 7 – 0.

Minutes of February 2, 2005, Regular Council Meeting. Motion made by Mr. Davis and seconded by Mrs. Jackson to approve the minutes. Discussion: None. Motion carried 7 – 0. Copies of the approved minutes were distributed to members of the audience.

PRESENTATIONS:

Mr. Warren Watkins gave a brief report on the Abington Business and Professional Association (ABPA) and their recent Ice Festival; on the Senior Center reminding Council that the Senior Center is now ten years old and thanking them for their efforts in obtaining grant money to update the kitchen and provide a new generator; and Clarks Summit's sister city Ystradgynlais in Wales. This coming June, Boy Scout Troup 160 from the Clarks Summit area will be traveling to Scotland, England, and Wales and they hope to be able to stop in for a visit.

PUBLIC COMMENT & INPUT:

Grandview Street

Solicitor MacGregor reported that at the last Council meeting Council had voted and directed him to follow up with the parties and the Court with regard to settlement of the Grandview issue. There was a vote at the last meeting but he advised Council that given the fact that the stipulation itself has changed in some of the details, that they should certainly re-vote that agreement this evening, rather than stand on the original voting. When something changes in substance or form, the public has an opportunity to be heard and Council has an opportunity to present its view. The present form reflects the history of the case. What was added were provisions that South Abington Township required. As you recall, one of the questions asked last month was, "What if South Abington Township doesn't do what they're supposed to do?" Obviously, there are three parties to this litigation: Noto and Amato; Clarks Summit Borough; and South Abington Township. As far as Clarks Summit Borough's portion of the stipulation is concerned, the concern has been the voice of the residents regarding traffic on Grandview Street. Council has tried to prevent a bypass from coming through from Shady Lane Road or any other development to have access to the road, whether it be from Country Club road or any others to the townhouses and by this stipulation or agreement any use of Grandview Street would be limited to the 39 single family homes; that it would be specifically restricted and no traffic would be allowed from the R-3 zone, from Country Club Road, or the Morgan Highway, or the Abington Executive Park. It was proposed that Noto and Amato would petition South Abington Township to vacate the road

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 2 of 27**

at the 1100 foot point so that no traffic would be able to access Grandview Street. At last month's meeting, there was concern about the issue about whether or not it would be wise for Clarks Summit Borough to actually OWN the strip. In fact, South Abington Township said they were concerned about Clarks Summit Borough actually owning land in South Abington Township. Last meeting a resident asked the question, "If I fell and broke my arm on the land that Clarks Summit took, who is liable?" It was felt that a restrictive easement would be better, rather than direct ownership of the land and having liability issues. A change was made in the agreement, in response to the liability concern. Instead of actually deeding the land and having the Borough own it "fee simple", what is proposed is that a restrictive easement would be obtained from Amato that would go all the way around the 39 homes. Before, it would have only been from the 1100 foot point and on the bottom portion. Council was concerned and several residents expressed last month about development coming from up above because there are still several parcels that are undeveloped. Now the restrictive easement encompasses a strip all the way around the 39 homes. There are declarations, covenants, conditions, restrictions, and easements that is another separate attachment here, that would be provided to each of the 39 homes which would specifically reiterate that no additional traffic would have access to Grandview Street. Safety has always been the issue here, but also in the new agreement, Noto has offered to make a payment of \$25,000 which would maintain the easement in question. Finally, and an issue which is of the utmost importance, all of the parties, Noto & Amato, Clarks Summit Borough and South Abington Township would agree to waive all future claims that would arise from this litigation.

The issue that now stands before Council, they are to vote as to whether or not to accept this stipulation of settlement as it appears. Judge Mazzoni has held off on making a decision. He is required to deal with cases in a certain amount of time and he has made it clear that he wants to know one way or the other on whether he needs to render his decision or whether it will be resolved by a settlement.

Some of the considerations that I have laid out for Council are:

Whether or not Noto and Amato would be successful taking this issue before a Board of View. Their position, obviously, would be that they purchased land on a map that had a road on it that they could not use. Council needs to be aware of any costs associated with a Board of View or any potential award.

If a settlement offer is rejected, then Judge Mazzoni will proceed with the case and he will issue his ruling. It is possible he could rule against the Borough. The Judge is not going to deal in "specifics" like the settlement did. He's only going to rule if the road is OPEN or CLOSED. Should he decide that the road is open, I think everyone here recognizes that there will be more access to Grandview than just the 39 homes.

I would also caution Council to be appreciative of any issues that flow from their decision. There is the possibility of having to pay for appeals and costly expert testimony. There is also the possibility of a civil rights action. This is a really tough decision.

Mr. Moyer wanted to know if the 40-foot setback was included in this agreement. Mr. MacGregor replied yes, the 40-foot setback was included. This was something that was negotiated in the settlement: instead of South Abington's normal 25-foot setback, this settlement requires a 40-foot setback and 20 feet of that would forever remain a wooded area.

Council President Don Moyer made a motion to accept the negotiated settlement. Council Vice-President, Tim Rowland, seconded the motion. Discussion:

John McNulty of 602 Carnation Drive, Clarks Summit – a fellow by the name of Amato bought a piece of land that was zoned commercial. This gentleman bought the land and he found out that it was not conducive to commercial use. In their ultimate wisdom, South Abington Township allowed him to change the zoning to residential. Why should all of us, who made the decision to live where we live because of the amenities where we are, because of the excellent service we get from Clarks Summit, why should we be burdened with a decision of a person who bought something for one reason that didn't work out and was able to get an adjoining township to change the zoning and

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 3 of 27**

now we have to absorb the traffic from these 39 homes. It sounds very easy: 39 homes means 39 cars. But that's not the reality. The 39 cars all of a sudden become 78 and then a hundred and some cars and the traffic during the day becomes 500 trips, the same car making a dozen or so trips. Those roads can't absorb it. People who sit around the table, I would hope that this Council is conscious of that. Yes, this fight has been expensive and maybe tomorrow's fight might be in some other part of this community, but I believe if you allow this to happen, it is a disservice to these people and myself who have been very loyal to this Borough. I think it's a bad decision. You Council members have been elected and appointed and you're making a decision that will impact the lives of these people here. Hopefully, you'll do the right thing.

Carl Noakes, 516 Grandview Street, told Council that we spent tens of thousands of dollars to conduct an important engineering study. I wonder if anybody read that study. We spent two years and at your last meeting, at the eleventh hour, Council let us down. I'm looking at Council members who when they were running for office, signed a pledge to support us. We ask that you do not accept this settlement.

Mari Van Wie, 512 Grandview Street stated that her position all along has been the health and safety of anyone who steps foot on Grandview Street. It's not just the people who live on Grandview Street, its anyone who rides or walks on the street. We have a tremendous amount of people who are supporting us on this. We have a new petition signed by approximately 170 people who still support the closing of Grandview Street. When this first started, and I am not an engineer, but when I heard 39 homes, that did not sound like a high number to me. Until we found out that these 39 homes would have 437 vehicles per day. I live there and work there and that is far too much for our children to have to walk to and from the bus stops every single day. They have walk on the street. They have nowhere else to go. If the kids want to get to the playground, they have to walk on Grandview Street to get to the playground. This not fair and this is not safe. Regarding the two-foot easement, all I have heard is that there is going to be an easement and restrictions on the one side where the 39 homes are supposed to be. I don't hear about any easement or restrictions for the land that Amato owns on the other side of the two-foot strip. And as you know, if there aren't any easements or restrictions on that side, then anything that they are giving you is absolutely worthless. There is nothing to prevent them from putting a road in right on the other side. And shame on you for not realizing that and shame on Malcolm for not telling them that. You should know better.

The next thing, I hope Malcolm has told you, and Malcolm is in personal injury, he should know this. Because there has been testimony in court by the engineer saying that Grandview Street is a substandard street and cannot handle any additional traffic at all, and that it was a safety hazard, that if you accept this offer, this agreement, that Clarks Summit Borough can be liable for any personal injury or death that could occur on Grandview Street. And Malcolm you should know this. And yes, there was some testimony by the other side, who quite frankly were not credible, and anybody that was there will tell you that. Malcolm can't tell you because he wasn't there. If somebody were injured or killed on Grandview Street, then part of the settlement would be that Grandview Street would have to be brought up to code, which we know will approximately cost 1.5 million dollars. If you think \$150,000 dollars is a lot of money, it is nothing compared to what you could be liable for.

The next thing is the Board of View. Malcolm is afraid that we will loose. I will tell you that I would love to represent Clarks Summit Borough before a Board of View. We have an excellent chance of winning. Number one, that land was commercial when it was bought. They cannot say that they have any expectation of being able to sell residential lots at whatever cost they think they can sell them for. They cannot say that. It was Pat Lavelle who told South Abington Township that they could not develop that land commercially because of the grade; it is so steep. And that would be brought before the Board of View, or it should be brought before them. Secondly, when that land was purchased by Amato, he had notice that there was a dirt pile at the end of Grandview Street and that there was a gate on the other side of Shady Lane, and they cannot deny the existence of that and that was notice that both South Abington Township and Clarks Summit Borough wanted that road closed. The next point to be brought before a Board of View is that there is already access into the 39 homes and that is called Country Club Road. That road is already there, already there. The other reason why you have a good chance of winning before the Board of View is that Laurel Highlands _____. If you haven't been there, you have to go through Acker development, which is not an executive park but an industrial park. It is not half as nice as the Abington Executive Park and there

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 4 of 27**

is no reason why these 39 homes cannot access their properties through Country Club Road. It is a much nicer entry than Laurel Highlands. And you check out the values at Laurel Highlands. Every single block is sold. The next reason why we would do well before a Board of View is because we would show that this whole thing is about safety versus greed. Because we are concerned about the safety of anyone who steps foot on Grandview Street. There isn't any reason why those 39 homes cannot have access somewhere else. And the only reason why Noto wants to go down Grandview Street is because it's going to cost him too much money. And should we have to pay with the lives of our families? It's just not right.

Malcolm also said that there was a concern about a civil rights action. Well, the residents can file a civil rights action in federal court AGAINST Clarks Summit Borough. So the litigation is not over. And don't think that just because you're settling that you're trying to save the Borough money. You're not! This is not over. Also, if you accept this agreement, you are not insuring that there is not a bypass. And you are not protecting the safety of the residents of Grandview or anyone else who steps foot on Grandview Street. And one of the things is, if this agreement is ever accepted and part of Grandview is in South Abington Township, there is going to be a brand new road that is going to have to meet code requirements that will be far wider than our little Grandview Street that already exists. And where they meet, Grandview Avenue is going to have to narrow down to Grandview Street and it's on a very sharp and will be a blind curve. People are not going to be able to see the cars coming. Also on Grandview Street, my daughter cannot see the bus coming because of the sharp curve. They end up standing out on the road looking to see if the bus is coming. So again, I've hit a lot of different points. This agreement is terrible. It is not assuring that there will not be a bypass and I feel that we have an excellent chance if going before a Board of View. I'm sorry that Malcolm doesn't feel that way but I would be very happy to do it because I think we could win.

Mr. MacGregor replied that he admired the efforts put forth by the people in attendance but he didn't think that personal attacks help the cause in any way. I think that when that land was originally changed in zoning, there was an opportunity THEN to challenge it right there as to what the zoning was changed to, from commercial to residential. I was not involved in that litigation, but other people here were involved and for obvious reasons that litigation was not successful and it was not successful as I understand it because the appeal was not filed in the appropriate place. So I just don't want to have my reputation I guess for lack of a better word, kicked around. I'm trying to give Council BOTH sides of this issue so they can make a decision and I don't think personal attacks are helpful.

Mr. Rowland wanted clarification from Mr. MacGregor and asked if the settlement agreement gave a restrictive easement that went all the way around. Mrs. Van Wie answered that it only went on one side. Mr. MacGregor replied that Mrs. Van Wie was not correct; the proposed agreement DOES go all the way around.

James Van Wie – 512 Grandview Street, stated that many members of Council were not present during the trial. I want to bring to your attention that there were quite a few settlement offers. The 40-foot barrier setback area that we've heard about, that's been offered long before this litigation even started. There were many other ideas going off Grandview Street at the end of the 39 homes that were rejected for various reasons. Then Council spent \$130,000 to litigate this action. They had a public safety concern regarding the existing situation on Grandview Street. Tim Rowland testified at the trial, under oath, that he traveled on Grandview Street several times during the day and that Grandview Street cannot stand any more traffic. The police chief, Mayor Dunn, several public safety people, all testified that Grandview is not safe; we cannot add any more traffic. That's what we're talking about here is adding more traffic to an already unsafe road. You have an unsafe road and you're going to make it a perilous road. There was testimony that a young person was hit by a car at the bottom of our driveway. I never knew about it; it happened before we lived there. Several people testified how cars would run off the road because it wasn't wide enough and end up in their front yard. This is about public safety on Grandview Street. The testimony many of you gave at trial was outstanding, the Borough officials gave great testimony about the public safety problems that exist NOW on Grandview Street and now you're willing to multiply those problems. You're basically opening Pandora's Box. I don't want someone seriously hurt or killed. There's going to be property damage. And by doing this whenever a car runs off the road and hits somebody's fence you're opening yourself up to a lawsuit.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 5 of 27**

The engineering firm, who is one of the most reputable engineering firms in the state of Pennsylvania, did a detailed report; they told you – don't add any more traffic. What you have now is bad. You can't make it worse. You're dealing with fire. Somebody is going to get hurt. You're going up to end up with a personal injury issue, punitive damages, and then you're going to have to spend all kinds of money. You're going to have to put sidewalks in and widen the road. And most of all, we don't want to see anybody get hurt. There are so many children and senior citizens that walk up and down that road every day, you do not want to see anyone get hurt; I know you don't. I know all of you. And that's the main thing; you can't let anybody get hurt. I do appreciate all the support you have given to the people of Grandview Street in the past. You've done the right thing so far. Ernie Preate did a great job; all of you who participated in the trial did a great job. Why cave in at the eleventh hour. If Amato and Noto thought that they were going to win all these millions of dollars from a Board of View, why are they willing to make a settlement at the eleventh hour? It doesn't make any sense. If you thought you could make millions of dollars from this land and not have to go through the trouble of developing it or improving it in any way and take your chances at a Board of View why do you think they're making this deal? It doesn't make any sense. Put yourself in their place. Thank you very much.

Council President Donald Moyer responded that he was here when the gates were proposed on the South Abington side originally and then on Clarks Summit side afterward. Everybody was against the gate because a gate could be knocked down and people stated that if it was a permanent barrier, they could handle it.

Mr. Van Wie replied that the problem is that an easement is not a permanent barrier. Truly it is not. And if you don't believe me, Dr. Michael Patrician lives on Oakmont. Michael's land bordered the Amato land. He had an easement, a restrictive covenant in his deed that gave him a 150-foot barrier. When South Abington rezoned the land, his barrier went right out the window. You're talking about land that's all in South Abington Township. They could do something to take your easement away. Why do you think they don't want you to OWN the land? If you own the land you have control over it; if you have an easement, you don't have control over it. That's the bottom line.

Mr. Rowland made a statement with regard to his testimony in front of Judge Mazzoni. My testimony was based on the assumption that Grandview Street was going to be opened all the way through to Country Club Road.

Mr. Ernie Preate, former Clarks Summit Borough solicitor for the Grandview litigation, said that he was there and he put Mr. Rowland on the stand. That was NOT what your testimony was about Mr. Council Vice-President.

Mr. Rowland asked how can you tell me what I based my testimony on?

Mr. Preate said he knows because all the people here....Let me tell you something. I've listened to enough of this stuff. I'm upset. I'm upset because there's no one in this room, not one member of Council, not one person sitting in this audience, that has been through this as much as I have. Since I took over as Borough Solicitor, after my brother died, this was the first thing on the agenda. I was at the first meeting at South Abington Township in 2002. I filed all the motions. I brought all the people in to testify. You weren't even here. You weren't even in the Council when the hearings took place in this room. I was here. Who filed the motions in court? In November back in 2003, I did. I was at the hearings, you weren't. When we had the trial, you came for just one day, for a portion of one day and you testified. Not one of these people here who is on Council was there for the whole trial. I was. Malcolm wasn't even there. He missed three quarters of the hearings. I was the only person from beginning to end in these proceedings who's heard every bit of testimony, that's talked to every expert, that's cross examined and examined every expert. And I'm going to tell you something. What you heard from Mari Van Wie and what you heard from attorney Jim Van Wie was absolutely accurate. Absolutely accurate. What you're looking at is creating a terrible situation for the kids, right here. (Mr. Preate pulled a child to the forefront.) That's what you're doing. You're worried about a few dollars now. I and these people here are worried about their lives. And you should be worried about their lives.

Mr. Rowland said, let me tell you something.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 6 of 27**

Mr. Preate interrupted and said no, no, this is a public meeting, okay? I believe, I believe, I believe that a secret deal has been made here. There's no question that something has gone wrong because Judge Mazzoni was waiting to decide this case in early February. All of a sudden, at the last minute, from the jaws of victory, you snatched defeat. You did. Without any reason. If Lavelle and Noto thought that they had any chance of winning this case they would have let Judge Mazzoni decide this case. But no, they didn't. Because we have such a powerful case; it was overwhelming. Everybody knew it. The evidence was all there. Along comes this fast deal. I get kicked out of the Solicitorship the first week of January, two days later in comes this offer. The next thing you know the thing is voted on. I submitted to you a letter explaining how ludicrous, how utterly stupid this agreement was. I had this agreement back in November of 2003. I had this. I had better! The thing that is disturbing to me is you still don't protect the kids on Grandview Street. The people on Grandview Street. You're going to allow 450 cars, new cars, to come up and use Grandview Street, back and forth. You're going to have a 30-foot road over at South Abington that's going to go past Carl Noakes' house. He's already testified that there's been one accident already. The fact of the matter is, the cars that are going to go past his house and Jack Nogi's house are going to go from two cars a day to 450 cars a day. That's a four thousand percent increase in traffic. These kids are getting picked up by a school bus right in front of their house. Did you know that? Did you consider that? There are eight school bus stops on that street in those first two blocks. And you're going to endanger these kids? You're going to endanger the people walking on that street? For what? To sell out for twenty-five shekels? That's all it is. And that's \$25,000 to maintain a ludicrous two-foot easement. It could be overwhelmed. The power of eminent domain that South Abington had over that easement renders it a nullity. Five years from now they could come in and condemn it. Condemn it. Did you ever study eminent domain law? Do you know that? Come on, this is not rocket science. This is elementary law. This easement could be condemned by the Township for public purposes, particularly to put in a new road. So all this agreement goes out the window. And as far as a Board of View is concerned, I totally agree. What a great argument. I never thought of it. That she made. If they thought they could get millions of dollars for NOT developing the land, well go ahead and take it. They won't; have to spend a dime. They would make more money for going before a Board of View than they would if they have to develop the land. They'll make more money by the Board of View. My God. Please, this about kids. This about the future. There's no question here that something has gone wrong and I don't understand what's gone wrong. But as far as I'm concerned, look, I look at this child...what's your name sweetheart? A young girl answered Mary. Mr. Preate asks her Mary what? She answered Mary Alletta. Mr. Preate repeated Mary Alletta. I want to show you. See this sign that says please keep Grandview Street closed. You know Peg Jackson, you signed this for this little girl. You signed it. You said you'd do that for her.

Mrs. Jackson stated that she said she would do what's best for neighborhood.

Mr. Preate said that what's best for the neighborhood is to protect these kids, not to give the developer that money. That's what they wanted, why they testified for that. Do you realize that in court, that's what they testified to? Noto testified that the reason they want to use Grandview Street is because they'd get more money for the homes. That's the reason. Here, Dick Armbrust, you signed this too. You signed it. Did you tell that to that little girl; that I want to protect you and not mean it? I doubt it; you're a cop.

Mr. Armbrust replied absolutely not. And Grandview Street will still be closed. It's not going to be a through road.

Mr. Preate said that one of the things the he feels is absolutely essential. You folks, you've got to do the right thing here. Once that road is opened up, it's over. Its over. Even if there is somewhere down the road, they open up and violate it and Malcolm says it's going to revert back, it's NOT going to revert back. It can't. Once the horse is out of the barn, it can't come back. You're never going to be able to close Grandview Street once it's opened to traffic. That is the law of this Commonwealth. I've cited in my briefs. I've showed it to Malcolm. If you want to read it folks, it's clear. I talked to the lawyers involved in the case from Camp Hill. It's the law. If once the road is opened and being used you can't close it. You cannot close it. So to say in all the court of appeals that it's going to revert back. It can't. The door is already open, the road is already paved, people are using it. You can't do it. What are you gaining? The way to prevent a bypass is to close Grandview Street. The way to prevent accidents and

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 7 of 27**

danger to the people up here is to close Grandview Street. The Board of View is utterly without any threat. It's like people who get paid to NOT plant any crops and they get millions for not planting. If that's what he believes, truly believes, that he can get millions from the Board of View, then he'd say I'm going to the Board of View. Bye bye. But the fact is that he's already got a road right in there. The elementary law of eminent domain is that if you had notice that there was a problem, and they did because it was zoned commercial, and importantly number two, that you have access from another road, and they do, and it's not blocked, and it can't be blocked because it's their road...its Noto's road. You can't loose at a Board of View. I say I'll do it for NOTHING. I will stand here publicly and say I will take this case for NOTHING, FOR NOTHING to a Board of View. And I guarantee you'll win. I will put my money where my mouth is and stand up and do it for nothing for these kids. Will YOU do it? That's the question.

Council President Moyer stated that there is still no guarantee on how the judge is going to rule.

Mr. Preate responded that he was not the guy that moved in there and said oh quick, let's try to settle it. No, it was Noto and Amato and they knew that the judge was going to decide in our favor. Who's better able to make that judgment? You or me? I'll tell you it's me. And I'll tell you why, because I've been in it longer than you. And I've been in that courtroom and you haven't. And I've written the briefs and you haven't. And Malcolm hasn't been there and he hasn't written the brief; I have. And so let me make that decision and recommend it to you. I'm telling you we would have won that case.

Mr. Chris Joyce, 604 Lilac Lane said the he has been to a lot of these meetings. He was at South Abington's meetings before we even had the meetings up here. I don't know where South Abington is coming from. If anyone can get a straight idea what they want to do, and I think part of the reason Mr. Amato and Mr. Noto want to go through our lands is because THEY can't figure out what South Abington wants to do. I don't know how a Board of View works; I don't know all the legal things, but I'm not a stupid guy. If I say somehow that a Board of View says that somehow Mr. Amato and Mr. Noto have been wronged. We took something away from them that prevented them from developing their land and we'll give them millions of dollars for that then I could see that. But the first thing that I said when I got involved in this is, well that road's closed. There's a big dirt pile there and it's been closed for as long as I've lived here. The word I got back was that legally it may not be closed. The definition of closed legally and physical closure are two different things. I was told it's a road that goes all the way through and always has been a road. It's never been taken away. They received liquid fuels tax on the road and stuff like that. Well if it is a road, and it's open all the way through like they say it is, then that means its open on the other end. The point I've never understood, and no one has been able to give me a good answer, if they have one way in right on what is the extension of Grandview Street, and even if they say for some reason that yeah, that was a way but its not adequate enough way, they have another way in from Country Club Road down there by Axo and Met Life. How are they being prevented from getting in there? As has been said in the earlier negotiations, he wants to come in our way because he can sell the lots faster. That's the whole point. If I were sitting on a Board of View, and someone showed me that there are two other ways in and these people want to close the road for safety I'd say how would these guys be harmed if they have two other ways in. One of the other things he mentioned to me in a meeting was that when you get to the end of the road there at Grandview, it dips up. I mean it's a severe engineering feat they'll have to do. But it's not undoable. He might just have to take a "lot" of his land and turn it into a softer entrance onto Shady Lane Road in order to have them come in and go out that way. Again, it comes down to him having to spend more money. Its not that he can't get it from Shady Lane Road. I understand that you on Council have to look at it from different points, what if it does go the other way; what's it going to cost us. You have to look at both sides. I have to agree with Mr. Preate. It looked like we were about to win. If they're so anxious to compromise, maybe we were about to win. And maybe we should go back and we do fight this again and we don't win we'll all be saying well maybe we should have taken that compromise. I don't know. You don't know. Malcolm doesn't know. The only one who knows for sure is Judge Mazzoni and he's not going to tell us before he decides, so all I'm trying to say is that if the road is open, then he can get in the other end. If the road is not open, then it's not an open road. Either way, we win. That's my feeling.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 8 of 27**

Council Vice-President Tim Rowland asked to address Ernie Preate's insinuation that myself or some of the other members were uninterested in attending the court hearings. I'll remind you, Ernie, that, yes you were there for all the filings and everything but you were also well compensated for that. Ernie attended every single filing, court hearing, everything. He was compensated for that. I, unfortunately, have two jobs that I work and if you remember, Ernie, I was scheduled to testify twice. Once, I drove from Hershey, Pennsylvania from a class that I was attending to testify at the hearing, which by the way Ernie Preate never even took the time to prep me on my testimony. So don't tell me about my interest in the court hearings.

Mr. Preate stated that Mr. Rowland was in his office, sat at his conference table twice and he prepped Mr. Rowland.

Mr. Bob Bennett, Timber Lane stated that he was here last week when attorney Lavelle made his presentation. I do not intent to get into any specifics about that. However, he did indicate, in my opinion, that we have this and we have this and we have this. Now it appears that all these guarantees.....he had a map with red lines drawn on it and stated that we're going to do this and we're going to do that. He had an entire proposition that he was going to lay out. It appears that all of that has come unraveled. Nobody at this table can guarantee what Amato is going to do. Nobody at this table can guarantee what Noto is going to do. Nobody at this table can guarantee what South Abington is going to do. The only thing that you have in your hands to control is Grandview Street and shame on you if you don't take that control.

Cindy Olenick, 402 Grandview Street told Council that for almost the last six years her son has been delivering papers on Grandview Street. Most of the people here he delivered to. Kids walk on the road to play. My son has a lot of friends on the street; they travel back and forth to their homes. A lot of kids come to our house to play on the trampoline. I feel it's very safe. I would like to keep Grandview Street closed for safety.

Mari Van Wie wanted to make a comment in response to Malcolm MacGregor saying that she was attacking him personally. Malcolm, I was not attacking you personally. I'm just questioning the quality of the legal advice that you have given to these people.

Michael Patrician, 1201 Marion Circle, stated that he is the unofficial Oakmont representative. He told Council that you have a tough decision here. But the people who are making you all these promises, are the same people who have thrown the original restrictive covenants and easements out the window. So what they did to Oakmont, that's okay. Now they have a brand new plan here, and that's bulletproof. How could you ever buy into that?

Mayor Wes Dunn, 405 Marion Street, said that he was approached by Charlie Martin when Mr. Dunn was running to Mayor. Charlie explained to me a little bit about what was going on. I went to court at Ernie's request and I testified as to my concerns about the safety. And I also thought that the developer could have made a cul-de-sac that would have come up where the end of Grandview Street is and then that was supported by Burton Loss' study that said we could go out and we could put an access street off of Shady Lane Road that had sufficient sight distance. And that could have been done for their estimate, and they're a reputable engineering firm, of around \$250,000. And they could have obtained the fill from onsite where they'll be developing the homes. As Mrs. Van Wie said, the access road of Country Club Drive that comes down from the Morgan Highway is a feasible approach to the homes because I don't buy the argument that he can't build these expensive homes because people won't buy them if they have to drive through quote unquote an industrial park. Well that's light office buildings and it doesn't look like there's any industry there. My son lives in a very similar type development in Mount Joy, Pennsylvania, where he has to drive through to get to the very expensive town homes and stuff like that and they didn't have any problems selling or building homes down there. I'm very concerned about the safety on Grandview Street. When I went to court and testified, I testified about emergency vehicles responding, ambulances, fire trucks, police cars. We measured the time from South Abington municipal building up to and around down to the Morgan Highway and there's no way an ambulance could respond to somebody having a cardiac at that time and provide the necessary emergency medical care to give that person half a chance. We also discussed the distance from the Clarks Summit new firehouse up there which was shorter. Having worked in South Abington Township for 25 years as their Chief of Police and having worked with the Supervisors of South Abington Township who have been extremely quiet in

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 9 of 27**

this matter so far, I don't believe that they are going to be satisfied with an access road that requires them to go all the way around the Morgan Highway and come down Grove Street or come up State Street and come up Knapp Road to get to that housing development. I also do not believe that they're going to be satisfied with purchasing emergency response service from Clarks Summit Borough to do that. I felt at the time I went to court and testified and since I've been sitting in this chair as Mayor, that it's a horrendous traffic problem that they're going to create there. I also feel that the developer has his own personal motives for getting this open rather than to take the access road. But I believe that some time down the road, South Abington Township is probably going to come up to him and say, hey, we're not going to approve any development unless you have an access road off of Shady Lane Road. And I still feel that way.

Mr. Preate interrupted and stated that South Abington Township can't do it under the Municipalities Planning Code; they cannot force him to go in and put a new road in. He has a road, Country Club Road, and that's the road he can get in. And that road exits out onto a public highway. His 140 units ARE going to use Country Club Road as their entrance and exit. If the 140 units are going to use Country Club Road as they entrance and exit, why can't the 39 homes use it also and just put a cul-de-sac up there at the end and put some emergency barrier up there for fire and ambulance. I didn't have any opposition to that. If they wanted to put up a barrier at Grandview Street for emergency vehicles, we would be in an untenable position; I'd say we'd have to do it. But as long as they could use Country Club Road.....for those of you who were not there, they DID have testimony at the trial that there was discussion about South Abington taking over Country Club Road. But what they wanted, before they turned it over, was for the developer to bring it up to par and PennDot wants them to put in a light down there as opposed to a blinking light. That costs about a million bucks. The developer didn't want to do it. Why? Because it would eat into his profits. So therefore the easiest thing for him to do was use Grandview Street. You're making him wealthy. I don't understand this folks.

Council President Moyer stated that right now Country Club Road is a PRIVATE road. He owns it, that's correct, but it is private.

Mr. Preate replied yes, but he's going to use Country Club Road anyway. He's going to use it for the 140 homes. He HAS to use it for them. And when he does, he's going to make it a public road. But he's going to use the money from all the proceeds of the 140 units that he sells to upgrade it for a million bucks and put the light in. Well, if he's going to do that five years from now, or less than that, why can't he just let the 39 homes use the same road?

Solicitor MacGregor responded that nobody disputes that and Mr. Preate is right and Mr. MacGregor and Mr. Preate discussed that and wished that the developer would. Bottom line is that you and I know that he's not going to do that. So you know and I know that we're going to have this contested litigation and obviously they know how strongly we feel about it but I wish they would use Country Club Road too. I agree with you. But the reality is that it's not going to happen. Ernie, I'm talking about the R1 homes. He's not going to use that unless he looses and you know that.

Mr. Preate said that the developer already has seven of the R1 home properties already front on Country Club Road. Seven of the 39 front on the road! The only way he's going to use Country Club Road for the 39 homes is if you close Grandview Street.

Mr. MacGregor stated that he agreed with Mr. Preate, but the developer is never going to do it.

Council President Moyer reiterated that if the Judge DOES rule to open that road, the developer could bring all the townhouses and everything else right out Grandview. The map right there shows that clearly.

Mr. Preate said that the evidence doesn't show that.

Mr. Rowland said to Mr. Preate that that was only his opinion.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 10 of 27**

Mr. Preate said I know it's my opinion but I was in the trial.

Mr. Moyer stated that he was there for all the testimony.

Mr. Preate said that his opinion, and you saw the brief; I gave you copies of it. People have read that brief. We have all the facts to back it up. I don't think that Judge Mazzoni is going to rule against us if he has to rule. I think the chances are better he's going to rule for us. There's always a chance we could lose; there's no question about that. We have to accept that.

Mr. Rowland asked Mr. Preate, what if we lose?

Mr. Moyer answered that then we have a bypass. We have a bypass.

Mr. Preate said no, you don't have a bypass. You don't have a bypass. You're right back where you are right now.

Mr. Moyer said that then you have to keep appealing.

Solicitor MacGregor asked Mr. Preate if Mr. Preate thought that Mr. Noto will be coming back to us with this deal if he wins this case? My point is, do you think that he would win in front of Judge Mazzoni and come back and say lets settle this thing?

Mr. Preate said why do you think he tried to settle in the beginning? He tried to settle because he was afraid he was going to lose.

Mr. MacGregor said that litigation ALWAYS goes this way. When a case is going to be decided and there is risk on both sides, which are tremendous risks, you know this. You know it from criminal cases, I know it from civil cases, and I know it from municipal law. You always....at the eleventh hour and somebody comes in because both parties are fearful of the risk, the question is, for them, what's the risk? Can they tolerate the risk?

Mr. Charles Martin, 405 Grandview Street, said he felt that Wes Dunn was dead on. We have one policeman here and another policeman over here, we have a third police person over here. These three people have dealt with nothing but safety all their lives. We have two children over here. I'm going to be 63 in May. The street is turning over. The older crowd is leaving. This is the younger crowd right here. Why at the eleventh hour would this board, under the advice of the attorney, want to take the safety of the children and the senior citizens of Grandview Street and turn that over so somebody else who doesn't live in Clarks Summit Borough, doesn't pay any taxes in Clarks Summit Borough, doesn't have a thing to do with Clarks Summit Borough, we're going to make money for people in South Abington Township. Gentlemen, when you took the pledge to office, you pledged to support Clarks Summit Borough. That means ALL of Clarks Summit Borough. Here is your Borough right now. Right here. Not myself, not the other people. Right here. And these are the people that's the future. That's the people that I'm supporting and I hope and I pray to God that whatever decisions you make, you think of number one safety, number two safety, number three safety. And I want to add a little codicil, last month in the January meeting when this came to happen, Malcolm sat and said no deals have been made. The next day I was on the phone to Walter Orzalek. Walter told me that, gee that's interesting...I'm talking to him Thursday. He told me that two of the maintenance men had been in his office talking about the deal that had already been struck. So something happened prior to the meeting.

Solicitor MacGregor stated that we talked about this before. It's all been out in the open, both in hearings, and appearances before the judge. I'm sorry you feel like that. There has been no deal.

Mr. Martin said that Mr. Williams is a granddad....Tim Rowland, you're a father; you've got little ones. They ride the bus. Gerry, I see you out thee with the grandkids. Peg, probably the same thing. Think safety. Why do we vote to give somebody in another township the power over us? We don't get any guarantees. Twenty-five thousand

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 11 of 27**

dollars is not a lot of money. How much is budgeted to continue the litigation? I think there's what, thirty thousand budgeted for 2005?

Mr. Moyer replied that there was \$30,000 and \$15,000 has already been spent. Fifteen thousand went to Mr. Preate.

Mr. Martin said, okay, then we have \$15,000 to go. Why don't we just wait? Let the judge rule. That's why we went to court. His background was in real estate law. We were dealing with real estate. Let him make the decision. We don't have to rush into this. South Abington Township is not going to make a decision until they have a public meeting. So you guys are going to put the cart before the horse. You don't even know what they're going to do. And one of the stipulations you said in the agreement was, you wanted to wait and see what South Abington Township is going to do. Gentlemen, slow down. Cool your jets. Think about this. What are these people here for? They're here for safety. Thank you.

Mr. Rowland asked a question and said, if we don't do anything and it goes to the judge and the judge rules that the road is open, would you be opposed at that point that we just say the road is open and whatever happens, happens?

Mrs. Van Wie said we'd appeal.

Mr. Martin said in that situation, he'd have to turn around to Mr. Preate and turn around to attorney Malcolm and say you guys didn't do a good job. But, I was at the trial for about 80% of the time more than Mr. Malcolm was. I didn't have to drive up from Hershey, but I had to go from here. I was there, and I listened to the testimony. And I saw Joe Gillat did splendid on that stand for about a week. And that young man who was recommended by PennDot District 4 engineer, was the acting engineer, did a commendable job for us. We're going to take all that effort and all that time and all that money and throw it away for a fast agreement which has more loopholes in it than the first, second, third, and fourth agreement. Now, the other thing you guys haven't thought about is the 140 townhouses. Where are they going to go? Now its 170. It started out at 25 and the number keeps going up because we don't know what Mr. Noto is going to do. There was original talk that that was going to come through on Rosebud. What happens if it comes through on Rosebud? What are you guys going to do? Enter another agreement with him? Gentlemen it's like a war. You stop them once and you stop them dead. Because we're only talking about the 39 homes and the 400 and something cars. Now we can turn around a little bit later and we're going to have to deal with 170 townhouses. If he chooses NOT to use Country Club Road. If he chooses not to go out on Shady Lane Road. What happens if he decides, oh well, it's a steep grade, D9-10 will take that in 20 minutes and it will make that grade beautiful. What are we going to do? I asked Mr. Noto this back in March 2003. You know what his answer was? I have bulldozers...20 minutes time.

Mr. Rowland said, first off, you're not comparing apples to apples.

Mr. Martin said I know, but neither are you guys. And this could come back and bite us later. He's playing cards, gentlemen. He throws out a little crumb here and he plays his aces. You guys, unfortunately, last month you wanted to fold. Don't fold. Because we don't know what he's going to do with the townhouses; we don't know what he's going to do with the second and the third building lots. Where's that going to go down?

Mr. Rowland replied, well we know its NOT going to go down Grandview. It's not coming out Grandview. Folks...Carnation and Rosebud are not mapped through streets beyond the Borough's property like Grandview. Grandview T-390 IS! The fact of the matter is, the road is there. Whether you think it wasn't traveled for 50 years and it's been impassable, the road is ON the map.

Mrs. Preate agreed and said it is a road. But that's not the law. Just because it's a paper road doesn't make it the law. There's law all over the books that says just because a road is on paper doesn't make it a road; you have to be using it. And in this case the road hasn't been used. It's been effectively closed when PennDot put the bridge in. That's the reality of it. So they can't use T390 even if they wanted to because it goes through a wetland. You can't do it. So you have to move the road down a bit about 150 to 200 feet from where it is right now. That's what

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 12 of 27**

Wharton Lawson did; they studied it. PennDot already gave preliminary approval for that site. They said OK that's an acceptable site to come in from Shady Lane Road. Just 200 feet down from where T390 is right now and we established that the cost was minimal.

Mr. Rowland stated, yes Mr. Preate, YOU established that cost and then their witnesses said that the cost was much higher, correct? Now, truthfully?

Mr. Preate said, well, the fact of the matter is the CREDIBLE testimony of the guy who is doing highway construction. Their guy, their witness doesn't do highway construction. Think about it. You weren't even there. I was there.

Mr. Moyer said Ernie, Ernie, I argued that point with you when we were in front of the judge about the estimate.

Mr. Preate said the estimate came in, you're right, Donny told me a couple of things which proved out to be true. And his final estimate, his original estimate was \$250,000; however, based upon some further review and we didn't have that benefit of that further review because Noto wouldn't let us on the land. So what happened was, between the time of the first cost analysis and the second cost analysis by Joe Gilat, we were permitted by the judge to go on the land. We went on the land. We did the further surveys and the further studies and so we found a couple things that had to be adjusted and the final number came in less than \$500,000. Well that's not much in a development that's got 150 townhouses and 39 homes going up. Joe Gilat said that a lot of the fill could be borrowed as the lots and the roads are being constructed above it. It's not a hard one. This is a guy that did the Casey Highway. This is a guy who's doing the whole shopping mall down in Wilkes-Barre. This is the same man.

Mr. MacGregor said that the bottom line is we wish you were the judge.

Mr. Preate stated that he's not the judge.

Mr. MacGregor said, no you're not. The reality is the judge is going to weigh that testimony; he's going to weigh the other testimony and he's going to issue a decision.

Mr. Preate said the point is that we presented such a strong, overwhelming case, Noto and Lavelle knew that and why do you think they rushed in here at the last minute?

Mrs. Van Wie said that Malcolm and Don, and Tim keep saying, what if we loose, what if we loose? I was there for a significant part of the time and as a result, I have no doubt we are going to win. You hired Ernie Preate, the former Pennsylvania Attorney General, who did an absolute first class job with that lawsuit. No one could have done a better job. Absolutely no better job. There was no doubt in my mind that he won that case.

Mr. Van Wie said, you keep on saying, what if we loose? I have been involved in this thing for over two years. I know all the parties involved. If I want a decision to be made regarding this, I would prefer it be made by Judge Mazzoni rather than Mike Noto or Peter Amato or Pat Lavelle or Art Capone or South Abington Board of Supervisors. Judge Mazzoni is the one person you want to make this decision. I feel very confident letting him rule on this as opposed to making a deal with people who have come up with numerous plans of settlement, numerous offers, have given different versions of plans. We don't know what they're going to do. If you take the deal, you forever loose any ability regarding this road. Once the first shovel of dirt is picked up, you're out of it. An easement is not going to give you control over land in South Abington Township where enforced by a court order or not. It can always be reconsidered. Any attorney will tell you that. It is not permanent. Anything can be reconsidered. Anything. The easement can be overcome by South Abington Township if they go into court with a public safety issue. It may not be this year or next year, but it could happen. You heard Wes Dunn say he worked for 25 years in South Abington Township. He telling you, they're going to try to get a road through. And you know what, if you take the deal you loose your power and you give the power to South Abington.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 13 of 27**

Solicitor MacGregor said the one thing that I certainly agree with Jim and Marie Van Wie is about Judge Mazzoni. He's certainly been outstanding throughout the whole proceeding. He has been great in terms of affording every witness an opportunity to be heard, controlling the procedures, but I think that everybody should also know that Judge Mazzoni, for a large part, has tried to bring the parties together and has been actively involved in these discussions for the last month and a half and as recently as Monday and certainly all I can represent in terms of the legal issues that some of the attorneys are raising, some of the issues so that Council can go ahead and vote on what they want to do. Obviously Judge Mazzoni hasn't shared with me the same issues that have been raised here tonight. I just thought that everyone should know. It's not like he's out of the picture.

Mr. Charles Martin stated that we've heard from attorney Preate, we've heard from attorney Mari Van Wie. I'd like to have YOUR opinion, Malcolm, because you did sit in. How did we do? Do you think we won?

Mr. MacGregor said that in terms of the case, I thought it went as well as could be expected and there's certainly, I think, a better chance of winning than loosing, but I wouldn't make the strength of the guarantee that Ernie and Mari would just because I've seen a lot of cases that go one way or the other. I don't think there is anybody who can guarantee one way or the other. And I also think that the issue isn't just winning or loosing with Judge Mazzoni, I think Council in this situation is required to look beyond. I think we've been admonished to look beyond just the win and loss with Mazzoni and what lies ahead. Like someone said, we'll appeal to Commonwealth Court. We do, but obviously there's issues associated with that and whether or not those cases have merit, I told Council, whether or not those cases have merit whether it's a Board of View, a civil rights, or any type of action, they still have to be defended. You're still going to be involved in that litigation. And I certainly think that you've been very reasonable in your counsel. But I don't think, for instance, indicating to Council, well we're going to sue you if you accept the deal, is very constructive.

Mr. Carl Noakes stated that he just passed a paper around and it was a pledge that some people signed. Can anybody tell me why they're not living up to this pledge?

Mr. Rowland answered that while you're on that, I think the key word in the pledge that I signed was to pursue and support all appropriate legislative and judicial remedies. Personally, as soon as I considered that to be appropriate, that's when I filled the pledges. That's the key word, "appropriate". I think appropriate is MY discretion.

Mr. Noakes asked why it isn't appropriate that we stay the course? What are you afraid of? You're the only one who's really running scared. We're taxpayers here, too

Mr. Rowland said, do you know what I'm afraid of? I pay taxes. Here's what I'm afraid of, I'm afraid of loosing the case and having the road open and then having to fund appeal after appeal after appeal, which we can't afford. And I'm worried about winning the case, going before the Board of View, and loosing. That's what I'm afraid of. I'm afraid, not for you guys, but I'm afraid for everybody else that lives in the Borough. You know, even though you guys are all here tonight, we've had people come up to each and every one of us saying when are you going to stop spending money on Grandview?

Mr. Noakes asked if Mr. Rowland told them WHY you're spending money on Grandview?

Mr. Rowland answered absolutely!

Mr. Noakes asked what did they say?

Mr. Rowland answered that it's a waste of money.

Mr. Noakes asked IS it a waste of money?

Mr. Rowland answered no. It hasn't been a waste of money.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 14 of 27**

Mr. Noakes asked if Mr. Rowland told them they were wrong?

Mr. Rowland told them it was not a waste of money.

Mr. Noakes said so they're wrong.

Mr. Rowland said not necessarily, no. This issue is so complex. You guys are sitting out there saying you know what, these guys are going to make the decision and we're not going to be happy with it, but you don't understand how it is being on this side.

Mr. Noakes asked why don't we. We're here two years. We were in this for two years. You're not.

Mr. Rowland said what do you mean I'm not? First off, I live on Sunset Street. When Oakmont went in, all that traffic...

Mr. Noakes stated that his father was a mayor for 28 consecutive years. I know what you're going through. That's why I'm not in politics. You bit the bullet. Stay there and stay the course.

Mr. Van Wie said that in all fairness, he and his wife have been involved in this for a long time. He personally has received more settlement offers from Noto and Amato than he can count on two hands. We have had to make the decision of whether or not to accept or reject those offers. One offer, they offered to deed land to ME, personally, at the end of Grandview Street. And you know what I said, well what's to prevent eminent domain from having that road opened up? And that's why we rejected that offer. That was before you people were even involved. We have been in your shoes, and we've had an even tougher decision.

Mrs. Van Wie told Council that we can't put a price on a human being.

Mr. Noakes said that he was accused in court by Mr. Piccone that he was offered one acre of land if he wouldn't enter into litigation. And that was a lie. And last Friday, Tim, one of your friends, approached me; we went to lunch, not going to mention names, same deal, one of your close personal friends.

Raymond Davis, Barrett Street, stated that he sat on Council here for the last eight years up until 2002 so I knew a little bit about the situation then. I followed this quite a bit over the years. I listened to Mr. MacGregor's comments on the settlement and in fact it was in the notes that after listening to his arguments it sounded like a solution. I said at that meeting at that time if I was one of the residents on Grandview I certainly wouldn't be happy with it but at that point I thought it brought closure to it. I thought it was the best decision for the Borough and for what they're looking at also. Now as I sit here tonight and I listen to a lot of the arguments by special solicitor Attorney Preate, and the very impassioned comments, and also by Mrs. Van Wie, who I understand is an attorney, I would have to rescind my endorsement of the settlement because I think there is overweighing matters as she was saying about the Board of View. As Attorney Preate said, he'd love to have the case. And first of all, let me say this, when an attorney volunteers to take a case for free, that gets my attention. Mr. Preate, you DID mean that, right?

Mr. Preate answered I did. I said it publicly; it's on tape, its on camera....FOR FREE. That's how strongly I believe in protecting these kids.

Mr. Raymond Davis stated that that holds a lot of credence for me when he says he knows the case, obviously because he did the whole case. And I really would question any Council members who would vote to accept this settlement at this point. I really think you'd be making a wrong decision doing that. Having sat on Council, you do not have an easy decision. My hair was brown when I started. But seriously, you have a tough decision. But I think what I heard tonight, there's overwhelming testimony that you have to reject this offer. You just have to take your chances and go with it. Ernie said he's been in it. He's been in a lot of trials and he has a real good feel for this.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 15 of 27**

And he volunteered to do this type of hearing. Attorney Van Wie has given I mean, you go through her 8 or 9 bullets that she gave you. They don't have a leg to stand on. They really don't. So all the emotion aside, I think if you're looking at a logical way to look at this and to act in the best interest of the taxpayers and that's what you're elected to do, not just Grandview Street, but the best interest of the taxpayers, I don't see how you can accept this settlement.

Christopher Joyce, Lilac Lane, said that Wes Dunn was saying something about working at South Abington Township. How many years?

Mayor Wes Dunn replied that he started down there in 1965 and retired in 1991.

Mr. Joyce asked Wes Dunn, regarding South Abington Township, what is their, for lack of a better word, what is their angle? Mr. Joyce said he had been down and Giles Stanton, one minute it seems like he's all for one thing and next minute he's all for something else. He keeps his cards close to his vest. I can't figure out what they want to see done. I don't know if they WANT them to come out at Shady Lane, if they DON'T want them to come out at Shady Lane. The one comment I did hear them make at a meeting at South Abington Township, he said he doesn't want their safety equipment going through Clarks Summit to get to South Abington. Which means he would never go for a barrier, that's what he said one time. But now it sounds like they'd be okay with that.

Mr. Dunn said my personal feeling and what I testified in court was that I believe that if the 39 homes were put in and the road was terminated at the end of the 39 homes that South Abington Township, my personal feeling, would not be comfortable with their emergency vehicles going up Shady Lane Road to the Morgan Highway, coming down Grove Street to get in there, or coming up State Street and going up Grove Street or Knapp Road. I personally feel that if I were sitting on their Board of Supervisors that I would want an easier access road to get into this development rather than have to come all the way around.

Mr. Preate said that that's his sense too, Wes. They're going to use Country Club Road to get to the 140. There's no question that in a couple years they're going to use that road.

Mr. Moyer said that they won't be able to.

Mr. Preate said yes they will. They'll use Country Club Road to get into the 140 homes.

Mr. Moyer said, oh, if they do that, that's fine. That's the 140 homes. I could care less about that.

Mr. Preate said, but Wes is saying I will guarantee you that at some point down the road, Wes is thinking five or ten years from now and I agree with him. That's the way you gotta think here. Five or ten years from now the people in those residences, those people are going to say, after somebody gets a heart attack and dies because that ambulance had to go all the way around and they file a law suit against the township for not having an ambulance able to get to them quickly, or some house burns down and somebody dies in the house because they couldn't get the fire truck in there in time. You testified beautifully, Wes. You said in rescues, emergencies, fire, police, seconds are precious. You used the word precious. It's all about getting there quickly and through the most direct route. You said to go all the way around to Grandview Street by going up past the PennDot shed back down Grove Street, up Grandview Street. That's the worst possible thing you can do. So I believe that the future residents of South Abington Township, eventually, not now, maybe five or ten years after they're in, they're going to petition South Abington or South Abington on its own gets sued, and says alright, we're going to open up Shady Lane. Just like Joe Gilat said, you could do it; there's a spot right there. It's easy to do. They're going to open it up. And particularly for emergency vehicles. If nothing else, for emergency people, they're going to put an exit right out on Shady Lane.

Mr. Moyer said that they're not going to come out Grandview Street though.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 16 of 27**

Mr. Preate said I understand that; they won't come out Grandview Street, except for the point that the easement is on South Abington land. South Abington can condemn that through eminent domain and you can do nothing about it. You, the Borough Council of Clarks Summit, any resident, can do nothing about it. Because you aren't residents there. You're not loosing anything. You don't have any loss. The road is already open and there's nothing you can do about it. The eminent domain statute that they have and they can condemn property for a public right of way. They can condemn property for roads. They can condemn property for fire and ambulance. And the poison pill then becomes absolutely worthless. They could go right over the two-foot easement that you think is the Maginot Line. Well you know what happened to the Maginot Line? It got over ran; they went right around it.

Mr. Noakes asked Solicitor MacGregor if he agreed with what Mr. Preate was saying.

Mr. MacGregor said, no. Because I believe that the agreement is worded, through the easement, can protect the interests on Grandview Street. And I'll also say that Ernie in our discussions as recently as Monday, with Judge Mazzoni. He doesn't feel the same way you do.

Mr. Preate said, well I hope you're not representing that Judge Mazzoni is pushing this agreement. Because Judge Mazzoni...

Mr. MacGregor interrupted and said Ernie, remember you said before that YOU were there, well you haven't been there at any of these discussions so don't imply by indicating any such thing. But he's taken the time to work very hard with the parties on these issues so it can be presented to them. Whatever way they intend to vote. But he has not; I can tell you as recently as Monday, and all the sessions leading up to that, raised the issue that you are raising as being a legal impediment to this agreement.

Mr. Preate said the reason he hasn't raised it is because he can't. He's impartial. He can't raise it. There's no way that you're going to tell me, I mean I'll go do there tomorrow with you, with Mari Van Wie and the press, and we'll walk into his office and we'll ask him if he has ever suggested that this be solved the way you're suggesting it be solved. I will tell you he will say no. It's the parties that have brought the thing to me and I'm just sitting here trying to work through it. But I'm not taking sides. I guarantee that's why he will say.

Mr. MacGregor said that that's the truth. He met in court with the parties. He's been very mindful of that. And if this agreement does not go through and I told Council that, he ultimately decides the case, he's been very careful not to cross that line.

Mr. Van Wie said he has one question. At your last meeting the offer was that Clarks Summit would OWN the land. Now South Abington is saying we don't want you to own the land; we want you to have an easement. Why do you think they DID that?

Mr. MacGregor said there are people in our audience, specifically Mr. Martin, who said, why do we want to own the land? Why do we want to have the liability of the land? Why should we own the land? Last month, you know, the land, it was a problem owning it and this month the issue is the easement's a problem. I think that Council has certainly heard from all parties regarding this issue.

Mr. Van Wie said that Bill Jones stood up at the South Abington Board of Supervisors meeting and said that we're not going to let land in South Abington Township; we'll give them an easement. Why? With an easement, it's easier for them to have overturned. That's why.

Councilman Roy Davis stated that he's the new kid on the block and I've heard more about this in the last 24 hours than I did in the last three months. I want to thank Mr. Noakes for giving me a heads-up. He called me last night and spent some time. I enjoyed the presentation by Jack McNulty who I think started it off at a very good level. The level of sincerity up until this point has been impressive to say the least. I just don't want to see things get to a point where it starts to get nasty. I was always a fan of Mr. Preate's and I enjoyed his presentation. However, I

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 17 of 27**

cannot sit here after three months and say that I do not have the utmost respect for Mr. MacGregor, these gentlemen who sit here. Whether I not sit here for another moon. I thought I was doing a community service by pitching in. I do think, I told Mr. Noakes this last night, I do think that at my juncture in this, I would have to recuse myself because of the fact that I've only been involved in three or four meetings. However, the sincerity from these people in trying to solve this problem, I told Mr. Noakes on the phone and he agreed with me last night. If I were sitting on a jury and I were judging a situation similar to this in Dixon City or Old Forge, or somewhere else, it wasn't my community, which I've been here for 44 years, I would have to look at some of the commonsense viewpoints that have been presented to us for the last 2 months. Now why this all came to light within the last 24 hours is beyond me. But I can sense the urgency of it and certainly Mr. Preate brought it to that peak. I have that statement to make about recusing myself, the other suggestion that I would have for my fellow council members, maybe at this time we should think about digesting some of this information. Whether council wants to do that or not, I would certainly go along with anyone else. My heart goes out to these people who live on Grandview. I think you're over emphasizing the safety factor because of the fact that I live on a road that had a lot of houses built behind me. I raised three children on Crestwood Avenue and when the cars continued to increase, I moved the kids to the back yard. My son just bought a home four years ago, on Oakford Road, the road that goes back to the Glen Oak Country Club. Since he's lived there, he has three children, I have three grandchildren there. Since he's lived there, they bought that property back there by the golf club, they've developed all that and now that road has been paved and it's a highway. What is my son going to do? He's going to move the kids into the back yard. The LAST thing in the world anybody wants to see happen is some kid get hurt. You're making it sound like we're almost wishing that if we make a decision...it is a scare tactic. It is a scare tactic. I respect a lot of the points that were brought out by Mr. Preate and attorney Van Wie and Jack McNulty and I've learned an awful lot. However, every time you get into a situation, you know I have a list of streets here that in the 44 years I've been here, I can give you examples of areas that went through the same thing: Gravel Pond Road where I lived. You go up Gravel Pond Road; NONE of those houses were up there, including the school. I lived on that road in 1960. Oakford Road, I mentioned that one. Fairview Road, what about the houses out there? What about the new houses that go up, are we going to go through this again and again and again? Now, I'm not against Grandview. I have a lot of close friends there. And my heart goes out to you. But the thing is, if it does open up, I don't know if you really, unless Mr. Preate would do it for nothing like he said, I don't know if I would really be for an appeal at this point. Please, I was prepared for this after I talked to Mr. Noakes. I think it's very unfair to the Council to use that. It's just the idea that you've got to face reality. We're the hub of an area that has grown out of site and the first question that I asked was is that road closed? And they said no, its not. Now I asked the people who were there before me, why wasn't that something that was sought originally? Why is it at the eleventh hour now, we're trying to work our way around that? It boggles my mind.

Mr. Moyer explained that what happened with that was that when South Abington asked Clarks Summit to close the road because of drugs being used and everything else, both parties agreed but in the letter it states "until further development."

Councilman Roy Davis said that's another thing he was told; he was told that the Salt Company and Clarks Summit Borough had agreed to close that road.

Mr. Moyer repeated "until further development."

Mr. Van Wie spoke to Councilman Davis. He said I appreciated your remarks. You know, we don't have sidewalks in our neighborhood. Some of the neighborhoods that you mentioned do have sidewalks, don't they?

Mr. Davis said no, none of them do. Each of those roads I mentioned do not have sidewalks. Don't get me wrong. You have a lot of great, great points and I do understand that. But to use children as a scare tactic and that one of them is going to be killed, then I....

Audience: no, no, no.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 18 of 27**

Mr. Davis said he dealt with safety for 35 years. I was a school administrator. Nobody was more concerned with the safety of our students, with traffic, with everything that was out there. I was always concerned about that. Okay? It's something that when the community grows, people buy cars. And people buy cars and they drive them down your streets and if your kids are on that street, God forbid.

Mr. John Boyle stated that he actually grew up on Grandview Street and he moved back to Carnation Drive two years ago, and we have a daughter two years old and a son who's four months old. And the reason we moved there was because of the neighborhood. I grew up at 506 Grandview Street. That road was never used from the time I was a young child. None of those houses were there. It was a swamp along there. When I was a young child I was hit on Grandview Street myself on a bike. And there was none of that. Even the traffic that's there now wasn't there. Todd Millet who lived next door to us was hit on a bike and thrown like 50 yards into the woods there. So I can't imagine what's going to happen when you open it up to 400 and some more cars a day. I have to watch now when I'm driving because there's a lot of people walking down the street now and there's a lot of blind turns. I can't imagine why you people in your right mind would want to open that area. We would want to SLOW development, really. Like he said, it's overdeveloped to begin with.

Barbara Midura, 630 Carnation Drive said she lives right by Carl Noakes and Jack Nogi and probably closest to that end of Grandview. And it amazes me that we're even talking like this and you're going to vote to settle on this issue. The whole premise of this lawsuit is misleading. I mean you can see that. He's talking about 39 houses and he spent two years of legal fees on 39 houses? And he's admitted that the only reason that he did that was because he could make more on those 39 lots than if he has to come in from Country Club Road. Well, he's already spent that money. There's more to this than 39 houses. There's 170 townhouses. I don't trust Mr. Noto. I don't even believe the lawsuit. He lost more money already than he's going to make on the 39 lots. The next thing is South Abington. I went with Carl. We went to South Abington and asked them; Jack Nogi argued with them, John Appleton argued that you can't rezone it. South Abington said we're rezoning it. Dr. Patrician had his easement; that was right in his deed. South Abington said we're taking that away. Do you think they're going to honor a two-foot easement? Do you think that they don't want a bypass? And that's what's coming. Your settlement isn't going to prevent that.

Mr. Moyer stated that's what we're trying to prevent.

Ms. Midura said well it's not going to. They have already spent more money on legal fees and Mr. Amato has too. The land goes all the way to Shady Lane. There's rumors of an exit from the Turnpike. That land is going to be commercial. It's going to be worth millions. So it's not about 39 homes. It's about millions of dollars. It's about roads that are going to go through and a bypass that's going to go through. One hundred seventy townhouses, and you're looking at 3,000 cars a day.

Mr. Moyer and Mr. Rowland said that's what they're trying to avoid. That's what we believe we're doing.

Mr. Noakes said here's a question. If this gentleman's easement was taken away, what makes you think that THIS easement can't be taken away?

Mr. Moyer replied because this is a court order.

Dr. Mike Patrician said that Axo Salt gave restrictive covenants that they didn't abide by. You're predicating a decision on an easement.

Mr. Rowland said let me ask you this. If we were making a decision tonight, based on taking 39 homes on Grandview Street with absolutely guaranteed, just say hypothetically, no way any other traffic could go on that road except those 39 homes, or we roll the dice and let the judge rule and say the road is open or go to the Board of View. If you were guaranteed not to have anything but the 39 homes, no townhouses, no whatever after, just the 39 homes. Would you take that deal?

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 19 of 27**

Audience: no, there is no guarantee.

Mr. Rowland said, you would rather roll the dice and see what happens in court?

Audience: Yes, that's why we went to court. We knew what we were getting into.

Barbara Midura said that she is an accountant. She thinks of finances and financially. It wasn't financially feasible for him to do what he did. He had troops of attorneys.

Mr. Rowland asked what is 39 times \$80,000? If he sells those lots for \$80,000? Four million dollars, that's a LOT of money.

Mr. Van Wie asked how many of those lots front on Country Club Road already?

Mr. Rowland said that they DON'T front on Country Club Road because that's the plan they submitted to South Abington. They're not fronting them there. I'm saying the plan is there.

Mrs. Van Wie said that hasn't been adopted yet. You don't know what they're going to do. If Noto and Amato were so sure that they're going to submit THAT plan, why haven't they submitted it already and asked South Abington Township to vote on it? They haven't.

Mr. MacGregor stated because they have been told by South Abington Township that South Abington Township would NOT act on a plan until they have access.

Mrs. Van Wie said that we have heard that Noto and Amato have multiple plans made out for that land. Multiple. And the other thing is that there is still more commercial land further up on that hill and what is to prevent Noto and Amato from asking that that land be rezoned residential and then Noto and Amato are saying oh more residential homes, THEY have to connect up with the 39 homes. Don't look at that tiny little map that they're giving you. They're deliberately cutting out a whole section on that hill so that you won't get the big picture. We live there; we've got it.

Barbara Midura said that that's her argument. There's more to this than 39 homes. They've already spent too much money. There's a bigger picture there.

Mr. Rowland said to Mrs. Van Wie, the boundary that they're depicting, the boundary goes all the way around the whole thing. There's no section, you're saying that they're leaving a section out but they're not. It goes all the way around.

Mrs. Van Wie said first of all it's still just an easement. And what she's saying is that two-foot strip is only on the 39 homes side. It's not on the commercial side. The two-foot strip has a left and a right. It's my understanding that the easement is only on the 39 home side, it's not on the right side of the two-foot strip.

Mr. Carl Noakes said he wants to make one more point. You were given a petition tonight of 120 signatures. No 170 signatures, in a couple of days. We also turned in over 400; those people have spoken also. I spoke with Mr. Moyer and I thanked him for coming to my house and spending over three hours. Now Don, you gave me five people who said they would accept the 39 homes?

Mr. Noakes continued, saying that in Floral Park, Quackenbush, Oakmont, Sunset, our signs were out, all the way down Grove Street. In all of those neighborhoods, we said, please, and we asked nicely, please. And we're here tonight, please. Don't open this road.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 20 of 27**

A Borough resident said that he wanted to clarify something. His wife just brought something to his attention that I'm one of those five who allegedly said that I thought this was a good idea. I in no means want that opened up to 39 homes. The only thing that I had said was that of all the crummy deals, this was the least crummy. But what the engineers say about the 20% increase in traffic? That is a huge issue as far as I'm concerned. Four hundred extra cars a day is a huge number and I definitely do not want that road opened up at all. I think we've done a good job presenting the case and I don't want to be represented as saying that I think this is a good idea. I think it rots.

Mr. Raymond Davis said that he just wanted to reiterate something here. I know that all the members of Council want to do the right thing for all of the people, not just for the residents of Grandview, and one of the reasons that I thought this was good last month and now its very, very iffy is last month it was presented there would be a deeded strip. Now we're looking at an easement. We have people here tonight showing what in reality, this is not theoretical, but in reality, happened to easements with eminent domain. You also had Wes Dunn speak tonight and tell you that in his opinion, having been in South Abington, he can't see them traveling all around the Borough to get emergency vehicles in there. So you already have a motive why South Abington would want to get a road in there. So maybe you need time to think about this. I don't if there's a big rush to vote on this tonight. You already have one member of Council who right now wants to recuse himself. He doesn't think he has enough information. Which by the way is not what he sat on Council for so maybe this person needs more time, maybe you all need more time. You've had some very powerful testimony here tonight. I wasn't privy to this last month. And now with all the facts that I've seen tonight, and again I'll go back to Ernie Preate volunteering his services, I'll stay awake all night with a lawyer doing that. That's powerful. Again, I respect Malcolm MacGregor, he's a good attorney, but this man was your solicitor. You paid him to do this. He's involved in the case today. You can't ignore the man's advice. So if nothing else, maybe you'd better table this and give yourself some time. If you do vote on it tonight, I think you have to think carefully whether you're doing right for the whole town, I think you're doing right for the whole town if you reject this settlement offer.

Barbara Midura said that the last thing she would like to say is I wouldn't think that you'd be worried about the \$130,000 that was spent, and if other people in the Borough ask, because if that road goes through and thousands of cars start coming through, its going to cost the Borough at least a million and a half dollars, maybe two. There are going to be seven homes that are going to have to be condemned. You're going to have to make it a wide the road and get sidewalks. You're going to have to take houses. So you're saying \$130,000 is a lot but it's going to be two million.

Mr. Rowland said that's if the road goes all the way through.

Mr. Preate said, oh no, that's if the 39 homes come in. That's what our expert testified to in court. You put the 39 homes there, you use 450 vehicles. Sooner or later somebody is going to have an accident. Somebody's going to get hit like this gentleman did here. Some kid gets killed and you're going to then be forced by a lawsuit to widen the road, condemn property, put sidewalks in. That was testified to in court by your own expert. You weren't there; I was there.

Mr. Rowland said, Ernie, we know you were there.

Mr. Preate said Malcolm wasn't even there. I was there, I heard this testimony. That's what our expert testified to. It's in the papers if you read them.

Mr. Moyer said that they were going to take a vote and he has just one statement to make. I HAVE been here, too, Ernie, all the way through and I was there when Mr. Martin got his petition signed at the voting booth the day of the election. And the majority of it was on the bypass. Everybody feared that bypass.

Mr. Martin interrupted and said just let me correct you. I said that the 39 homes being built in South Abington Township. I also had as my clincher line, as a good salesman would have, if you built in South Abington Township, keep your traffic in South Abington Township. There was nothing in there about a bypass; it was about traffic.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 21 of 27**

Mr. Moyer said that he believed that the majority of the people were concerned about the bypass. That's my opinion, okay? And that safety is a concern. And if that road did open all the way through, it would be tremendous not only to Grandview but the entire development. And this agreement stops that, in my opinion.

Mr. Noakes said he has one thing to say. You talk about a bypass. Nothing was mentioned in Clarks Summit's petition to vacate or close the road, about a bypass. Nothing in the ordinance 2003-02 said anything about a bypass. The certified letter that was sent to Giles Stanton, Chairman of South Abington Township – nothing about a bypass.

Mr. Preate said that nothing was testified to about a bypass, either. By the experts. I was there.

Mr. Noakes said nothing in the concerned resident's petition to Clarks Summit Borough that we handed you with 500 plus signatures, said anything about a bypass. Nothing in Mr. Rowland's testimony said anything about a bypass. I read it. Nothing in Mr. Preate's letter of January 10th to you folks at your Executive meeting said anything about a bypass. Now can I ask you where you got bypass from?

Mr. Moyer said he's been here right along, I've heard it on the tapes. I've read it in the minutes. It's been referred to as the West Side bypass. It's been referred here and it's been mentioned here. And it's been a major part of these discussions.

Mr. Noakes said and our signs and everything that I just read to you, everything that I just read to you?

Mr. Moyer said, right. I'm just telling you my opinion and why I'm doing what I'm doing.

Mr. Noakes said your opinion is one thing. But everything that's in writing? Do you read?

Mr. Moyer said yes.

Mr. Noakes said do you READ?

Mr. Moyer said I read this agreement.

Mr. Noakes said that besides what you heard, nothing in writing says nothing about a bypass. So you are using that as a scapegoat. You're backing out.

Mr. Moyer said no.

Mr. Noakes said yes.

Mr. Moyer said, okay, we'll take a vote.

Mr. Rowland, how do you vote?

Mr. Rowland said I vote yes.

Mr. Williams?

Mr. Williams asked to make a comment. I want to thank everyone who came tonight. I was very impressed by the powerful presentations and the knowledge that our people have. And the informative comments that were made. This is the type of government that we need. People who are involved, interested, and again I want to thank everyone for coming. Just to talk a little more on the presentations, very powerful, by everyone. Mr. Preate, like he said, and I will agree with you, you were here from the beginning. I also want to say that I'm proud to be a citizen

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 22 of 27**

of Clarks Summit. When you see people like this come out, it helps. With that, my vote is no. I would have voted no last month. I definitely feel that we should have the judge make the decision. Thank you.

Mr. Armbrust?

Mr. Armbrust said he wanted to make a comment. I've seen the young ladies with their signs regarding safety, the eloquent presentations by Mr. Preate, Mrs. Van Wie, and Charles Martin. Charles, I take exception with your statement of a deal being made. There was no deal. And Dr. Mike Patrician, certainly. My problem is with the stipulation of settlement itself; I'm not comfortable with it and I must vote no.

Mrs. Carey?

Mrs. Carey said a very strong no.

Mrs. Jackson?

Mrs. Jackson said yes.

Mr. Davis?

Mr. Davis said he abstained.

Mr. Moyer said he votes yes.

Mr. Moyer said the vote is three to three. Mayor, it goes to you.

Mayor Dunn said, well as I testified before, when I got on the stand and swore to tell the truth, the whole truth, and nothing but the truth so help me God, I did so with almost 30 years of law enforcement experience behind me. And I was concerned that that road was opened and it becoming a bypass from the Morgan Highway. And I'm still concerned about the safety issue. I'm still concerned about the rapid response or ambulances and fire trucks, etc. But having been on the stand and swore to tell the truth, the whole truth, and nothing but the truth, and I did so honestly, and I thought forthright at the time, that if I was to rescind that attitude now, that I would question my credibility. I would have to say no.

Mr. Moyer asked Mr. MacGregor if he would inform the court.

Mr. MacGregor said he certainly will. I will inform the court.

Police Chief

Mr. Bob Bennett, a Borough resident stated that he was concerned about finances. He asked who is our current Police Chief.

Mr. Rowland answered that Lou Vitale is the acting Police Chief. Steven Ruffino is the gentleman we hired.

Mr. Bennett said, okay. Two months ago, last month also there were discussions about his taking certain tests and qualifying physicals. We're 60 days into the process and what is the status?

Mr. Rowland stated that there is no contract.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 23 of 27**

Mr. MacGregor said that there has been a lot of back and forth negotiations and the Mayor has spent a lot of time on this.

Mr. Bennett asked how Mr. Vitale is being paid for the hours he puts in as a regular policeman. Are we paying time and a half?

Mayor Dunn answered that no, we're not paying time and a half. Mr. Vitale is working a regular shift and he has sufficient officers to assist. Mr. Vitale is the acting officer in charge but he's still working his shifts and still doing all of the work that he did as a patrol officer. He gets paid extra for being officer in charge. He is paid \$5.15 per hour for 40 hours for being Officer In Charge.

Mr. Raymond Davis asked about the new Police Chief's contract.

Mr. Moyer replied that there is no contract yet.

Mr. Raymond Davis said he's just bringing this up and he knows you can't comment on it because I know you're negotiating on it. But he's heard that there's talk about supplying this officer with a car for his full use, his own vehicle, which we've never had before. I've heard also that he's looking for a three to five year contract, some kind of guarantee. Again, I'm bring this out in the meeting and I want it in the Minutes here, that if this stuff comes up and its part of the contract, you're going to have one person in the audience very irate about this stuff.

Mr. Moyer said that there is no contract signed yet. Until it is signed, we can't comment. Your comments are well taken.

Mr. Raymond Davis said, you know, you got rid of Chief English, who was doing a good job here, at \$35,000, and that was pretty much it for his benefits, so its not like this new guy that you're hiring at \$51,000, you'll be adding a 40% cost of benefits for a police officer. That's pretty much what you're looking at. You're looking at an officer costing you \$70,000.

Mr. MacGregor said he needed to clarify one thing. We didn't get rid of Chief English. He was given an illegal contract. Our labor solicitor researched it and confirmed it; there are two cases right on point. His contract was null and void. For the record, we did not get rid of Chief English.

Mr. Raymond Davis said, okay, what you're saying then is that no Council can really give ANY Chief a contract. You have an election coming up so you couldn't give a contract for more than a year.

Mr. Moyer said that is correct.

Mayor Dunn said that a Police Chief contract can stipulate what he's going to earn, what he'll have for vacation, what equipment you might supply him, etc. but you can't give him a length of service contract.

Alarms

Mr. Bob Bennett said when he was on Council, he turned in some information about state laws and procedures and it's been two years now. Are we actually able to fine somebody on the false alarms?

Mr. MacGregor said that Council had passed a new Alarm Ordinance within the past three months.

Mr. Moyer stated that it was even advertised on the old Weiss's bulletin board that you had to register.

Mr. Dunn said that they are now in the process of setting up an alarm file system and contacting everybody that has had an alarm go off. We're making sure that they're paying the proper permit fees. So we're on top of it.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 24 of 27**

New Emergency Municipal Tax

A resident asked who will be responsible for collecting the new EMS tax. Has this ever gone out for bid?

Mr. Moyer stated that Don Wilkenson Agency is collecting the tax for the Borough. It has been put out to bid once or twice. We didn't look at that this year because we had a lot going on but we may decide to look at it again.

Mr. Rowland said that there is talk in the Commonwealth that the EMST will be sent back to the legislature and it's going to be retooled.

BIDS & QUOTATIONS:

Mr. MacGregor reported that we asked for quotes for lawn care for the Borough and the Senior Center. There was a low bidder that came in but the low bidder didn't comply with the requirements of the bid. And the other bids were much higher so the bids were not acted upon and it is my understanding that this will be re-bid.

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 Mr. Rowland to approve the Report as presented. Second by Mrs. Jackson. Discussion -- None. Motion carried 7 - 0.

COMMITTEE REPORTS:

Abington Area Joint Recreation Board - Mr. Rowland - Motion made by Mr. Rowland to approve the waiving of fees for fishing/use permits for the Eston Wilson Lake. Mrs. Jackson seconded the motion. Discussion: Mr. Rowland said that by not charging any fees, it limits our exposure to liability. Motion carried 7 - 0.

Mr. Rowland said that they are now going to allow non-motored boats on the lake. You can't take a trailer and back it up there, but a kayak, a canoe, a rowboat, something that you can carry in there, is now allowed.

Abington Council of Governments (ACOG) - Mr. Williams --

Mr. Williams asked if Council had passed a motion saying that we were agreeable for a bypass?

Mr. Rowland said that Council voted to support ACOG in getting a bypass.

Mr. Williams stated that ACOG is looking for Clarks Summit's endorsement on a bypass which would be four lanes on the sides of the railroad tracks. Or, possibly a Morgan Highway interchange. They're proposing an interchange by Lahey Park or the mausoleum in that area for people using the Morgan Highway could access the Turnpike or Interstate 81. Instead of endorsing one or the other here, Mr. Jaimeson is asking that we endorse both because they both help with the traffic problem.

Mr. Rowland made a motion to endorse the Abington COG's movement to obtain a bypass as long as it doesn't obligate us at this point to any financial consideration. Second by Mrs. Jackson. Discussion:

Barbara Grabfelder, 507 Gladiola Drive, spoke against the motion saying that she lived in the Philadelphia area for 30 years and lived two blocks away from a "road" that was on paper and simply listed as The Blue Route.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 25 of 27**

Community meetings were held and the residents of our development were told that we were blocks away from the road and that there would be no noise coming into the neighborhood due to the traffic from this road. I'm here to tell you that there is no such animal as "no noise". They told us they would put up a concrete noise barrier or an earthen berm and the sound would be blocked. What they don't tell you is that noise comes down on the other side of the barrier and the noise was terrible. Due to the noise of the truck traffic, you could not hold a conversation in your back yard. When it came time for us to retire, I wanted to return to my hometown and we told our Realtor that we would not even look at a house until we had the opportunity to stand in the yard and listen for traffic noise. We choose Gladiola Drive. So I'm very, very concerned about a bypass being put in at the railroad tracks. I feel that again, Council will be making a decision that will greatly impact Floral Park, just like Grandview Street did.

Following a traffic study, many alternatives were presented. Abington Council of Government is asking Clarks Summit Borough to endorse a bypass along the railroad tracks and I'm urging Clarks Summit Council to reject that.

This proposal that they're talking about right now will take you from the cloverleaf entrance at the Turnpike in Chinchilla, across the road to the railroad tracks and then it will be a 45 to 50 mile hour bypass that would go two lanes on either side of the tracks, no other access, and then it would end somewhere in the vicinity of Chermak's Garage. They have not determined exactly where.

Mr. Williams said that the Abington COG feels that that bypass and the Morgan Highway access site to the Turnpike/Interstate 81 are the most feasible and least costly of all the options.

Mr. Moyer was told that in order to put a bypass there at the tracks, there are four new bridges there. When those bridges were done, there was not thinking of a bypass. Those four bridges would have to be redone.

Mr. Williams said that Tunkhannock Borough is so thrilled with getting their town back, after they put in their bypass, that they formed a committee who is willing to go out and speak to any municipality who might be considering a bypass.

Solicitor MacGregor said that this is a different situation because the bypass installed in Tunkhannock was able to go out in the middle of nowhere and go around the town. Clarks Summit does not have that opportunity. There are homes already there.

Mrs. Grabfelder agreed and said exactly. This is a fully developed RESIDENTIAL R1 neighborhood that will be impacted.

Mr. Rowland said perhaps we missed the boat. This issue should have been brought up earlier when all the Grandview and Floral Park people were here in the audience.

Mr. Rowland withdrew his motion. Mrs. Jackson withdrew her second. It was agreed that Council should ask Lee Jameson or a COG representative to attend a Council meeting and give a presentation on the issue.

FEMA Grant for Flooding

Council President Moyer said that before Jim Vones left, he made a preliminary grant application to FEMA to get reimbursed for some of the costs incurred during the flooding that took place in September 2004. We picked up on some of the paperwork and completed the application and took the representative around and we'll be getting \$28,600. So the efforts of Warren and Barbara in the office paid off. It will take four to five weeks for the money to arrive.

We've also applied for another grant regarding the drainage ditch over on Division Street. That grant should go in shortly.

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 26 of 27**

Sewer Line Repair

Mr. Moyer said he called the railroad and found out they were able to put the line on the other side of the tracks and this will save us money. The engineer is designing it and from there we'll put some specs together. Right now it's on the right side if you start at Miles; it goes down the right side. But what happens is this side of town it goes underneath the tracks and when you go down further, it crosses the tracks again. So when we go down on the left side we have to go underneath the tracks to get the sewage up from the upper side and that will be included in the costs. This is a major repair that nobody realizes. But if you go down and look at the tracks you see green water down there.

POLICE REPORT

Mayor Dunn asked permission to present both this month's and next month's report at the next meeting to give him an opportunity to check some of his figures for accuracy. They mayor was asked to present both reports at the next meeting.

BILLS TO BE PAID:

Motion by Mr. Rowland and seconded by Mr. Armbrust to approve payments of \$43,024.95 from the General Fund, and for the period of February 1, 2005 and February 28, 2005 approve \$105,184.64 from the General Fund, \$50,425.06 from Payroll, and \$124,275.46 from Sewer Fund. Discussion: None. Motion carried 7 – 0. Mr. Moyer stated that he wants to go on record that he does abstain from voting on any Water Company bills or any Roto Rooter Bills during the year.

OLD BUSINESS:

Resolution 2005-04 – Consent Resolution of Board of Directors of Clarks Summit Borough to establish a "Cafeteria Plan" within Section 125 of the Internal Revenue Code.

This plan was established to provide for the co-payment for health care premiums by the non-uniform employees that was included in the contract. In order for the employee's co-payments to be done on a pre-tax basis, it was necessary to establish this plan and have it approved by Council. Motion made by Mr. Rowland and seconded by Mr. Armbrust to adopt Resolution 2005-04. Discussion: None Motion carried 7 – 0.

NEW BUSINESS:

Resolution 2005-05 – Community Development Block Grant (CDBG) for FY 2005

Motion made by Mr. Rowland and seconded by Mrs. Jackson to approve. Discussion: None. Motion carried 7 – 0.

Resolution 2005-06 – Colin Fanning Service Recognition

Motion made by Mrs. Carey and seconded by Mr. Armbrust to approve. Discussion: None. Motion carried 7 – 0.

Letter of resignation from Colin Fanning from the Planning Commission received February 16, 2005. Motion made by Mr. Rowland and seconded by Mrs. Jackson to regrettfully accept resignation.

BOROUGH SEWER OFFICE REPORT:

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, MARCH 2nd, 2005
Page 27 of 27**

The February 2005 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.

SOLICITOR'S REPORT:

None

CORRESPONDENCE:

Timothy L. Kropa, 514 Grandview Street, wishes to do an Eagle Scout project on Knapp Road to place additional forsythia bushes and beautify the fenced area and also replace and stain the broken and missing fence rails at the Lewis Lane Park.

EXECUTIVE SESSIONS:

President Moyer reported that one Executive Session had been held prior to this meeting on February 2, 2005, and one was scheduled to be held during this meeting on March 2, 2005 and none were to be held subsequent.

RECESS:

At approximately 10:35 PM, President Moyer recessed the meeting to move into Executive Session.

RECONVENE:

At approximately 11:46 PM, President Moyer reconvened the meeting.

Motion made by Mr. Rowland and seconded by Mrs. Jackson to hire Virginia Kehoe as an administrative assistant at the rate of \$10.00 per hour with no benefits for a three-week trial period. Discussion: None. Motion carried 7 – 0.

Motion made by Mr. Rowland to allow the Mayor to attend a conference to be held at Penn State. Seconded by Mrs. Jackson. Discussion: None. Motion carried 7 – 0.

ADJOURNMENT:

There being no further business before Council the Meeting adjourned at approximately 11:56 PM.

Respectfully submitted,

**Barbara R. Grabfelder
Borough Secretary**

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