

BOROUGH OF CLARKS SUMMIT

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BOROUGH COUNCIL REGULAR MEETING

Wednesday, October 7, 2009

7:00 p.m.

**Clarks Summit Borough Building
Loughney Hall
304 State Street
Clarks Summit, Pennsylvania**

**LISA M. GRAFF, RMR
COURT REPORTER**

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CLARKS SUMMIT BOROUGH COUNCIL :

COUNCILWOMAN GERRY CAREY, PRESIDENT

COUNCILMAN PATRICK WILLIAMS, VICE PRESIDENT

COUNCILMAN HERMAN JOHNSON

COUNCILWOMAN KATHY DRAKE

COUNCILWOMAN BARBARA EVANS

COUNCILMAN ROY DAVIS

COUNCILMAN MURLI RAJAN

ALSO PRESENT :

MAYOR HARRY KELLY

CHIEF LOU VITALE

VIRGINIA KEHOE, BOROUGH MANAGER

ERNIE PREATE, ESQUIRE, SOLICITOR

MIKE COWLEY, ESQUIRE

1 MS. CAREY: I'd like to call this
2 Borough Council meeting to order, October
3 the 7th, 2009. We'll do our rollcall. Mrs.
4 Drake.

5 MS. DRAKE: Here.

6 MS. CAREY: Mr. Rajan.

7 MR. RAJAN: Here.

8 MS. CAREY: Ms. Kehoe.

9 MS. KEHOE: Here.

10 MS. CAREY: Mr. Williams.

11 MR. WILLIAMS: Here.

12 MS. CAREY: Mrs. Evans.

13 MS. EVANS: Here.

14 MS. CAREY: Mayor Kelly.

15 MAYOR KELLY: Here.

16 MS. CAREY: Chief Vitale.

17 CHIEF VITALE: Here.

18 MS. CAREY: Mr. Davis.

19 MR. DAVIS: Here.

20 MS. CAREY: Mr. Johnson.

21 MR. JOHNSON: Here.

22 MS. CAREY: And Solicitor Preate.

23 MR. PREATE: Here.

24 MS. KEHOE: And for the record, we
25 also have Mike Cowley present.

1 (WHEREUPON, there was a moment of meditation and The
2 Pledge of Allegiance was recited.)

3 MS. CAREY: The first item on our
4 agenda is public hearing for Ordinance
5 2009-13. We've updated our ordinances and
6 Council members have had this copy and have
7 gone over them, and I'm --

8 MS. KEHOE: We have to open up for
9 public comment first, but it is advertised a
10 potential amendment to the ordinance.

11 MS. CAREY: Do we have any public
12 comment or input on the ordinances that have
13 --

14 MR. RAY DAVIS: Madame President,
15 for everybody here, could you please explain
16 what the ordinances are, what you will be
17 voting on? I'm not sure if it's planning,
18 zoning. Can you please do that?

19 MS. CAREY: Virginia, do you want to
20 bring them up to date on it? We are not
21 going to read the entire thing because --

22 MS. KEHOE: Sure. This has been
23 ongoing. The planning commission spent six,
24 eight months working on some amendments to
25 the zoning ordinance. The purpose is really

1 just to clean up some definition and fill in
2 some areas where they felt there wasn't
3 enough clarity for appropriate decisions.

4 The result is recommended Ordinance
5 No. 2009-13, which has been advertised and
6 available for public review for the past
7 couple of weeks. It basically -- it defines
8 a contractor yard, something that wasn't in
9 the ordinance before, it talks a little bit
10 more about clearer definitions of
11 restaurants and parking areas, et cetera, it
12 talks about fences around pools, just covers
13 some things that weren't specifically
14 addressed in our previous zoning ordinance.

15 So, if we wanted to open this up for
16 public comment, if anybody had any issues
17 with it that they wanted to talk about.
18 Okay. We can just proceed with our vote.
19 Do we have a motion to accept?

20 MR. JOHNSON: Madame President, I'll
21 make a motion that we accept Ordinance
22 2009-13.

23 MS. CAREY: Do we have a second?

24 MR. WILLIAMS: I'll second that.

25 MS. CAREY: All in favor?

1 MR. WILLIAMS: Aye.

2 MS. CAREY: Aye.

3 MR. DAVIS: Aye.

4 MS. DRAKE: Aye.

5 MS. EVANS: Aye.

6 MR. JOHNSON: Aye.

7 MR. RAJAN: Aye.

8 MS. CAREY: All opposed? Favors
9 have it. Thank you. Okay. Are we going to
10 move right to the public input?

11 MS. KEHOE: You want to put that
12 ahead of the agenda? That makes sense.

13 MS. CAREY: Well, on our agenda
14 instead of doing the approval of our agenda
15 and approval of our minutes, we are going to
16 jump right into the public comment and input
17 so that we can give everybody an opportunity
18 this evening that wants to speak.

19 What we want to inform you with is
20 most of you people are here because of the
21 Grandview decision made, it was a week ago
22 today actually, and what we want to let you
23 know is that this past week we've had many,
24 many people working together on this, we
25 have lawyers who have come from within our

1 borough, outside our borough, we have got
2 financial experts that have come forward, we
3 got people from Harrisburg, we have -- we're
4 moving in a good direction. We have come up
5 with some excellent solutions, and it's
6 going to take time.

7 We hope to have this resolved by our
8 next meeting, and most important is that we
9 want to maintain our tax base the way it is,
10 and it's being worked in that direction.

11 Everybody here on Council has been
12 working very hard on this and there has been
13 three -- I'm the third Council President
14 that has been under this umbrella of the
15 Grandview Street issue, where myself
16 personally, it's a financial issue that
17 we're going to be able to work it out.

18 Nobody lost a life over it, nobody's
19 lost their homes, so everything basically is
20 still intact and we can -- we'll work the
21 financial end out of it.

22 We can't -- there's not too much
23 information that we can give because of the
24 position that the people that are working on
25 this with us have requested us to do that.

1 By next month, like we said, we hope to have
2 it totally resolved and worked out.

3 So -- and we have a lot of our --
4 we're -- our town is 100 years old. We have
5 a lot of seniors that live in the town,
6 people that bought their homes and lived in
7 them their whole life. We don't want this
8 to be any impact on them, and that's why we
9 we're really chipping away.

10 But I wish I could give you more
11 information, but we've got some really good
12 solid positive stuff going on and we
13 definitely -- we're going to be okay.

14 We all have to work together with
15 this and work together as a community.
16 Clarks Summit is a strong community, and
17 that's also what is going to make it work.
18 Gerry, if I may. My name is Steve Evers.

19 MS. CAREY: Would you like to take
20 the podium, Steve?

21 MR. EVERS: Not really, but I will.

22 MS. KEHOE: Gerry, after this, we
23 did have people sign in first.

24 MS. CAREY: Okay.

25 MR. EVERS: You know, I didn't come

1 here with a grudge, with the intent of
2 saying anything, but when you start the
3 meeting by saying we're not going to talk
4 about it apparently or you can't talk about
5 anything until next month, as a lawyer, I
6 know the appeal period is going to be over.

7 So, I really think that the
8 residents of our community have a right to
9 know what's going to happen, whether you are
10 going to pursue this litigation or whether
11 the thrust should be trying to amicably
12 resolve it or will you throw more money --
13 good money after bad? I don't know.

14 But, Gerry, honestly, I think there
15 has to be a discussion before that appeal
16 period comes, whether it's tonight or next
17 week or something, and I know it's the
18 board's decision as to whether to appeal or
19 not.

20 MS. CAREY: Right.

21 MR. EVERS: But I don't think nicey
22 nice and everything's going to be okay,
23 we're going to talk about it next month
24 really fits the bill. And that's all I have
25 to say.

1 I don't have an opinion one way or
2 another, but honestly, I think the residents
3 of the community have a right to know what
4 the hell is going to happen.

5 MS. CAREY: Well, I would leave that
6 up to our solicitor and his co-counsel there
7 that we're working under their direction.

8 MR. PREATE: You want me to say
9 something, Gerry, at this point?

10 MS. CAREY: I do.

11 MR. PREATE: Sure. You know, Steve
12 has a point, and we'd be -- it would be
13 malfeasance for myself and co-counsel on the
14 case, Mike Cowley to not prepare for an
15 appeal or actually it's called a motion for
16 non obstante veredicto, it's a motion to
17 mold the verdict and a motion for new trial.

18 It will be addressed to Judge
19 Minora, who is the trial judge, and we've
20 already prepared a rough draft of it, we
21 discussed it. But that's just one of our
22 options, folks. It's not just the idea of
23 taking a motion and handing it to the judge.
24 We're exploring other avenues to see what
25 our options are.

1 For example, one of the things
2 that's on the agenda tonight, if I may, you
3 will see is under old business Resolution
4 regarding the traffic signal, all right?
5 That's the traffic signal at, and I'm going
6 to mention it now, because I think you
7 should know this, the traffic signal at the
8 Morgan Highway and Grove Street in front of
9 PennDOT, that was a part of the damages
10 assessed in this case, about \$146,000, and
11 this came up in 2007. I wasn't here, I
12 believe, for that, but it was tabled at that
13 time, it was tabled, it was not decided, and
14 so it's now ripe for whether we should
15 approve the resolution to deal with the
16 intersection lighting and timing and
17 whatever needs to be done on Grove Street
18 and Morgan Highway.

19 And so, I just want to let you all
20 know, and I told Gerry this and I told
21 Virginia this, I met with PennDOT, and
22 PennDOT said, Look, we can waive that. If
23 you do not go ahead and approve this
24 resolution tonight, you turn it down, then
25 we'll talk to Mr. Noto, give Mr. Noto his

1 money that he's put in escrow and that will
2 be the end of it.

3 So, that takes out of a \$2.3 million
4 judgment, that takes \$145,000, \$146,000 off
5 the table. That's the kind of work we're
6 doing, but it has to be done publicly
7 tonight. That's why I'm mentioning it to
8 you.

9 But there are other things that are
10 happening that are not public that are
11 litigation oriented, that are financially
12 oriented that we'll -- that we need more
13 information on.

14 We haven't met with any of the top
15 level bankers yet, we haven't looked at our
16 -- we haven't talked to all of the financial
17 experts that we need to talk to. It's only
18 a week, but it's -- you know, when we first
19 got into this matter the last week, we
20 indicated that we thought that there were
21 some errors made in the trial that deprived
22 us allegedly of a fair trial, and we have
23 prepared 11 pages of error already based
24 upon the conduct of the trial.

25 So, they haven't been filed yet, so

1 it will be improper for me to discuss all of
2 the things that we're raising, except that
3 one of the things that was clear was raised
4 publicly and that was the inconsistent prior
5 statements that have been made in the trial
6 which we were not able to put before the
7 jury, and so, therefore, we felt that the
8 jury didn't hear all the evidence that it
9 should have heard.

10 Consequently, that's one of the
11 reasons that we -- we're -- we'll probably
12 be looking at the filing of a motion by the
13 end of this week. Ten days are up on
14 Saturday. We have ten days to file, so it
15 would be prudent to file -- my
16 recommendation to the council would be that
17 it would be prudent to file, because without
18 filing, you're essentially giving up and you
19 don't get a chance to mold the verdict, you
20 don't get a chance to do any setoffs, you
21 don't get any chance to get the judge to
22 reconsider.

23 So, you really do need to file so
24 that you got some leverage, so you've got
25 some -- if you're going to even negotiate

1 down the road.

2 If there's a chance that we
3 negotiate down the road with Mr. Amato, if
4 you don't file, he's got all the leverage,
5 we have none. So, those are the kinds of
6 things that we are talking about now.

7 So, it would be prudent, I'd
8 recommend it to council that we take the
9 first step in getting the judge to look at
10 some of the rulings and to see if we can't
11 get some relief, at least temporarily, and
12 if not permanently, in reducing the amount
13 of the verdict and maybe even giving us a
14 new trial. I don't know. You don't know
15 that until you actually try.

16 But we believe that that's the
17 prudent approach, it's the approach that has
18 Mike and I have discussed and other lawyers
19 that have talked to us about it that we've
20 talked to, and they believe that would be
21 the proper thing to do at this juncture,
22 since you don't have a lot of time. You
23 only have ten days, so you got to -- by next
24 -- that's what I think Gerry was alluding
25 to, our president, when she said we should

1 have a lot of things resolved by that time,
2 but what we'd be looking at would be filing
3 and then seeing what the process is of the
4 court to hear our complaints and our ideas
5 on what should be done with the verdict.

6 That has nothing to do with the
7 practicality of the finances, you know, on
8 its face, but it could, it could. For
9 example, one of the things that we argued in
10 the proceedings was that Mr. Noto testified
11 that because -- that they were never
12 intending to do anything but use all of
13 Grandview Street for all of the traffic,
14 that's what he testified to.

15 Well, you know, six years of
16 litigation, he testified just the opposite,
17 we allege, and that is he said, Oh, only the
18 39 homes are going to use Grandview Street,
19 multi-family townhouses, 130 of them,
20 they're going to go out another way. That's
21 what he said to Judge Mazzoni. The
22 transcript is here.

23 When he gets to the trial here last
24 week he says, Oh, no, no. We're going to
25 use Grandview Street, which would put cars

1 from 160 residences out Grandview Street.
2 And you multiply that roughly times about
3 four and a half, five, and you get 1,000
4 cars a day going over a 20-foot road with
5 104 kids on it, seven school bus stops, two
6 stop signs, you're just asking for disaster
7 at that point, and that's why Council after
8 Council here since 2003 voted to close the
9 road for safety reasons, for the protection
10 of the kids in the community.

11 And frankly, Judge Mazzone saw it
12 that way. He said, you're absolutely right,
13 you're justified in closing the road, you
14 have proper reasons for doing this. This
15 was not done on a whim, it wasn't done out
16 of animosity towards Mr. Noto or Mr. Amato,
17 they're both fine people, it was done
18 because the Council believed that it was
19 prudent for the borough to protect its
20 residents, particularly its children in that
21 area.

22 And anybody that has been over there
23 on that street knows that what a disaster
24 that would have been with 1,000 new cars
25 coming over there, and particularly at the

1 end right there where Jack Nogi's house is
2 and Carl Noakes' house is. I mean, they
3 don't have -- the traffic could go from four
4 cars a day to 1004 cars a day.

5 They already had accidents, and Carl
6 Noakes is here, already had one accident
7 with people using that when it was
8 temporarily open.

9 So, you know, we did -- I think the
10 Council did the most prudent thing it could
11 do, and the significant factor here is that
12 a judge after a year's worth of hearings,
13 over 2,000 pages of testimony and experts
14 said it's the right thing and the proper
15 thing to do. So, we went forward on that.

16 Now, on the other hand, what if we
17 didn't close the road? What if we didn't
18 close the road? Well, I can tell you what
19 would happen, even if there was just 39
20 homes there. We had an expert testify
21 before Judge Mazzoni under oath that even
22 the addition of two to 300 cars at that
23 narrow street would make an already
24 dangerous condition even more dangerous.

25 And so, with that on the record and

1 some child got hit by a car, some elderly
2 person, a senior citizen walking out there
3 for exercise, which they often do, kids
4 playing baseball in the street, somebody got
5 hurt because of that, I can just see a
6 lawyer like Steve Evers or Joe Quinn or some
7 of these big plaintiff lawyers saying, You
8 had it on the record, you're liable.

9 And you'll get one or two of those
10 kind of lawsuits and you lose your
11 insurance, the borough loses its insurance
12 to protect itself, number one, and number
13 two, when you do that, the only way you can
14 get back your insurance is starting to
15 condemn your own people's property.

16 We were told by experts, it in the
17 record before Mazzoni, Judge Mazzoni, at
18 least three to five homes would have to be
19 condemned because they -- once you take --
20 you go from 20 feet, 30 feet to 50 feet,
21 which you would have to do, and you go up
22 the hills on either side, certain homes,
23 particularly on the Noakes' side of the road
24 would be inaccessible, and inaccessibility
25 means you pay them eminent domain, you pay

1 them damages.

2 In addition to that, all of the
3 trees that you see along Grandview Street
4 now, they're 40, 50, 60 feet higher, maybe
5 higher, some of them have been there for
6 maybe 50 to 100 years. They would all be
7 destroyed, they would all be cut down and
8 the roadway would have to be expanded to 30
9 paved feet. That means front yards and
10 everybody from Jack Nogi and Carl Noakes,
11 all the way down to the corner of Grove
12 Street would lose ten feet approximately on
13 either side of their road -- of Grandview
14 Street. And that's ten feet of yard, and
15 it's nice yard, and it's manicured and it's
16 trees and it's wonderful shrubbery. You'd
17 change the character of the street.

18 In addition to that, you would be --
19 opening up Grandview Street would be the
20 shortcut to the Abingtons, through the
21 Abingtons, around the Abingtons, and you are
22 going to affect every street on that side of
23 the borough, maybe every street in the
24 borough, because you're going to put traffic
25 out Knapp Road behind the school, around the

1 school down there, you are going to put
2 people out onto Center Street, people out
3 onto Grove Street, and you'd probably have a
4 light at Grove Street and Grandview Street
5 then. That's another thing. You would be
6 spending millions.

7 I estimate that by closing the road,
8 we saved the borough \$10 million dollars in
9 condemnation costs and relocation costs and
10 costs for restructuring the road. And
11 that's backed up by our engineers from
12 Borton-Lawson, who are some of the finest
13 engineers in the region.

14 So, that's the dilemma that councils
15 have faced over the years and have made it
16 possible for Grandview Street and this
17 neighborhood to be safe. There hasn't been
18 any accidents, nobody's been killed, as our
19 president has said, no kid has been killed.

20 Now, I don't know what price you put
21 on a life, but there's never, never a high
22 enough price to save a child's life. So
23 that's why this Council acted and a judge
24 said what you did was right and proper.
25 Okay. Anybody have any questions?

1 MR. COWLEY: Can I just add
2 something?

3 MR. PREATE: Yes.

4 MR. COWLEY: I don't have quite the
5 passion that Ernie has because my
6 involvement in this started about six weeks
7 ago, but I just want to give you a little
8 bit of where -- Ernie told you where we're
9 at, but the way it works is this, and I
10 think you are all familiar with it from
11 seeing television, each and every time
12 there's an objection in trial, the judge
13 either sustains or overrules the objection.
14 Each time that is done, there is a potential
15 for error, because the judge makes a rather
16 instantaneous decision as to the testimony
17 that is going to be offered.

18 We feel that there is a very, very,
19 I used two verys, valid reason for filing a
20 motion for a new trial and a motion for
21 those fancy Latin words that Ernie used,
22 it's called a judgement NOV.

23 These will become apparent to you in
24 a few days, but the action that is being
25 taken technically is not an appeal.

1 Technically it is a motion for a new trial
2 that will go back to Judge Minora.

3 Judge Minora will then review the
4 record in the case and he will -- I believe
5 there's a 120-day window -- file a written
6 opinion as to the motion for a new trial and
7 motion NOV. If at that time it's necessary
8 to file an appeal, then an appeal would be
9 taken to the Commonwealth Court.

10 And I just want to say that all of
11 those books when you see the politicians or
12 even the doctors on TV and they have those
13 books behind them, they all look the same,
14 those are all decisions by appellate courts,
15 and it is not unusual for any plaintiff or
16 defendant who feels that they have been put
17 in a position where a judge has made an
18 error, and I don't even think it's a
19 mistake, it's like a well-thought quick
20 decision that the judge makes, but all of
21 those books have to do with appeals.

22 So, this is not something that is at
23 all uncommon in the law. Obviously in this
24 case, you know, the stakes are pretty high
25 for this community, and the stakes are

1 pretty high for the developer, and as a
2 result, there is going to be some, I think,
3 significant argument on the law and the
4 facts in this case, but it's technically not
5 an appeal, and that's what I want to say.

6 We're going back to the same judge
7 who tried the case to say we think at that
8 moment that instead of sustaining the
9 objection or overruling the objection, you
10 should have done the opposite. Thank you.

11 MS. CAREY: Mr. Dave McQueen. Dave,
12 can you give us your name and your address?

13 MR. MCQUEEN: Dave McQueen, 405
14 South State Street, Clarks Summit. First of
15 all, the \$2.3 million is really \$3.1 million
16 with interest. If Mr. Amato goes after his
17 attorney fees and engineering fees and
18 whatever, it's going to be over \$4 million.
19 So, we're not talking \$2.3 million. What
20 did the last trial cost us?

21 MS. CAREY: We don't have that
22 information.

23 MR. MCQUEEN: You must have the
24 figures of what that trial cost us.

25 MS. CAREY: We don't have the

1 figures in front of us right now, Dave.

2 MR. MCQUEEN: What did you pay for
3 all the expert lawyers from Philadelphia?

4 MS. CAREY: We'll get all of that
5 information for you, if you want, you know
6 --

7 MR. MCQUEEN: Well, somebody has to.
8 You know, now you're talking about doing it
9 all over again. Everything that Ernie has
10 told us here, everything he talked about, he
11 tried to convince us, he didn't convince a
12 jury, how -- why should we convince us?

13 MR. PREATE: Because the jury didn't
14 hear all the evidence. Because the jury
15 didn't hear all the evidence, Dave.

16 MR. MCQUEEN: Why didn't you
17 cross-examine him and tell him he perjured
18 himself?

19 MR. PREATE: Who's that?

20 MR. MCQUEEN: You said Mr. Amato
21 perjured himself in the trial.

22 MR. PREATE: No, not Mr. Amato. I
23 didn't say that.

24 MR. MCQUEEN: You said he testified
25 two different --

1 MR. PREATE: Mr. Noto, Mr. Noto.

2 MR. MCQUEEN: Why didn't you cross
3 examination him and tell him he perjured
4 himself?

5 MR. PREATE: That's the whole point.
6 We couldn't.

7 MR. MCQUEEN: You can cross-examine
8 any witness.

9 MR. PREATE: You can't if the judge
10 rules that you can't.

11 MR. MCQUEEN: I'm not a lawyer, but
12 I'm going to hire one.

13 MR. PREATE: The judge ruled that we
14 couldn't cross-examine him on his prior
15 statements. It's simple as that. We filed
16 a motion prior to trial to --

17 MR. MCQUEEN: Well, is the judge
18 right by refusing it?

19 MR. PREATE: We think he was wrong,
20 and that's one of the arguments that we're
21 going to make. That's why I said, the jury
22 didn't hear a good chunk of the case.

23 MR. MCQUEEN: You guys are chasing
24 -- it's ridiculous. You can't keep spending
25 the taxpayers money like this. You're

1 liable for over \$4 million right now. You
2 have to settle it. You have got to go to
3 Mr. Noto or Amato or wherever it is, and
4 you've got to settle it. You're not going
5 to go to trial again. I'll do everything I
6 can to stop it.

7 MR. PREATE: What would you have us
8 settle it for?

9 MR. MCQUEEN: If you decide to go to
10 trial and I can't stop it, who is going to
11 represent us?

12 MR. PREATE: What would you have us
13 settle it for? What amount?

14 MR. MCQUEEN: I haven't got any
15 idea. You owe them over \$4 million. You
16 tell me.

17 MR. PREATE: Well, we are. We're
18 working it out. We're working it out.

19 MR. MCQUEEN: If we owed you \$4
20 million, what would you settle it for?

21 MR. PREATE: I would settle for \$4
22 million. If I don't take an appeal, I'll
23 settle for \$4 million.

24 MR. MCQUEEN: Thank you.

25 MR. COWLEY: You sir, I don't know

1 your name, I never met you before.

2 MR. MCQUEEN: Dave McQueen.

3 MR. COWLEY: Mr. McQueen, just
4 because action is being taken on one front
5 does not mean that all options are not being
6 taken and evaluated and discussed.

7 You don't just go in one course at
8 this point. And you're probably correct
9 that the judgment is going to be increased
10 by interest and cost and the like.

11 MR. MCQUEEN: A lot. It's
12 compounded daily.

13 MR. COWLEY: But what I'm saying to
14 you is that all of the options that are
15 available are being pursued. Now, you don't
16 want me to get into specifics about it
17 because it would kind of ruin what we are
18 trying to do and it does take people who are
19 confident in each other's positions to
20 discuss things and to make it work.

21 But just because you file for a new
22 trial doesn't mean that other avenues are
23 not being pursued. In fact, they are being
24 pursued. Every option that could be pursued
25 is being pursued.

1 MR. MCQUEEN: Well, when are you
2 going to have some answers on what you're
3 pursuing? We don't want to wait a month,
4 I'll tell you that.

5 MR. COWLEY: In all honesty, I can't
6 tell you that because it's all ongoing. I
7 mean, it's been a week, and I understand
8 that, but a week is not a lot of time.

9 MR. MCQUEEN: It's been six years.

10 MR. COWLEY: Well, it's been a week
11 since the verdict, sir, that's what I'm
12 talking about. And, again, that's what we
13 have to deal with is the verdict.

14 MR. MCQUEEN: Who is going to try
15 the new trial if we go to trial? Are we
16 going to get a new solicitor?

17 MR. COWLEY: That's up to council.

18 MR. MCQUEEN: Are we going to get a
19 solicitor that understands real estate or
20 are we going to keep throwing money at our
21 solicitor we have now? Has the Council made
22 a decision on that or are you going to?

23 MS. CAREY: Right now we're dealing
24 with what we have to deal with now. These
25 are questions that have nothing to do with

1 what we are --

2 MR. MCQUEEN: You can't keep
3 driving it up, that's all I'm saying, and
4 I'm going to do everything I can --

5 MS. CAREY: We're all well aware of
6 that.

7 MR. MCQUEEN: In fact, I am going to
8 see Steve Evers after the meeting. Maybe he
9 will represent me.

10 MS. CAREY: Karen Whineman.

11 MS. WHINEMAN: My question was
12 answered already.

13 MS. CAREY: Okay. Thank you. Andy.

14 MR. MONAS: My name is Andy Monas,
15 405 South State Street, Clarks Summit. Just
16 wish to say that I've been following this
17 for a while and I agree with Mr. McQueen
18 that you're going to be ending up throwing
19 good money after bad.

20 I have been in business for 40
21 years, I know that settlement is hard to
22 swallow sometimes. I know you went into
23 this with the best of intentions, and I'm
24 sure there's a lot of you sitting up there
25 right now that feel there's absolutely no

1 reason not to pay or not to lose. The
2 reality of it is, it can cost a lot more
3 money.

4 My second suggestion is that
5 Mr. Preate not be allowed, should there be
6 another trial. You should get another
7 attorney. We spent enough money. There's
8 enough water gone under the bridge.
9 Obviously the other people's money did a
10 better job, otherwise the verdict would have
11 turned out the other way.

12 The only other thing I have to say
13 is I noticed on here Resolution No. 10, new
14 business, appoint Mr. Graci to assist Ernie
15 in our legal briefs.

16 I think Ernie has done a fine job
17 getting us to where we are now. I don't see
18 any reason for additional money to be spent.
19 You total up the amount of money that has
20 been paid, I think he should hire somebody
21 on his own to help him. I think we've done
22 enough.

23 And I do hope that common sense will
24 prevail and that settlement that your
25 discussing goes forth, because the amount of

1 money is not going to shrink, it's not going
2 to go away, and we all want to get on with
3 our lives.

4 And as Gerry said, there's a lot of
5 senior citizens in this area that you go
6 throw a bill at them for -- an additional
7 tax bill, it's going to hurt them. Thank
8 you very much.

9 MS. CAREY: Thank you. Tim Rowland.

10 MR. ROWLAND: Tim Rowland, 618
11 Sunset Street, Clarks Summit, and I was the
12 vice president of the Council at the time
13 Grandview Street was closed.

14 And like Steve Evers, I did not come
15 here to admonish anybody on what happened --
16 God knows there's probably plenty to share
17 around here -- but we are here tonight
18 because we are looking at potentially over
19 \$4 million.

20 And as far as Mr. Preate had
21 mentioned in the -- Mr. Noto's testimony,
22 when I was the vice president of Council at
23 the time that the settlement agreement was
24 before Council which ultimately resulted in
25 Council voting not to take the settlement

1 agreement and to close the road, the
2 settlement agreement included only the 39
3 residential homes. The 140 townhouses were
4 going out the other way, so that was -- so,
5 I think at the time the settlement was not
6 taken, I think for Mr. Noto, I'm not
7 defending Mr. Noto, but I think at that time
8 once the settlement was off the table, it's
9 off the table. It was the intention never
10 to bring the 140 townhouses into the Borough
11 of Clarks Summit.

12 The other issue about the expense of
13 improving Grandview Street into the borough
14 and widening the road and putting traffic
15 lights in, I said when I was on the table at
16 that time, you know, I sat in a meeting
17 where we brought children in and said kids
18 are going to be hit by cars and roads need
19 sidewalks, if you go to the Highland Avenue
20 and Center Street, which carry easily ten
21 times the amount of traffic that Grandview
22 Street would have captured, even putting 39
23 homes and 240 cars a day on Grandview
24 Street, you know, I said then the engineers
25 and everything were brought in to

1 demonstrate to Judge Mazzoni that we would
2 have to do this to widen the road to allow
3 us to close the road.

4 In fact, Judge Mazzoni at least
5 three times during that trial, and at one
6 settlement conference, which I attended,
7 warned Clarks Summit Borough that if they
8 closed the roadway -- they could close the
9 roadway, it was their right to do that, but
10 if they closed the roadway, there would be
11 large civil penalties for doing that by
12 taking away the right to the developer to
13 use the road which South Abington collected
14 liquid fuel taxes on. The roadway was on
15 the map as a roadway, even though it was not
16 approved. So, to that point, I mean, that's
17 exaggerated.

18 I mean, I run an ambulance service
19 and I work for the coroner's office in
20 Lackawanna County. There is nobody that
21 sees more tragedy than I do. And the fact
22 of the matter is, you cannot -- nobody wants
23 to place a price on a life, but you know
24 what, we also exaggerate greatly what the
25 exposure is, too.

1 I mean, we have kids that are
2 getting hit by cars in parking lots. I
3 mean, to go and say that we are going to
4 spend \$2 million to improve -- or Ernie just
5 said \$10 million. I mean, for \$2 million,
6 we could probably pave the interstate to
7 Waverly and back for \$2 million. That's a
8 lot of money.

9 But nevertheless, unfortunately at
10 the time Council did not agree with --
11 Council did not agree and wanted to close
12 the road.

13 And I said at the time that this
14 would be a historic lesson in how a local
15 government listens to or takes the advice
16 and does not do what is best for the entire
17 community, which is absolutely what occurred
18 in this case, and I'm asking you as a
19 resident and a taxpayer.

20 I had somebody come up to me and
21 said, You know, I said all along -- I sent
22 you a letter two years ago asking you to
23 settle it after the Board of View hearing,
24 and it was kind of laughed at when I brought
25 that up by the Council at that time.

1 I, you know, I said all along we
2 shouldn't be in this, we should have closed
3 the road. Unfortunately that did not
4 happen, and here we are today.

5 I mean, I'm following the West Fall
6 Township up in Pike County, I'm following
7 that case. That is where a township
8 actually declared bankruptcy and is still
9 paying the developer \$4 million, \$6 million,
10 four or six.

11 In the bankruptcy court, you know,
12 the municipality has taxing powers, so we're
13 going to have to pay the demand one way or
14 the other. Bankruptcy for this borough
15 would devastate the property values of all
16 our properties in town because nobody would
17 buy a house in this borough if they had no
18 idea whether going forward we would have
19 police protection, we would have DPW, we
20 would have a fire department or whatever
21 because of declaring bankruptcy.

22 So, I hope when you're deliberating
23 about how you're going to approach this,
24 that that is certainly not an option for
25 this borough.

1 We have 2300 give or take homes in
2 the borough. I believe under the eminent
3 domain code there is actually language in
4 there that would allow the borough to put a
5 special tax in to cover the cost of an
6 eminent domain proceeding, such as we did.

7 But nevertheless, you know,
8 \$4.whatever million, \$3 million is a lot
9 less than that, \$2 million is a lot less
10 than that. I mean, whatever we can
11 negotiate going forward.

12 I understand that the appeal or the
13 action that was taken to preserve our right
14 to appeal, you know, barring any effort by
15 plaintiffs for collecting the money; in
16 other words, if they, I mean, if they come
17 back in next week, you're trying to settle
18 this and they say, Okay, we want no less
19 than \$4 million, and then the option is
20 appealing, which, you know, I think is kind
21 of crazy at this point, because the judgment
22 of the jury was actually pretty close to
23 that in the Board of View.

24 So, I'm asking as a taxpayer to give
25 that very, very -- to consider very, very

1 much the future cost.

2 I mean, we are at 3.8 with interest
3 now. I mean, if we appeal this and it goes
4 another year, it could be 5.8 or whatever.
5 I mean, you know, we need to cut our losses
6 and move on. Good luck.

7 MS. CAREY: Thank you, Tim. Gene
8 Gallagher.

9 MR. GALLAGHER: Gene Gallagher, 205
10 Barrett Street, Clarks Summit, Pennsylvania.
11 I prepared to come to this Council meeting
12 to speak about another matter that I've been
13 involved in in the last several months, and
14 that only involved a little matter of about
15 \$10,000 that this borough was not aware of,
16 one gentleman that's involved in some
17 controversy in the borough owed to the
18 borough and several members of the Council
19 were not even aware of it.

20 I don't know what that -- where that
21 issue stands, but I think under the
22 circumstances, that's peanuts as compared to
23 \$2.3 million or with all the additional
24 costs up to \$4 million that this borough
25 owes.

1 Nobody wants to admonish anybody,
2 but I'm going to admonish the people that
3 are sitting on that board up in front of me,
4 because a year ago last January on the first
5 regular Council meeting that this new
6 Council held after they held a work session
7 meeting on Tuesday night and they voted to
8 file this appeal and continue it, I stood up
9 here in the other room at the same
10 microphone and told you people that it was a
11 foolish thing to do.

12 You had new members on the Council
13 that you didn't give them any time to study
14 the issues. You took a vote and decided to
15 make that appeal. I told Mrs. Kehoe to make
16 sure that recorder was on there. She could
17 probably dig it out, if anybody wants to
18 hear it, because I told you at that time you
19 were going to lose, and lose you did.

20 Now, I'm not here to gloat. I'm
21 sorry you lost, but I knew it was going to
22 happen. Anybody with any common sense would
23 have been able to know that it was going to
24 happen.

25 And now we've gone on over a year

1 and a half and continued paying Ernie Preate
2 and who else, I don't know, and now you are
3 considering doing it again.

4 I think you come up with an awful
5 lot of suggestions on things you're going to
6 do now. I don't know if any of these are
7 going to work with Mr. Noto, because I'm
8 sure he and Mr. Amato, they're sitting back
9 in their chairs, they're gloating over the
10 stupidity of the Council of Clarks Summit
11 Borough getting into this position. They're
12 making him rich and some other people rich
13 and they're going to make paupers out of the
14 citizens of Clarks Summit.

15 If you took the same effort last
16 January, a year ago in January, when I told
17 you the mistake you made as to looking at
18 other options, perhaps Mr. Noto and
19 Mr. Amato might have been in a little better
20 frame of mind and there could be agreements
21 worked out or something of that sort.

22 And I agree with Tim Rowlands and
23 the other gentleman up here, I think it's
24 time to cut our losses and don't put any
25 more burden on this borough that we already

1 have.

2 I also said that night, I told the
3 newly elected people that getting elected
4 was the fun time, but now that you're
5 sitting in those chairs, this is the time to
6 get serious about what you are doing.

7 And I said that you were supposed to
8 represent all of the citizens of the Borough
9 of Clarks Summit, you weren't supposed to
10 represent any individual, any street, any
11 group, you were supposed to represent all of
12 the citizens of Lackawanna County -- or
13 excuse me, the Borough of Clarks Summit.

14 And I'm afraid for whatever reasons,
15 personal or otherwise, I think you failed in
16 that duty. Thank you very much.

17 MS. CAREY: Fran Jones.

18 MR. JONES: My name is Jimmy Jones,
19 123 North State Street. I've lived in the
20 borough all my life, and with the exception
21 of some of the very new people her on
22 Council, I know pretty much everybody in
23 this town, and I feel sorry that we have
24 gotten ourselves into this position, I
25 really do.

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Attorney Preate, I have known Erie back when he was District Attorney in Lackawanna County. He's a good lawyer. I mean, he knows -- he's a lawyer, I mean, he has to know the law. You don't pass the bar exam and not know the law.

Unfortunately in this case, it looks like you closed the road, which you obviously had the right to do. The judge told you you have the right to do that, but this Council probably wasn't even here when this occurred. Some of you, I'm sure, you were not on Council at the time, but when you do that, you take the responsibility of compensating people that are damaged by that action, and it looks to me like that is what happened here.

You obviously owe money, some money, did some damage by closing that road. That's why I agree with these people. Probably the best thing to do at this time is to try to settle that thing for the cheapest amount of money you can get out of it. Don't throw any more good money after

1 bad, and that's what I urge this Council to
2 do. Thank you.

3 MS. CAREY: Thank you, Mr. Jones.
4 Fran Jones.

5 MS. JONES: Franny Jones, 201
6 Electric Street in Clarks Summit. First of
7 all, I want Council to realize that I know
8 firsthand what it's like, you know, I know
9 the pressure you are under when you are
10 sitting around that table. You are trying
11 to please everybody, trying to appease
12 everybody. Sometimes you have to say no.

13 I thought -- and I really feel that
14 this was probably one of them, however, I
15 have been enlightened. Shame on me, and
16 shame on a lot of other residents for not
17 showing up at all the other Council meetings
18 six years ago to voice our opinions on this.

19 I didn't know, you know, that there
20 are 140 children on Grandview Street. I
21 know how many children there are on
22 Electric. You know, I know all the traffic
23 we have on Electric. That's what Clarks
24 Summit is. There's traffic all over the
25 place. We all know that. Nobody wants any

1 children hurt.

2 I didn't know about taking the
3 fronts yards of people. I wouldn't want
4 that either. I didn't know about taking all
5 the trees. We lose enough trees.

6 My one question is about insurance.
7 Nobody has brought that up. Wasn't there
8 any borough insurance? Isn't there any
9 insurance that will cover this, at least
10 help us with this? That's my question.

11 MS. CAREY: That's an issue we are
12 also looking into. We have -- with the
13 group that we have working with us, Fran, we
14 have some insurance experts that are looking
15 into some issues there.

16 MS. JONES: But was there never any
17 insurance? I mean, isn't that what the
18 borough policies are for? I mean, I worked
19 for the borough for 12 years. I know that
20 we have insurance policies, we paid hundreds
21 of thousands of dollars for insurance, and I
22 always thought that we had coverage.

23 Is there any coverage, you know,
24 that, Ernie, that you know of, that should
25 have been purchased by the borough or when

1 this first started did you know that we had
2 insurance?

3 MR. PREATE: Yeah. It's a good
4 question, and the answer is that the
5 insurance carrier said no, that you're not
6 covered for these kinds of acts. This was
7 back in 2003, as I understand it.

8 I believe that Jim Vones or Ed Bush,
9 who was Council President at that time,
10 inquired into it, and they cannot cover --
11 an insurance company cannot cover what is
12 known as intentional acts; that is,
13 legislative acts, such as to close a road.
14 They can cover negligent acts, if somebody's
15 driving the borough truck and they have an
16 accident that's negligence, yeah, we're
17 covered there, or one of the Council members
18 does something negligently or admits to
19 doing an act, that's not an intentional act,
20 it would be a negligent act that's covered.

21 But when you do -- it's like
22 anything else. If you shoot somebody, your
23 insurance company is going to say, Well,
24 we're covering you, because you can't cover
25 intentional acts, not matter whether it's

1 committed by a borough or it's committed by
2 an individual, intentional acts are not
3 covered, and that's why I don't know of any
4 insurance company that covers it, but be
5 that as it may, there are several issues
6 that we're exploring that maybe, and I can't
7 reveal them to you here, and the rest of the
8 Council knows about this, we are going to
9 discuss them in session after this, you
10 know, there's some other sources of income
11 that we might need besides the millage to
12 get the money to pay this case, without
13 going any further.

14 And so, yeah, there's no question
15 that we -- I think that we are going to look
16 for ending this case as quick as we possibly
17 can and as minimal cost as we can.

18 But to get there, folks, you still
19 have to do some things so that you don't
20 lose leverage. You just got to -- and
21 that's why I say, it would be malfeasance on
22 our part if we didn't say, you know, file an
23 appeal, at least get the judge to see these
24 issues and he might change his mind or he
25 might be able to reduce the verdict, which

1 happens in eminent domain cases very, very
2 frequently, that the judge in retrospect
3 says, you know, you guys are entitled to a
4 credit here, a credit there.

5 I already brought up one credit that
6 I was able to negotiate with PennDOT in the
7 space of one day, and that is, take \$146,000
8 off the table that we don't have to do now
9 up on Grove Street, so that's reduces the
10 verdict down by that amount of money
11 already.

12 But it has to be molded by the
13 judge. The judge has to say, I'm going to
14 give you this, because right now all we have
15 is a verdict. What we don't have is a
16 judgment.

17 The judgment isn't there yet. The
18 judgment is going to reflect, of course, a
19 lot of different things, and some people
20 have mentioned those numbers, but to get to
21 what the final number is, you have to be in
22 a position to sit down if you are going to
23 be talking to Mr. Noto and Mr. Amato and Mr.
24 Lavelle, you have to be able to say, Look,
25 we filed an appeal. If you get to the table

1 and you haven't filed an appeal, why
2 negotiate? At that point you don't have any
3 leverage to negotiate. So, that's it.

4 But we have instituted a lot of
5 actions already with financial experts, with
6 lawyers, to try to come up with some
7 solutions to dealing with the verdict.

8 And I agree with you, bankruptcy is
9 the last -- very last thing. I mean, that's
10 -- I wouldn't even think about going that
11 way. I think we can handle it. Without
12 that, I think we can get the judgment down
13 substantially and get this thing over with.
14 And that's what our aim is, and I know
15 that's the Council's aim here, too.

16 MS. JONES: So, there is a
17 possibility it will be lowered and you don't
18 have to file anything else, you don't have
19 to go to court?

20 MR. PREATE: I wish it would be that
21 easy. I wish it's that easy, but when you
22 file a motion, you also have to file legal
23 briefs, there has to be arguments held in
24 open court, there has to be maybe status
25 conferences and behind in the judge's

1 chambers. There's a lot of work that has to
2 be done in order to get to what the figure
3 is that will be the final judgment.

4 This is the jury's verdict. It
5 isn't the judgment of The Court yet, and so,
6 that's why we need to file to present some
7 arguments to the judge about how to mold the
8 verdict.

9 One of them is going to be that
10 Grove Street and Morgan Highway doesn't need
11 to be included in this, to be taken out.
12 Another one might be the fact that by us
13 closing the road, we saved them from
14 spending approximately \$750,000 from
15 building a little connector road, which is
16 that's what they said they were going to do
17 to connect up the two townhouse phases,
18 phase one and phase two and that we had an
19 expert come in and testify and that was
20 ignored by the jury.

21 You know, why, I don't know, but the
22 fact is that we are entitled to a credit,
23 we're entitled to a credit, and that's one
24 of the things we are going to be bringing to
25 the judge's attention, and it's in our

1 motion for judgment that the verdict should
2 be reduced by that amount of money.

3 And so, those are the things that we
4 are talking about bringing up for The Court.
5 It's all an attempt to reflect fairness.

6 MS. JONES: I only ask Council one
7 thing, that all of this information gets out
8 to the public, because not everybody feels
9 comfortable coming to Council meetings and
10 they don't get it in the paper. I'm sorry,
11 but sometimes it doesn't. Like I said, I
12 think all of this stuff that Ernie was
13 saying before about the trees, about the 140
14 children --

15 MR. PREATE: 104 children.

16 MS. JONES: 104 children, trees and
17 everything else. So, if that was said at a
18 meeting, then I missed it, but if not, then
19 it should be in the paper because people
20 don't know that, believe me.

21 MS. KEHOE: A quick response to
22 that, first of all, myself and Council are
23 always available to anybody that wants to
24 come in and discuss and get informed on, you
25 know, on decisions before we come to a

1 Council meeting. You do not need to come to
2 a Council meeting to get the information,
3 but we can't reach out to every resident and
4 say, what do you want to know? We need you
5 to let us know. I promise you, we're here.

6 Additionally, we have Lisa Graff
7 here tonight as the stenographer. We're
8 going to be trying out using a stenographer
9 at our meetings to do the minutes, and we
10 will get a digital record of the minutes and
11 we will be posting them on our website, so
12 you will be able to see the minutes from
13 meetings on the website and do your own
14 research on things and keep up with the
15 actions of Council at your own leisure.

16 So, we're trying to take a number of
17 different things to get these updated. But
18 please, I encourage you, ask questions,
19 call. We are here, we're happy -- anything
20 that we can legally discuss, we will.

21 MR. MCQUEEN: You know, I plant six
22 to ten trees every year. Those trees are
23 not worth \$4 million like Grandview.

24 MS. CAREY: Jim Walther.

25 MR. WALTHER: My name is Jim

1 Walther, 147 Carol Drive, Clarks Summit.
2 I'm not an attorney, but I always thought
3 when you sued somebody it was to be made
4 whole, and this jury awarded too much money,
5 as far as I'm concerned.

6 I can understand if this development
7 didn't sell one house and the piece of land
8 is still sitting there. I understand this
9 is 98, 99 percent full, so where is the loss
10 to this builder? It makes absolutely no
11 sense.

12 You should appeal and get another
13 trial. Is it possible to get a trial
14 without jurors or have lawyers, because I
15 think the jurors were prejudiced to Clarks
16 Summit. That's how I feel. Give away their
17 money.

18 MR. COWLEY: It's not possible to
19 get a trial without a jury, so long as one
20 party seeks a trial with a jury.

21 So, in this case, I am -- I don't
22 think you would on a new trial get a trial
23 without a jury.

24 MR. PREATE: I think you made a good
25 point --

1 MR. WALTHER: Didn't this go to the
2 Board of View once?

3 MR. PREATE: It did go. Somebody
4 else -- some other lawyer brought it that
5 was your solicitor then, but you make a good
6 point. You know what we couldn't do, Mike
7 and I tried to do this at the trial, we
8 tried to show the jury what was going on
9 over there, that they sold 31 of 32
10 townhouses in record time, that they sold 27
11 of 39 lots at \$85,000 a half an acre.

12 MR. WALTHER: Did he lose any money?

13 MR. PREATE: Excuse me. You know
14 what the judge said, no, you can't show that
15 to the jury. We wanted to show them this
16 map. We wanted to show them this map of all
17 the lots that were sold, all right? Look at
18 this. Almost all of them, \$85,000, \$89,000
19 a half an acre.

20 They claimed -- their expert got on
21 the stand and said, The lots are only worth
22 \$4,000 an acre, and we tried to show that
23 these were lots were selling for \$85,000 an
24 acre. Couldn't do it.

25 MR. WALTHER: Could you get a change

1 of jurisdiction as prejudiced?

2 MR. PREATE: Couldn't do it. That's
3 one of the reasons why we allege we didn't
4 get a fair trial. And somebody said, Why
5 didn't you win the case? There's the
6 reason, right there.

7 MR. WALTHER: Did you do any
8 research on, I don't know the correct term,
9 like, history of other towns that had this?
10 There must be towns across the United States
11 or --

12 MR. PREATE: Yeah, somebody
13 mentioned that. It's a good point.
14 Somebody mentioned West Fall Township. West
15 Fall Township is totally different. I want
16 to make this clear.

17 Well, what they're doing over there
18 -- what they did in West Fall Township, Pike
19 County, and they got a jury verdict against
20 them for \$20 million, but what they did in
21 West Fall Township was totally different
22 than what we did here, and that is in West
23 Fall Township, they didn't like the religion
24 of the developer, and so they set out --

25 MR. WALTHER: I think they said

1 they were prejudiced.

2 MR. PREATE: They were prejudiced
3 against the developer, and so they set out
4 to put road blocks, artificial road blocks,
5 intentional road blocks as he tried to make
6 his development, and it turned out they did.
7 They stopped him from putting in his \$15
8 million development there.

9 They went to trial and the jury
10 found that they deliberately were prejudiced
11 against this fellow that was trying to put
12 it in.

13 In our case, we don't have anything
14 against Mr. Amato or Mr. Noto or Mr.
15 Lavelle. What we were trying to do was to
16 protect the community of Clarks Summit and
17 so we acted, and a judge said, a judge said
18 back in 2004, 2005, You're right, you did
19 the right thing. So, it's not as if we are
20 the same as West Fall Township, clearly not.

21 MR. WALTHER: You mentioned, too,
22 about the increased 1,000 cars, this is
23 after the development is in, but what about
24 pre-construction, the heavy duty equipment
25 would have had to drive through those roads

1 with all kinds of building materials. It
2 would have destroyed the road.

3 MR. PREATE: Did you see the eucs
4 that were over there would have driven up
5 and down Grandview Street?

6 MR. WALTHER: The trees on that
7 block, they're beautiful, they overhang it
8 other. They would have been all ripped up.
9 It would have been a mess.

10 MR. PREATE: Well, the problem is
11 it's not just the trees that would be coming
12 down, it would be everybody's yard on
13 Grandview Street would lose footage. They
14 would --

15 MR. WALTHER: I think you did the
16 right thing and I think you should fight to
17 the end, don't give up.

18 MR. PREATE: Thank you.

19 MS. CAREY: Thank you.

20 MR. ROWLAND: Ernie, again, in the
21 settlement proposal that was voted on, the
22 developer said no euclids, no construction
23 vehicles would use Grandview, so --

24 MR. PREATE: Well, I don't know
25 about that, but all I --

1 MR. ROWLAND: I know about it. I
2 was there. You were not there and I was
3 there.

4 MR. PREATE: I wasn't there at the
5 time, you're right, I wasn't there. There
6 was somebody else there. I wasn't your
7 lawyer then.

8 MS. CAREY: All right. Michael
9 Adams.

10 MR. ADAMS: Good evening. Mike
11 Adams, 210 Carnation Drive. I'm going to
12 leave you alone about the Grandview Street
13 development, although I will say, our own
14 residents don't obey the traffic laws on
15 that road, so 100 cars wouldn't have made it
16 more dangerous.

17 The problem I'm having is with road
18 drainage on Carnation Drive down at the
19 bottom of the hill on Tulip Circle. The
20 four abutting properties on that corner all
21 have berms in front of their house to keep
22 the water off of one. Apparently I'm
23 getting everybody's water from the entire
24 neighborhood on both sides. I'm right on
25 the corner between Tulip and Carnation. I'm

1 getting water on both sides. The front of
2 my house it's actually starting to erode the
3 dirt and it has broken up the end of the
4 driveway in the right of way.

5 Can somebody come out there maybe
6 take a look at it? It looks like at one
7 point in time going down to the drain at the
8 corner, that it actually had a paved culvert
9 in there going all the way back up, but I'm
10 not going to dig up the lawn to look for it.

11 MS. KEHOE: Mr. Adams, I'll be out
12 there tomorrow with our DPW foreman. We'll
13 take a look at it.

14 MR. ADAMS: Yeah, the sewer has a
15 lot of weeds coming out of it, too. Like,
16 you had Roto Rooter last week cleaning, but
17 they never touched that one.

18 MS. KEHOE: Before you leave, if you
19 can just give me your phone number, I will
20 let you know what happens after we go there,
21 okay?

22 MR. ADAMS: And another issue I have
23 is with the trash collection. You know,
24 have you ever had a house built, you use a
25 general contractor, yes, and he hires a

1 subcontractor, let's say, do your bathroom
2 tile and you don't like it, does that
3 subcontractor tell you to call the
4 subcontractor or does he handle it?

5 Because when I call borough and I
6 have a problem with the trash company, I
7 have to call them myself. And I didn't hire
8 these people, because I wouldn't hire them
9 because their service rightfully stinks,
10 because I wind up with the cans in the road.

11 Last week I had an issue with them.
12 They went in the can, there was two pizza
13 boxes in there, they threw the pizza boxes
14 in the middle of the driveway and threw
15 another box out in the middle of the road.

16 I went out there and cleaned it up.
17 I called -- I'm a little bit of a hothead,
18 so I called and the guy called me back and I
19 didn't answer because I said this is only
20 going to lead to a bad thing, so just let it
21 go and pick up the cardboard.

22 But I shouldn't have to call them.
23 I did not contract these people. The town
24 -- the community of Clarks Summit did. To
25 me, I'd use somebody else, because

1 personally they stink.

2 MS. KEHOE: And, again, Mr. Adams,
3 what the office does, because this is not
4 Council, this is my office that handles
5 that, we always encourage the residents to
6 call first, because frequently when we make
7 the phone call for somebody, there's
8 questions that are asked that we can't
9 answer.

10 So, any time there's any consistent
11 problems, we encourage you to report them to
12 us, and I do have weekly meetings with the
13 supervisor of the area and I do review them,
14 but individually, you know, if they missed
15 your garbage, just call them --

16 MR. ADAMS: They never miss, they
17 just selective --

18 MS. KEHOE: But that's the thing,
19 consistent problems, you absolutely should
20 give me, but, you know, just the fluke
21 thing, they missed us or something, we
22 encourage the residents to call, because all
23 of a sudden they'll say, well, you know,
24 which house is it, and I don't know, or, you
25 know, where was your trash? I don't know.

1 So, it's just -- it's usually easier to have
2 the resident call.

3 MR. ADAMS: Well, this has been an
4 ongoing issue now. This is the last six to
5 eight months. I guess they have different
6 people coming through every week and it's
7 just --

8 MS. KEHOE: Unfortunately that kind
9 of business does have turnover.

10 MR. ADAMS: I have one last question
11 and then I'm done, I'll sit down. Recycling
12 bins, do we have any for the DPW for the
13 residents to come and get?

14 MS. KEHOE: Right there. Take one
15 on your way out. There's lids there, too.

16 MR. ADAMS: I'll take one on my way
17 home. Thank you.

18 MS. KEHOE: Come and see me before
19 you leave.

20 MR. WALTHER: Can I say something
21 about sanitation?

22 MS. KEHOE: Yeah, I think we're
23 still going down the list first.

24 MS. CAREY: Well, we'll let --

25 MR. WALTHER: A quick thing.

1 MS. KEHOE: Okay.

2 MR. WALTHER: I think that
3 sanitation is terrific. I came from New
4 York City where if you put out more than
5 three bags, they wouldn't take them. The
6 sanitation police come around, open up your
7 garbage and go through it, and if you have a
8 can mixed in with the regular garbage, you
9 get a \$50 summons in the mail.

10 I mean, a little once in a while
11 they skip -- once in a while something in my
12 garbage gets stuck in there, a pizza box, I
13 wouldn't complain about that. You don't
14 realize. These guys are good. I think
15 they're fantastic. I've never had a
16 problem. They take everything, they're
17 there on time. That's all I have to say.

18 MS. CAREY: Thank you. Okay. Carl
19 Noakes.

20 MR. NOAKES: Carl Noakes, property
21 owner, 516 Grandview Street in Clarks Summit
22 35 years. We raised our two children here,
23 we lived here for 33 years. We still own
24 the property, and one of the reasons we
25 didn't sell our property is we didn't list

1 our property is because we wanted to see the
2 Grandview Street issue resolved, not at
3 anyone's expense, especially Clarks Summit
4 residents.

5 The street was closed because of
6 safety. And I only wish that all of you
7 people came to these meetings through the
8 years, because this started back in 1990
9 with the salt company.

10 And I'll say this for Mr. Allen
11 Graff, when he found out that the
12 development that the salt company was
13 pursuing at the time, when he found out that
14 the traffic was going to be relieved as an
15 alternate route on Grandview Street he
16 stopped the development. And he said, I
17 wouldn't do that to my neighbors.

18 So, that's from 1990 that brought us
19 up to the Grandview Street closure and the
20 road was closed because of safety.

21 There were only a handful of
22 reported accidents to the police department
23 and there were probably three times more
24 that were non-reported.

25 I've got a lot of notes here. I

1 only came to say a couple of things that
2 Mr. Preate already covered what I had to
3 say, but just I'll go as quickly as I can, I
4 don't think anybody would want 1,000 cars a
5 day on their roadway, in addition to the
6 handful that you had before that.

7 And I'm not talking about just my
8 property, Mr. Nogi's property, but everybody
9 on Grandview Street.

10 A lot of things were said. One
11 thing that I want to touch on that
12 Mr. Preate said, and I think Mrs. Carey
13 said, was three Councils, three Councils
14 voted to pursue the closure of Grandview
15 Street.

16 So, having said that, and it's over
17 and done with, we had no choice but to
18 defend ourselves against these developers.

19 And I'll say this, there was
20 testimony given by the other side, not this
21 trial, the previous trial, that they said
22 they talked extensively, Mr. Amato, talked
23 extensively with the people from the salt
24 company before he purchased the property.

25 Don't you think that he already knew

1 that Grandview Street people and Clarks
2 Summit, the Borough of Clarks Summit, was
3 going to close that road back in 1990? I
4 think there's a little bit more to his
5 motive, a little bit more to this trial.

6 The gentleman stood up and he said,
7 Through the stupidity of this Council,
8 through the stupidity of this Council.
9 These are well-educated people in front of
10 me, come from all walks of life, a lot
11 smarter than I am, and I don't think they're
12 stupid, and they give of their time more
13 than what they're paid.

14 There was six days of trial. I
15 attended all six days of trial. I think if
16 some of the residents who felt this way
17 about this trial and what the decision could
18 be and the possible outcome would come and
19 show their support.

20 Another statement that was made was
21 representing a few. Council and the mayor
22 don't represent a few, they're there for
23 everybody, and part of the statement was
24 made was for the residents of Lackawanna
25 County, and then it was corrected to Clarks

1 Summit.

2 Well, I've been a hunter safety
3 instructor for the Pennsylvania Game
4 Commission, construction, a hunter safety
5 instructor for the Pennsylvania Game
6 Commission, I was a safety instructor on a
7 large project at the nuclear power plant. I
8 would like to say that the safety of
9 everyone who traverses Grandview Street
10 should come in play, not just Carnation
11 Drive, Louis Lane, but there are people who
12 carpool from all over the Summit. Mothers
13 carpool, fathers carpool, they take turns.
14 There are people from the across the Summit
15 that traverse Grandview Street. So, it's
16 not just for the residents of Grandview
17 Street.

18 I just want to touch on one other
19 thing. I heard the word settlement, I heard
20 the word agreement, I never heard the word
21 ordinance.

22 And what I'm saying is this
23 gentleman was on Council, and he was in
24 agreement and settlement discussions, there
25 was a 70-foot buffer at the end of Grandview

1 Street that was not going to go to Country
2 Club Road, never said that South Abington
3 Township was going to pass an ordinance and
4 restrict the connection of Country Club Road
5 to Grandview Street in the future.

6 And what Mr. Preate said was, If you
7 let them in, if you open the door, you can
8 never go back, you can never go back and
9 say, Wait a minute, don't reconnect that.
10 He was right, and he's been right, and he's
11 a winner, and the most important thing, he's
12 not a quitter.

13 There are people in this room that
14 sat on Council, didn't get their way, then
15 they quit. There were a couple of them.
16 I'm not a quitter. I don't believe in
17 throwing good money after bad money. This
18 wasn't bad money. It hurts. It was a hell
19 of an education, a good education.

20 And the other side, I know, more
21 than they know, how much they lied. They're
22 not to be trusted. They're people in this
23 room that ran for Council and they signed a
24 pledge and they said they would back
25 Grandview Street. They got on Council, and

1 they lied. They turned their backs. And
2 they know who they are, and so do we.

3 Keep Mr. Preate. He's been in it
4 from the start. He was let go. He's back.
5 He's a winner. Keep Ernie.

6 MS. CAREY: Joe Jackson.

7 MR. JACKSON: That's okay. I'll
8 pass.

9 MS. CAREY: Okay. Ray Davis.

10 MR. RAY DAVIS: Well, you know I
11 won't pass, right, Gerry? My name is
12 Raymond Davis. I live at 211 Barrett Street
13 in Clarks Summit. I've been a resident of
14 the borough for 25 years. I've been
15 involved with local government, well, since
16 I've been 20 years old. I used to always
17 attend the Scranton Council meetings, the
18 original Mr. Doherty, who's long since
19 passed.

20 So, I've been a student of good
21 government. The key word there is good
22 government. And I was on Council here from
23 1994 to 2002. During that time I was
24 chairman of the finance, public safety and
25 personnel committees.

1 By the way, myself, along with other
2 people on Council, we actually lowered your
3 taxes during that time period 42 percent,
4 and that's a real number. That's
5 tremendous. How did we do it? We spent
6 money, we ran the borough like a business.

7 Now, one thing I want to commend
8 Councilman Herman Johnson here. Somebody
9 mentioned we have a court stenographer.
10 This is brand new, folks. Never had a court
11 stenographer here in a regular meeting.

12 If they continue doing this every
13 meeting throughout the year, it will
14 probably cost -- I think it's \$5,000 -- I
15 would say it's going to be \$10,000. It's so
16 much per page that she types.

17 It's probably the best money the
18 borough will ever spend. Why? It keeps
19 everybody honest, me, Timmy Rowlands,
20 Council, and the attorneys.

21 Because if you ever want to know
22 what Ray Davis said or anybody else, it's
23 not going to be a he said/she said, just
24 look at the record. It will be a printed
25 record. You can get a copy of it. There's

1 a lot of boroughs and municipalities doing
2 it. It's the best thing you can do.

3 One of the reasons we may have
4 gotten to this position is -- I attend these
5 meetings regularly, there's usually four
6 people at them -- I don't blame you, there's
7 a lot better things to do with your time on
8 a Wednesday night -- but without a
9 stenographer, there's a lot of loose
10 language used.

11 I don't mean inappropriate, I mean
12 people just throw stuff out because they
13 know nobody is recording it.

14 I was at a hearing here that
15 somebody said I -- that's a dispute going on
16 right now that I had my property surveyed
17 way back three years ago and the surveyor
18 messed up, and that's why the house is built
19 on the wrong area.

20 That gentleman knew darn well he
21 never had that property surveyed. Had we
22 had a stenographer at that meeting, you
23 would have known that, wait a minute,
24 something is not right.

25 So, Mr. Johnson, again, I commend

1 you. This is good government.

2 Let's talk about a couple things.
3 Tonight your Council President, Gerry Carey,
4 somebody asked how much has been spent on
5 this so far. She didn't know. You're
6 president of Council and you don't know what
7 was spent?

8 MS. CAREY: We don't have the
9 figures --

10 MR. RAY DAVIS: Well, I would
11 certainly have them if I was here, and you
12 knew you were going to have a crowd full of
13 people, a room full of people.

14 MS. CAREY: We haven't received the
15 bills.

16 MR. RAY DAVIS: All I'm saying is
17 this, Madame Chairman, shame on you that
18 you're sitting in that position and you
19 don't have the information you should have
20 immediately. Either you should have it or
21 the borough manager should have it, okay?

22 Somebody also asked tonight, very
23 legitimate question, is it insurance
24 covered? You weren't in on conversations
25 with this? You had to have the solicitor

1 answer that? That would be the first thing
2 Ed Bush or myself would have asked.

3 MS. CAREY: Well because that's an
4 item that we have been working on and we
5 don't have the information on it yet, but
6 they're delving into our policy that we have
7 --

8 MR. RAY DAVIS: You made the comment
9 last week with this or last meeting when you
10 were told that these kind of transcripts
11 could come back and haunt Council, and they
12 can, only if you're not doing your job.

13 None of you are perfect. If you
14 don't know something, there's nothing wrong
15 at the time of saying, I don't know, we'll
16 research it. But we have the minutes
17 transcribed, and then the next meeting,
18 which I've seen many times, you still don't
19 know, I don't mean you personally, but I
20 mean Council.

21 And by the way, folks, I'm not
22 picking on Clarks Summit, this happens in
23 Council meetings in all 2700 municipalities
24 in Pennsylvania.

25 The stenographer eliminates that.

1 It keeps everybody very on their toes, makes
2 sure you know what you're saying. If you
3 don't know, research it. Don't just throw
4 things out, because here is the attitude,
5 there was four people there, who's going to
6 know what I said? Now, I will bring up some
7 --

8 MS. CAREY: We always had our -- the
9 minutes of our meetings, it was recorded.

10 MR. RAY DAVIS: First of all,
11 Roberts Rules do not require them to be
12 verbatim at all. In fact, Roberts Rules say
13 you don't talk -- you don't put in the
14 minutes who said what, you just put in there
15 what was done.

16 So, actually that relieved you. But
17 what I'm stressing is this is good
18 government. What you see here tonight is
19 good government.

20 And I know three issues in this
21 Council in this borough right now, had you
22 been doing this, they probably would be
23 resolved right now, because people would
24 have been caught on, I'll use some
25 fifty-cent words, some prevarications in

1 there, okay? That's a nice way to put it.

2 Now, let's talk about something
3 specific. I was told, for instance, and
4 this is the public's business, this is small
5 potatoes compared to \$4 million, but, for
6 instance, you're going to pay a police
7 officer right now a clothing allowance who
8 hasn't worked in three years, which is
9 actually, to me, it's in their contract, I
10 know that, I've worked on these contracts,
11 but in good conscience that officer should
12 not be accepting that. It's probably six,
13 \$700.

14 Doesn't sound like a lot, but guess
15 what, it's six, \$700 that goes against the
16 spirit of, wait a minute, it's a clothing
17 allowance, I'm not working, what do I have
18 to maintain? I haven't worn a uniform in
19 three years. He shouldn't be paid.

20 What had happened is by contract you
21 have to pay him. He should just give that
22 check right back to the borough.

23 Now, I'm not going to go on and on
24 here, but, again, Mr. Johnson, thank you for
25 doing this. And you are going to have

1 discussions, this bill is going to be ten,
2 it could be \$12,000 a year for a
3 stenographer. Folks, it's insurance that
4 the government here works.

5 And by the way, I'm going to put a
6 shameless plug in, I am running for election
7 in November. Don't confuse me with Roy
8 Davis, I'm Raymond Davis.

9 MS. CAREY: Thank you, Ray. Jack
10 McNulty.

11 MR. MCNULTY: Jack McNulty, 602
12 Carnation Drive. I've been a resident in
13 this area for 42 -- all of a sudden, I guess
14 I'm a senior citizen. I can tell you one
15 thing, I am not running for Council. That's
16 for sure.

17 You know, hindsight is 20/20, and
18 there's some people here this evening that
19 have that beautiful hindsight, but for the
20 six years that we went back and forth on
21 Grandview Street and we had meetings here
22 and I went through all the court proceedings
23 and so on and so forth, the end result is
24 the people on the Council did the right
25 thing in closing that avenue.

1 If you walked through this from the
2 beginning, when a fellow named Amato made a
3 poor business decision to buy property that
4 was zoned commercial that was attempted to
5 be rezoned residential for years, and I
6 participated, as Mr. Noakes stated, when
7 Mr. Graff come up and he looked at that road
8 and he said, No way would I put these people
9 in that jeopardy. He was an honorable man.

10 This outfit bought that land. They
11 made a poor decision. And I said that in
12 South Abington Township, and South Abington
13 Township awarded a poor business decision by
14 rezoning that to residential.

15 And then insult to injury, they want
16 to open a road up to come into Clarks
17 Summit, and as stated here, these
18 individuals are going to make a lot of
19 money.

20 They wouldn't have made a lot of
21 money on the poor business decision, because
22 commercial business was not going to go into
23 that salt park development, but they
24 negotiated through South Abington Township,
25 got a residential change of zoning, and then

1 they want to send all those cars into your
2 borough and you get nothing, nothing.

3 South Abington Township gets the
4 real estate tax, South Abington Township
5 gets the building permit tax, South Abington
6 Township gets every single entity out of
7 that stupidity that three people in that
8 township made that decision. And shame on
9 -- maybe some of the people with 20/20
10 vision, we should have been down at that
11 meeting in South Abington Township, which
12 some of us were, in droves and say, Shame on
13 you. Don't send that traffic through our
14 community.

15 They should have been the aggressor
16 and shut that road down, they should have
17 been the aggressor, but what the hell do
18 they care? They're going to make the money.

19 MR. PREATE: That's right.

20 MR. MCNULTY: Now, there's a lot of
21 senseless said here tonight by everybody,
22 and I'm not demeaning any person that spoke,
23 but let's rationally work together and try
24 to bring this to a resolve.

25 I think the Council did the right

1 thing. You know, we can debate that. I do
2 this for a living, but, you know, nobody
3 wins in that. It's a lot of money here, and
4 I don't plan on moving.

5 But I can tell you this, I want to
6 see us fight. And if you need, you know,
7 I'm an mediator, that's what I do, if I can
8 be of assistance, off the record for
9 The Times, I would be more than happy to
10 work with you.

11 But let's do it as a community, but
12 let's bear in mind how we got here. A man
13 made a very horrific business decision and
14 was awarded for it by an adjoining township
15 that said, The hell with Clarks Summit. And
16 that's wrong. Thank you.

17 MR. JONES: I'd like to say
18 something, I was only up here for a little
19 bit of time when I was up here, but I think
20 you better just forget all of this past and
21 just forget it and assess where you are
22 right now and take it from here forward.

23 Because you know, if every town shut
24 down progress -- I mean, we drive through
25 South Abington, it goes right around us, you

1 know? I mean, and what if they shut all of
2 it? I mean, there would be no development,
3 there would be no tax base.

4 Unfortunately Clarks Summit's fully
5 developed pretty much. They have no real
6 areas to develop anymore.

7 MS. CAREY: Right.

8 MR. JONES: But you can't just shut
9 down progress. That's why I disagree a
10 little bit with what Mr. McNulty said. I
11 think the biggest thing is, the Council took
12 the decision to close the road, they took
13 the responsibility for any damages that were
14 done by their doing so. It's time to settle
15 this thing. Thank you.

16 MR. MCQUEEN: I'll work with Jack.
17 I will be the mediator with him. He's a
18 union man, I'm a non-union man. Together
19 we'll settle it. Give us a dollar figure to
20 work with.

21 MS. CAREY: Well, there's always
22 options. Greg Maniski.

23 MR. MANISKI: No comment, ma'am.

24 MS. CAREY: And that's it for our --

25 MS. KEHOE: There was some people

1 that came in afterwards.

2 MS. CAREY: Now, is there anybody --

3 MR. COMPASS: My name is Charles
4 Compass, 103 Grandview Street. Yes, I'm one
5 of the people that live on Grandview Street.
6 Just listening, I wasn't going to speak
7 tonight, but I just want to make a couple
8 points on things I have heard.

9 Number one, once this development
10 started, Clarks Summit was going to lose, if
11 we did or we didn't. The reason I say this
12 is that I went to several of the meetings,
13 many of the meetings, and I also went to the
14 trial that Mr. Mazzone was the judge for
15 that we won on, and part of the argument and
16 part of the evidence for -- well, the
17 background evidence was the impact on
18 Grandview Street.

19 For example, I live on Grandview
20 Street, and there was a study done, and it
21 would have cost the people of Clarks Summit
22 \$2 million if the road was opened.

23 And what that came from was a study
24 that took the whole length of Grandview
25 Street and they looked at what the impact

1 was, and one woman said that she didn't know
2 the information about the trees and this and
3 that.

4 And what that study said that for
5 all the houses along the street, they were
6 going to have to line the right of way.

7 And what that meant is that my
8 property would have gone ten feet into my
9 property to widen the street because they
10 needed to widen the right of way to be
11 expanded to take the increased traffic.

12 When I first got there, Grandview
13 Street was pretty much the street that was
14 built, it was only a two lane highway -- it
15 really was a two lane street.

16 If a car parks on the side and
17 another car comes down, one of the cars has
18 to stop because the cars can't really
19 negotiate with the parked car, so they were
20 going to have to expand the road with the
21 increased traffic.

22 And as I said, since I've been
23 living there 27 years, much of Floral Park
24 has been developed. I mean, most of them
25 come down Grandview Street. Some go down

1 Knapp Road. But many come down Grandview
2 Street.

3 Since I've been there, Oakmont Park
4 has been open. Most of those people come
5 down. Some go out Sunset, but most of those
6 people come and use Grandview Street to get
7 out. So, that's a lot of traffic added on
8 to how Grandview Street was first built.

9 And on the street I see the school
10 busses going up and down, I see all the
11 people walking. I think you can see the
12 potential of problems and safety was the
13 reason that the road was closed.

14 And in that study for the first
15 trial which closed the street, they took a
16 study of all the houses along the way and
17 they said we go ten feet here and we go ten
18 feet there, we are going to have to impact
19 all the houses because we're going to have
20 to cut all the trees down, which I would
21 have lost many, they were going to build
22 sidewalks to accommodate the people walking
23 because of the increased traffic of all
24 these additional people also coming down
25 from the Nogi/Amato (sic) development, which

1 should have added onto the traffic that's
2 going on there now.

3 My side of the street is pretty
4 level, but the other side of the street,
5 much of the people pitch up, and to take
6 those ten feet on their side of the street,
7 they were just going to cut all their
8 driveways all the way down in addition to
9 all of the trees.

10 These people's driveway, if it's
11 like this, they would cut it, and they
12 wouldn't be able to go up to their own
13 houses.

14 So, Clarks Summit was facing on this
15 study condemning these houses because they
16 can't get up to the houses of the expanded
17 ten feet, they are going to have to go on
18 their side of the street, and they said it
19 was going to be almost \$2 million for Clarks
20 Summit to do that.

21 So, Clarks Summit would have lost
22 and it would have had to come up with the
23 money for \$2 million more of expenses just
24 to increase -- accommodate the increased
25 traffic going down that road. So, Grandview

1 would have been an expense to Clarks Summit
2 either way.

3 The other thing I heard, I was at
4 several days of the trial for this past
5 trial and I heard much of the -- well, at
6 least several days worth of testimony, and
7 just listening there, just standing there
8 listening to what the objections were, just
9 standing listening to that, I think that
10 Clarks Summit was not treated fairly in that
11 trial.

12 So many objections that the judge
13 was doing, I just -- I scratched my head why
14 you allowed this and not allow that, and I
15 can see the basis that Mr. Preate was
16 talking about as conditions for perhaps
17 relooking at this.

18 And several people said perhaps get
19 rid of Mr. Preate for the next phase of
20 what's going to be done, and I think he did
21 a good job. Just listening and evidence
22 presented and -- I think he represents
23 Clarks Summit quite well, and I don't agree
24 with those people who say perhaps he should
25 just stop and not do anything else. He has

1 expertise and we should go with him. Thank
2 you.

3 MS. CAREY: Thank you. Okay. Is
4 there anybody else that would like to speak
5 at the podium?

6 MR. COWLEY: Mrs. Carey, I'd just
7 like to say something. Look, everybody, and
8 this is a little motivational speech, but
9 everybody who is here is here because they
10 have a right to be here and a right to be
11 heard, and that comes from the basic tenants
12 of our government, it comes from both the
13 Pennsylvania Constitution and the
14 Constitution of the United States.

15 And the people who are involved in
16 this particular lawsuit on all sides were
17 exercising their rights on opposite sides of
18 an issue which has its basis in that very
19 document.

20 I mean, there's no question that
21 property rights under the United States
22 Constitution are very sacred.

23 The only reason I say that is that
24 as a community, everybody's rights were at
25 stake, be it the developers', be it yours,

1 be it your right to be here tonight.

2 And I just think that there is a
3 unity there, and the unity is that everyone
4 is trying or was trying to do their best
5 with regard to property interest.

6 That's corny, I know that I'm not
7 quite getting it across, but when you're in
8 a courtroom and you're dealing with these
9 issues trying to hold Ernie back every now
10 and then, you know how he gets, you really
11 do come to respect the system, and there's
12 ways that the system, if it errs, can
13 correct itself.

14 And that's really what we're looking
15 to do is to try to bring about a resolution
16 within the system that has been given to us
17 and that has worked for a long time.

18 I'm not running for anything, but
19 keep that in mind is that all of these
20 things are not new, but they are systems and
21 procedures to be respected. That's the way
22 I look at it. So, we fight for the
23 residents of Clarks Summit within that
24 framework. Thank you.

25 MS. CAREY: Okay.

1 MR. JOHNSON: Madame President, I
2 would like to say one thing, and, I mean,
3 I've been sitting here all night and I've
4 been listening to the residents, and when I
5 ran for office I said I would do everything
6 I can for our residents, such as the rest of
7 the Council.

8 But, you know, I think we've done
9 everything and we're going to continue to do
10 everything. That is our pledge to our
11 citizens, but I don't think our citizens
12 fully understand what went on in this court
13 hearing, and I don't know how we can get the
14 information out, if we put it on our website
15 or if we publish an article in the paper,
16 but I think everyone needs to be educated on
17 this situation.

18 I'm not saying or throwing stones at
19 past Council our future Council, but there
20 was a lot at stake here. Our solicitor did
21 a commendable job with his team, our expert
22 witnesses did a commendable job.

23 I was there every day for the whole
24 trial. I was exhausted. And me being a
25 resident here in Clarks Summit and a

1 councilman, I was even educated on some of
2 the things that I really didn't know what
3 really happened.

4 And I think a lot of people sitting
5 in the audience, they really don't know what
6 all the motions are about, and that's what
7 really hurt us, whether Council takes an
8 appeal or they don't take an appeal, if we
9 make a settlement, that's a decision that
10 Council is going to have to live with in the
11 best interest of our community.

12 But, it really surprises me, you
13 know, everyone is saying this or saying
14 that, but, you know, there was only two
15 residents at that trial, two, that's all,
16 but everyone can come here and voice their
17 opinion.

18 And I understand that, but I think
19 you have to have faith in your Council, too,
20 and I don't think what I'm hearing tonight,
21 some people do, some people don't, and
22 that's your prerogative, but this has been
23 going on, like the one gentleman said, since
24 1990. This is 2009, going into 2010, and we
25 have to come to a solution with this

1 problem, and I think Council will do it.

2 This Council is working very hard.

3 MS. CAREY: Absolutely. Thank you,
4 Mr. Johnson. All right. Behind tab one is
5 the approval of the agenda. Do we have a
6 motion?

7 MS. EVANS: I'll make a motion.

8 MR. JOHNSON: Second on the agenda.

9 MS. CAREY: On the question? All in
10 favor.

11 MR. WILLIAMS: Aye.

12 MS. CAREY: Aye.

13 MR. DAVIS: Aye.

14 MS. DRAKE: Aye.

15 MS. EVANS: Aye.

16 MR. JOHNSON: Aye.

17 MR. RAJAN: Aye.

18 MS. CAREY: All opposed? Favors
19 have it. Behind tab two is the approval of
20 the minutes.

21 MR. RAJAN: I'll make a motion.

22 MS. EVANS: Second.

23 MS. CAREY: All in favor.

24 MR. WILLIAMS: Aye.

25 MS. CAREY: Aye.

1 MR. DAVIS: Aye.

2 MS. DRAKE: Aye.

3 MS. EVANS: Aye.

4 MR. JOHNSON: Aye.

5 MR. RAJAN: Aye.

6 MS. CAREY: All opposed? Favors
7 have it. And also we have the minutes from
8 the July 28 meeting. Do we have a motion?

9 MS. DRAKE: I'll make a motion.

10 MR. DAVIS: Second.

11 MS. CAREY: All in favor.

12 MR. WILLIAMS: Aye.

13 MS. CAREY: Aye.

14 MR. DAVIS: Aye.

15 MS. DRAKE: Aye.

16 MS. EVANS: Aye.

17 MR. JOHNSON: Aye.

18 MR. RAJAN: Aye.

19 MS. CAREY: All opposed? Favors
20 have it. Behind tab five is our borough
21 treasurer report. Do we have a motion to
22 approve the treasurer report?

23 MS. DRAKE: I'll medical a motion.

24 MS. CAREY: Mrs. Drake. And second?

25 MS. EVANS: I'll second it.

1 MS. CAREY: Mrs. Evans. All in
2 favor.

3 MR. WILLIAMS: Aye.

4 MS. CAREY: Aye.

5 MR. DAVIS: Aye.

6 MS. DRAKE: Aye.

7 MS. EVANS: Aye.

8 MR. JOHNSON: Aye.

9 MR. RAJAN: Aye.

10 MS. CAREY: All opposed? Favors
11 have it. Behind tab six, the safety
12 committee voted on the ordinance -- we are
13 going to table that at this point.

14 Okay. And also the building and
15 plants committee, Barbara, did you want that
16 tabled for Chris Spangler?

17 MS. EVANS: I would like to vote on
18 that.

19 MS. CAREY: Did you want to vote on
20 that tonight? Okay. All right. We have --
21 you can bring Council up to date on that.
22 Christine Spangler had an interest in
23 running property for the borough.

24 MS. EVANS: Training dogs at the
25 borough, and we're going to use the area

1 behind the garage so we don't interfere with
2 the police department. Mr. Johnson will
3 open it up and close it. It's an area
4 that's under construction. They're only
5 going to train the dogs in and out of the
6 inclimate weather. It will be from November
7 until April for one hour a week. We figure
8 this is a good service to the community and
9 to our citizens and we're hoping to get a
10 vote to pass this through.

11 MS. CAREY: Okay.

12 MR. JOHNSON: Madame President, I
13 will make a motion we accept this.

14 MS. CAREY: Okay. Do we have a
15 second?

16 MS. EVANS: I'll second it.

17 MS. CAREY: On the question? All in
18 favor.

19 MR. WILLIAMS: Aye.

20 MS. CAREY: Aye.

21 MR. DAVIS: Aye.

22 MS. DRAKE: Aye.

23 MS. EVANS: Aye.

24 MR. JOHNSON: Aye.

25 MR. RAJAN: Aye.

1 MS. CAREY: All opposed? Favors
2 have it. Thank you. Okay. And, Herman and
3 Pat, on the mission statement, did you have
4 a report on that?

5 MR. WILLIAMS: Yes, we're still
6 looking into that, Madame President. We're
7 working very closely with Mr. Filarski and
8 we had a few drafts now. We're still trying
9 to tweak it.

10 MS. CAREY: Okay.

11 MR. WILLIAMS: As soon as we
12 finalize that, we will bring it to Council's
13 attention.

14 MS. CAREY: Okay. So, we will table
15 that. And then the Landsdown right of way
16 update, so --

17 MS. KEHOE: Yeah, we had a resident
18 at our last meeting talk about, you know, a
19 homeowner that barricaded or fenced off
20 their property, the right of way, and I just
21 want to give an update.

22 We have written to the property
23 owner, he has responded by taking down some
24 of the fence. We are still working with
25 them, but he has made -- he has made some

1 adjustments already, and our code
2 enforcement officer is continuing contact
3 with him.

4 MS. CAREY: Thank you, Virginia.
5 Okay. And behind tab seven is our police
6 report. Chief Vitale, would you --

7 CHIEF VITALE: An overview for the
8 month of September, we had one robbery that
9 was a robbery that occurred at knife point,
10 one assault, three thefts, two criminal
11 mischiefs, two DUIs, 38 traffic offenses, 20
12 accidents, 15 burglar alarms, 281
13 non-criminal calls, for a total of 364
14 calls.

15 Parking tickets issued were 55, 50
16 of those were meter tickets, five were
17 prohibited zone, ten warnings given, 38
18 traffic offenses, five criminal arrests,
19 1312 man hours, 202 hours of overtime, court
20 appearances, and vehicles were on the road
21 for 4980 miles for the month.

22 Special details were two, two
23 football games, and the mileage for the end
24 of the month for the 2007 Tahoe was 32,162,
25 2006 Ford, 59,044, the 2005 Expedition was

1 31,962, the 2003 Chevy, 114,164 miles.

2 MS. CAREY: Pat requested Herman to
3 have the mission statement tabled until next
4 month. He said that -- is this what you
5 were interested in?

6 MS. DRAKE: Yes.

7 MS. CAREY: Okay. Okay. Thank you,
8 Chief. Does anybody have any questions for
9 our chief? Thank you. Behind tab eight we
10 have bills to be paid. We reviewed them.
11 Do we have a motion to approve the bills to
12 be paid?

13 MS. DRAKE: I'll make a motion.

14 MS. CAREY: Mrs. Drake. Do we have
15 a second?

16 MR. RAJAN: I'll second that.

17 MS. CAREY: Mr. Rajan. On the
18 question?

19 MR. JOHNSON: These are just vendor
20 bills. This is not the entire bill for the
21 borough? Bills to be paid for the borough
22 since the entire --

23 MS. KEHOE: This is everything that
24 came up in September.

25 MS. CAREY: All in favor.

1 MR. WILLIAMS: Aye.

2 MS. CAREY: Aye.

3 MR. DAVIS: Aye.

4 MS. DRAKE: Aye.

5 MS. EVANS: Aye.

6 MR. JOHNSON: Aye.

7 MR. RAJAN: Aye.

8 MS. CAREY: All opposed? Favors
9 have it. Okay. Behind tab nine, do you
10 want to --

11 MS. KEHOE: I will be happy to give
12 you update on this. In 2007, we have
13 received a request from PennDOT to pass a
14 resolution regarding the traffic signal at
15 the intersection of the Morgan Highway and
16 West Grove Street.

17 At that time Council voted to table
18 that resolution until we followed the
19 progress of this litigation because it was
20 related to the litigation with the
21 developer, Mr. Amato.

22 At this time, as Ernie reported
23 earlier, he's worked out something with
24 PennDOT where we're going to vote on this
25 resolution, and should we decline it and

1 notify PennDOT in writing, they will then
2 waive the requirement for it and refund the
3 bond to Mr. Amato, thereby removing it from
4 the settlement or the jury finding.

5 So, at this point, the resolution is
6 being brought back to the table and we would
7 like Council to vote to accept or reject.

8 MS. CAREY: Okay. Do we have a
9 motion to approve the --

10 MS. KEHOE: Or reject.

11 MS. EVANS: I'll make a motion to
12 decline it.

13 MS. DRAKE: I'll second it.

14 MS. CAREY: Okay. On the question?

15 MR. PREATE: Can I just add just for
16 clarification in the record, so that the
17 record is clear, I met with Joe Pelosi at
18 his office at PennDOT and I discussed with
19 him the situation, and I think it was clear
20 to him that there wasn't any pressing safety
21 issue, and indeed if you were at the trial,
22 Mary Bogart, who was Amato's traffic survey
23 engineer, said at the trial under oath that
24 there was no problem up there at Morgan
25 Highway and Grove Street that required

1 anything of substance to be done.

2 And so, armed with that information,
3 I asked Joe Pelosi to waive any further
4 upgrades at that intersection, and he
5 agreed.

6 He says the first step is to take
7 this motion that you tabled and vote it
8 down. He said they'll probably do nothing,
9 You'll be getting contact from one of the
10 PennDOT lawyers to confirm all this, and
11 then he will just -- once that's done, he
12 will contact Mr. Noto, who calls every year
13 to see about what his \$90,000 is doing, and
14 he said they've escrowed that money and he
15 said he would give it back to him. And
16 that's the end of it.

17 And we then take that information
18 and present it to Judge Minora as part of
19 our motion to mold the verdict, and then
20 hopefully that will reduce the verdict
21 amount down. But that's the first step in
22 reducing that verdict.

23 MS. CAREY: Thank you. Okay. All
24 in favor.

25 MR. WILLIAMS: Aye.

1 MS. CAREY: Aye.

2 MR. DAVIS: Aye.

3 MS. DRAKE: Aye.

4 MS. EVANS: Aye.

5 MR. JOHNSON: Aye.

6 MR. RAJAN: Aye.

7 MS. CAREY: All opposed? Favors
8 have it. Thank you. Okay. Behind tab ten
9 we have tab A, Resolution 2009-16.

10 MS. KEHOE: This is simply the
11 PennDOT MS965 that we file annually in order
12 to get our liquid fuels money, it's now able
13 to be done online, but in order to do it
14 online, I need a motion authorizing me to do
15 so, so I'm asking you to consider releasing
16 Gerry to sign this resolution.

17 MS. CAREY: Okay. Do we have a
18 motion?

19 MS. DRAKE: I'll make a motion.

20 MR. DAVIS: Second.

21 MS. CAREY: Second Mr. Davis. On
22 the question? All in favor.

23 MR. WILLIAMS: Aye.

24 MS. CAREY: Aye.

25 MR. DAVIS: Aye.

1 MS. DRAKE: Aye.

2 MS. EVANS: Aye.

3 MR. JOHNSON: Aye.

4 MR. RAJAN: Aye.

5 MS. CAREY: All opposed? Favors
6 have it. Thank you. All right. The next
7 item is Junior Council.

8 MS. KEHOE: That's just to say we've
9 been looking to replace our Junior Council
10 members for the current school year.

11 We have started reaching out as
12 early as August looking for volunteers, and
13 actually the funny thing is we've gotten a
14 number of volunteers, unfortunately all the
15 ones that have expressed interest live in
16 /TPHREUF South Abington Township.

17 So, we would like to encourage
18 Clarks Summit resident students to come
19 forward and submit applications, so we feel
20 it's something that would be great for their
21 college transcript or their high school
22 transcripts. We feel it would be
23 educational to them, and it certainly would
24 be educational and beneficial to our Council
25 to have that input from these students as

1 liaisons to the youth of our community.

2 MS. CAREY: Okay.

3 MR. JOHNSON: Madame President, I
4 understand that we are reaching out to the
5 community, but I think that maybe we should
6 put something in the newspaper, the local
7 newspaper.

8 MS. CAREY: Yeah, I mean, doing an
9 article on it and maybe, you know, have the
10 names of our previous Junior Council members
11 in and what they did. Maybe, Ellen, we can
12 do something like that to promote it, and
13 maybe put it in the school newspaper,
14 because they have a school newspaper.

15 MR. JOHNSON: Right, exactly.

16 MS. CAREY: So, I'll get in touch
17 with them on that and see what we can do.

18 MR. WILLIAMS: Exactly.

19 MR. JOHNSON: I think this year Roy
20 is the mentor.

21 MS. CAREY: Oh, okay. Behind tab C
22 is the police vacation buyback.

23 MS. KEHOE: Yeah. And just to
24 refresh everyone, the recommendation was
25 made two years ago to consider offering our

1 police officers to sell back some of their
2 unused vacation time. Currently their
3 contract allows them to pour over into the
4 beginning of the new year.

5 What happens is obviously when it
6 goes into the new year, we're paying them
7 their vacation time at their new rates and
8 we're paying probably overtime for somebody
9 to cover them. And, again, it's at the new
10 rates.

11 So, we thought it would be a very --
12 we're offering to buyback or we would -- I
13 would like to ask Council to consider making
14 a buyback offer to determine how many hours
15 we would like to make available to them.
16 It's at a 50 percent reduction, so it would
17 be 50 percent of their current rate, but
18 they could sell it back to us and therefore
19 they wouldn't carry it forward.

20 There is a letter in here which I
21 also had forwarded to everyone with Chief
22 Vitale's input on this. I don't know if
23 anybody's ready to discuss this, but I was
24 hoping we could move forward on this one way
25 or the other.

1 MR. JOHNSON: Madame President, I
2 would like to make a motion we accept this
3 report and we buyback the time. I think
4 it's a big savings for the borough and it's
5 a win/win situation for the borough and the
6 officer s.

7 MS. KEHOE: Do we have a suggestion
8 as to -- there's a limit on how many hours
9 they can sell back?

10 MR. JOHNSON: Why don't we go with
11 last year?

12 MS. CAREY: We did have a limit on
13 it last year. Should we --

14 MS. KEHOE: Use the same?

15 MS. CAREY: The same scale as last
16 year.

17 MS. KEHOE: Your motion then is to
18 follow last year's scale. Perfect.

19 MS. CAREY: Okay.

20 MS. DRAKE: I'll second it.

21 MS. CAREY: Okay. All right. All
22 in favor.

23 MR. WILLIAMS: Aye.

24 MS. CAREY: Aye.

25 MR. DAVIS: Aye.

1 MS. DRAKE: Aye.

2 MS. EVANS: Aye.

3 MR. JOHNSON: Aye.

4 MR. RAJAN: Aye.

5 MS. CAREY: All opposed? Favors
6 have it. Thank you. And the appointment
7 for Mr. Graci to assist Ernie in our legal
8 briefs.

9 MR. PREATE: Yes. I will bring that
10 up. I brought that to be put on the agenda.
11 It's Bob Graci, Robert Graci, is a former
12 Superior Court Judge and confirmed by the
13 Pennsylvania Senate, served about two years
14 or more, and is a former chief deputy in
15 charge of all the appeals for the Office of
16 Attorney General. He's argued in the United
17 States Supreme Court on more than one
18 occasion, argued in third circuit, argued in
19 all the courts of appellate courts of the
20 Commonwealth. He's considered one of the
21 top five percent lawyers in the Commonwealth
22 and has got an excellent reputation for
23 integrity and fairness and knowledge of the
24 law that he teaches every year all the
25 lawyers in the Commonwealth at the

1 Pennsylvania Bar Institute, and is the prime
2 spokesperson in interpreting all the case
3 law of our appellate courts.

4 So, he's a friend of mine, I have to
5 say that. I know him a long time. I've
6 known him for over 20 years, but he is with
7 the law firm now of Eckardt Seamans, which
8 is one of the largest law firms in the
9 state, and he's heard about the case, and as
10 soon as he heard about some of the issues in
11 this case, he wanted to join because he
12 believes we did not get a fair trial.

13 And so, I mean, this is a former
14 Superior Court Judge who knows that Clarks
15 Summit may have been wronged, and he went so
16 far as to say that he wouldn't accept a
17 retainer in the case. He normally gets
18 about five or \$10,000 a case and he wouldn't
19 take his \$350 to \$400 an hour matter. He
20 wants to work with us on the case. He said
21 whatever Council is willing to do to work,
22 he said, I'll take baby steps. And he said,
23 So, if I have to work with you, Ernie, I
24 worked with you before when I was Attorney
25 General and he was my chief deputy.

1 And so, he's been -- he's eager to
2 come aboard and I think bring a -- he'll
3 bring a tremendous sense of new face,
4 experience, judgment, integrity and a
5 knowledge, and he certainly will have Judge
6 Minora's respect immediately, as he will
7 have anybody that deals with him. You'll
8 have an opportunity to meet with him. He
9 wants to meet with you to explore some of
10 these issues with you, and that's one of the
11 reasons why we talked to everybody here
12 about getting the best minds together to
13 deal with the problem that we have.

14 So, I would ask that he said he
15 would do it for \$300 an hour, and that's
16 really not very expensive for what we would
17 be getting in terms of him.

18 And remember, he's not going to be
19 the prime on it, he's going to be working
20 with me and consulting with me and we have
21 done a lot of work already. A lot of work
22 has been done. In fact, if you --

23 MS. CAREY: That we're not being
24 billed for yet, right?

25 MR. PREATE: Not billed for yet, no,

1 no. I said, you know that I prepared this
2 11 page motion for a new trial, and he
3 hasn't even seen this yet. He just -- all
4 he did was talk to me, but to add a new
5 perspective. He can review what we are
6 doing, he can look up some ideas, maybe give
7 us some new ideas that we didn't think
8 about. It's always good to have a fresh
9 perspective in these matters.

10 So, that's the reason why I would
11 hope that you will agree with me that I
12 could use him as a resource, not to take
13 over the case, okay, I want to make that
14 clear, it wouldn't be surrendering the
15 control of the case, he would be assisting
16 and would he make some arguments, yeah, I
17 assume he would, just like Mike did some
18 questioning in the case and made some
19 arguments in the case when we were there.

20 So, it becomes a team effort. And I
21 think what we want to have is to present the
22 most experienced and knowledgeable team to
23 the court because it is an important issue
24 for the people of Clarks Summit and they
25 deserve the best that we can get and there

1 will be more people that we will be talking
2 to. I'll bring that up to you in -- no more
3 experts, by the way, but this is -- in the
4 session after this when we discuss
5 litigation, future litigation, not involving
6 this case, but other things, all right, you
7 understand where I'm going.

8 MS. CAREY: Yes, we do.

9 MR. PREATE: And I will bring that
10 up and talk to you about that in terms of
11 what we can do to help protect the citizens
12 of Clarks Summit.

13 MR. RAJAN: Ernie, I have a question
14 for you. Is Mr. Graci going to start
15 assisting you right now with this motion or
16 the appeals process?

17 MR. PREATE: No, this. I want him
18 to take a look -- because this is so
19 critical, as Steve Evers know, what you
20 initially file, and every lawyer knows this,
21 what you -- you are limited to what you
22 initially file on. If you don't file it,
23 you waive it.

24 MR. RAJAN: He's going to assist you
25 on this?

1 MR. PREATE: Yes.

2 MR. RAJAN: And should we go to
3 appeal, he's going to assist you on the
4 appeal process, as well?

5 MR. PREATE: If we go that far, if
6 we go that far. Basically I want him to
7 consult with me and to advise me and to help
8 me as best he possibly can to make sure that
9 we're doing the right things and doing it --
10 we're wording it the right way and making
11 the proper argument.

12 MR. RAJAN: And how many hours of
13 his time do you suppose will be involved in
14 this initially?

15 MR. PREATE: Well, since most of the
16 work is done, I think it's going to be
17 minimal, but it's going to be -- he's going
18 to have to do what I did, and that is he
19 would have to get a copy of the record and
20 read that, but he's very, very bright. He's
21 a genius.

22 MR. RAJAN: I understand that.

23 MR. PREATE: So, it's not like it's
24 going to take a long time for him to catch
25 up.

1 MR. RAJAN: I mean, you know,
2 understand that there are people in the
3 borough that are concerned about how much
4 money has been spent on this, all right?

5 MR. PREATE: Sure, absolutely.

6 MR. RAJAN: So, I think it's a fair
7 question to ask how much of his time are we
8 talking about?

9 MR. PREATE: Well, you know, it's
10 hard to say how much time we're going to
11 spend on this. If we make the right kind of
12 arguments, it may result in the judge
13 molding the verdict down substantially,
14 which we think that that may happen here in
15 this case because of the arguments and the
16 errors that we made already.

17 So, I don't know. I can't put a
18 number on it. I can't tell you how many
19 hours I'm going to spend on the case.

20 MR. MCQUEEN: But you're going to
21 file it Friday.

22 MR. DAVIS: Maybe we are being a
23 little premature putting together a legal
24 team. I mean, we were going to digest what
25 we heard in here tonight. We're going into

1 executive session. You know, I think we all
2 -- everybody I heard here has a general
3 opinion we want to cut our losses.

4 MR. PREATE: Sure.

5 MR. DAVIS: I think we want to cut
6 our loses to whatever way we can and, you
7 know, you're recommending to do it the legal
8 way, and I think we all feel that way, but
9 aren't we being a little premature here
10 lining up expert people at this point?

11 You know, not that I want to
12 procrastinate or delay the decision, and I
13 know we have to move quickly within the time
14 frame it, but I --

15 MR. PREATE: I think that's a fair
16 question, and can I address that when you're
17 finished?

18 MR. DAVIS: Sure.

19 MR. PREATE: Thank you very much.
20 You raised a good point, both gentlemen have
21 raised good points, and my answer is that if
22 this -- if we had a lot of time, I would say
23 just do what, you know, maybe delay it a
24 little bit, but the problem is we don't have
25 a lot of time.

1 We have ten days in which to file an
2 appeal or a motion for new trial, I should
3 say, but then we have to have briefs done
4 very quickly thereafter and perhaps
5 arguments and hearings before Judge Minora,
6 all of which has to take place within 120
7 days.

8 So, by the end of the year, we're
9 going to know whether we've struck some
10 nerves legally here and we've got some
11 chance to reduce this verdict down.

12 And as a result, if we wait for
13 another 30 days, we may be -- by the time,
14 you know, if you get him in 30 days and by
15 the time he gets up to speed, it's another
16 20 days after that, we may be already
17 through the process and it may be too late
18 to be of any effect.

19 MR. DAVIS: Ernie, I agree with you,
20 but you know what, this is so important that
21 I think that possibly it would warrant maybe
22 even an emergency meeting before that.

23 We are all talking about the 30
24 days, you know, and so forth, maybe we could
25 after we make some of the motion that you

1 are going to consider or we are going to
2 consider, that has to be done by the end of
3 the week, and we do that, and then we find
4 out we're going to start taking some
5 direction and obviously giving you some
6 direction at that point, and I think that
7 things are going to start playing out in the
8 next week and a half or so, and we don't
9 really have to wait a month to make some of
10 these decisions.

11 I would support Council to call a
12 special meeting to -- if we go that way, if
13 we go that way, which, you know, is
14 certainly a strong consideration.

15 MS. CAREY: We have several other
16 options that are also looking very
17 promising.

18 MR. PREATE: Right.

19 MR. DAVIS: So, I mean --

20 MR. PREATE: You know, I don't have
21 a problem with that. We are going to need
22 another session to discuss the other legal
23 issue that we have, and that lawyer is
24 looking forward to speaking with you also
25 and --

1 MR. DAVIS: See, I get nervous when
2 I hear pro bono, pro bono.

3 MR. PREATE: No, no, no, no pro
4 bonos here.

5 MR. DAVIS: Well, the guy's coming
6 in from Harrisburg and he wants to get part
7 of this. And we had people, you know, years
8 back that were -- I mean, there was five
9 lawyers that lived right there on Grandview
10 Avenue that were working pro bono at one
11 time. You know, and, I mean, actually they
12 were looking out for their number one their
13 homes and they were doing all of that.

14 I get nervous when I hear that. And
15 I want us to make the right decision at this
16 point, and I think that what I've heard in
17 here tonight, you know, we don't want to
18 rush to judgment on a lot of these legal
19 issues, and that's all I'm saying. You know
20 what I'm saying?

21 MR. PREATE: Okay. Let me do this
22 then. We're going to have to have another
23 -- let me explain it to you in terms of when
24 we have our session after this. You don't
25 have to vote on this tonight.

1 If you want to meet with Mr. Graci
2 and see for yourself and talk with him, I
3 would welcome that. I would welcome that
4 you do that, because it's going to give you
5 peace.

6 MR. DAVIS: It's the prudent thing
7 to do at this point when we're talking the
8 kind of numbers.

9 MS. CAREY: Yeah.

10 MR. PREATE: And I think that would
11 be important that you do that, and I'll
12 convey that to him and he'll come up to
13 discuss that with you, and we have to have
14 another meeting anyway with another lawyer
15 about the other issue, so I have to be vague
16 with everybody out here because I can't
17 reveal it at this point.

18 MR. RAY DAVIS: Attorney Preate.

19 MR. PREATE: Oh, yes, I'm sorry.

20 MR. RAY DAVIS: For the record
21 again, Raymond Davis. I think what
22 Mr. Rajan is saying -- by the way,
23 Mr. Davis, he never mentioned anything about
24 pro bono. This guy is going to charge \$300
25 an hour.

1 MR. PREATE: Right.

2 MR. DAVIS: No, no. Mr. Davis,
3 excuse me.

4 MR. RAY DAVIS: No, no, no, no, no.
5 I want to clear the record -- I mean, I know
6 you're doing a little campaigning here, but
7 --

8 MR. RAY DAVIS: No, no, no, knock it
9 off. I'm watching out for taxpayers.

10 MR. DAVIS: Wait a minute. I said I
11 remember when there was some pro bono work
12 being done, I remember, and I referred to it
13 in the past. I don't mean presently. I
14 certainly don't mean presently.

15 MR. RAY DAVIS: Okay. When you read
16 the record, that's not what you said, that's
17 why I love this. That's why you people
18 should love it.

19 You know what, if everybody was
20 doing their job up there, I don't really
21 need this job. By the way, you don't know,
22 it pays a whopping \$2500 a year. You don't
23 get rich on Council, okay?

24 What Mr. Rajan was saying was this,
25 you got to put a number on this guy. You're

1 preparing this. He wants to know are you
2 going to give him two hours, ten hours, 100
3 hours? The guy is charging \$300. You give
4 him 100 hours, that's thirty grand. You
5 give him 200 hours, that's sixty grand.

6 You got to control it. You're the
7 attorney. Now, obviously the guy is a heavy
8 hitter. I'm sure the guy is fabulous and
9 he's worth every penny of it, but what Mr.
10 Rajan is asking you is, you got to control
11 it.

12 MR. PREATE: I don't have a problem
13 with that.

14 MR. RAY DAVIS: Well, again, you got
15 to put numbers on it. You put it together.
16 If anybody in this room was hiring an
17 attorney for an important thing and you're
18 paying that kind of money, you better
19 believe you would be restricting what he's
20 doing.

21 If your attorney said I have this
22 expert that's going to review it, you'd say,
23 well, how long is it going to take? Three
24 hours. What's the charge? \$300. That's
25 reasonable.

1 MR. PREATE: I think you've got a
2 point and Council has a point. I would be
3 happy to discuss it with Council and with
4 Mr. Graci and come up with a number and
5 beyond that which we will not go. That's
6 some kind of a limitation that we cant' go
7 beyond this.

8 MR. RAY DAVIS: When you said,
9 again, I'm repeating myself, I love this,
10 because what you said is the guy --

11 MR. PREATE: I'm half responsible
12 for this, you know.

13 MR. RAY DAVIS: Yes, you are, and
14 you're to be commended for that. If his
15 normal rate is \$350 to \$400, I think you
16 were correct, maybe \$450 --

17 MR. PREATE: No, it's higher, but we
18 do it for municipalities --

19 MR. RAY DAVIS: Okay. So I -- I
20 thought you said the guy out of the goodness
21 of his heart is going to do it for \$200. He
22 knocked fifty off. So, that's wonderful.
23 Please control it.

24 MR. PREATE: I don't have a problem
25 with that, Madame President. I would be

1 happy to set up a meeting with Council, and
2 you can make the evaluation of go or no go,
3 and we can get a feel from Mr. Graci as to
4 what he thinks how much time he's going to
5 spend based upon the work that I've already
6 done and the briefs have already prepared so
7 that we could get some input from him. And
8 you can say, Look, we can only go up so far,
9 or if you go up, stop there and then get --
10 you need further clearance to go further
11 ahead.

12 MS. CAREY: Well, that's what we
13 usually do anyway.

14 MR. PREATE: I don't have a problem
15 with that.

16 MR. JOHNSON: Madame President --

17 MS. CAREY: Do we want to table this
18 until --

19 MR. JOHNSON: Yeah, that's what I
20 was going to suggest. Why don't we table
21 this until we meet with the gentleman, and I
22 think Council needs to sit down and get the
23 numbers and figure out what we can spend.

24 MR. PREATE: Okay. I don't have a
25 problem with that.

1 MR. MCQUEEN: Can I say something
2 again or not?

3 MS. KEHOE: I think this woman was
4 waiting to say something, too.

5 MS. ALBERIGI: No. The comment I
6 was going to make is I agree with you. Your
7 answer to him was minimal. Well, minimal to
8 you might not be minimal to us, so, like,
9 what is minimal, three hours, 100 hours?

10 And if you add \$300 on top of your
11 hourly fee, which I don't know what that is,
12 but we might be looking at --

13 MR. PREATE: \$165.

14 MS. ALBERIGI: Okay. So, no you're
15 looking at \$465 an hour for the legal. So,
16 I agree, I think you need to get an absolute
17 number that you're not going to go past.

18 MR. JOHNSON: That's why I say that
19 we should table it and Council should sit
20 down and talk about it and come up with
21 hours.

22 MR. MCQUEEN: Dave McQueen again.
23 What it sounds like, you're going to start
24 dragging this out again for 120 days. It's
25 -- when I read it, I'm not stupid. I can

1 read it. And what he's saying, he's going
2 to drag this out. You're not going to
3 settle for 120 days. I see it coming.

4 MS. CAREY: Well --

5 MR. PREATE: I don't know whether we
6 are or we aren't.

7 MR. MCQUEEN: I can read it.

8 MR. PREATE: My answer to you, Mr.
9 McQueen is, I don't know how long this is
10 going to take. It could take, as Roy Davis
11 said, it could be over in a week and a half.

12 MS. CAREY: You can probably settle
13 it Friday if you would get everybody
14 together in a room and settle it.

15 MS. CAREY: That's one of our
16 options that we've been working on.

17 MR. PREATE: That's one of our
18 options, absolutely one of our options.

19 MR. MCQUEEN: I wouldn't hire
20 anybody. Just settle it.

21 MR. PREATE: Well, peace at any
22 price is not peace. Because we really need
23 to be fair to all the people here, and if
24 you think that they're going to settle for
25 some small amount of money, you're crazy,

1 because they're not.

2 MR. MCQUEEN: Absolutely, but
3 they're not going to settle for \$4 million.

4 MR. PREATE: If we don't take an
5 appeal, then we'll only want \$4 million,
6 because that's what they can get a judgment
7 for. That's the reality of this situation.

8 MR. MCQUEEN: Right. That's why you
9 have to negotiate with them and settle for
10 something. Settle for \$2.5 million. That's
11 better than \$5 million but the time you're
12 done, \$6 million.

13 MR. PREATE: Well, we have to
14 determine how much we can afford.

15 MR. MCQUEEN: Well, you better do
16 that tonight after --

17 MR. PREATE: We're already working
18 on it. We have lawyers and accountants and
19 financial experts that are already working
20 on what this borough can afford in a
21 settlement.

22 It's like anything else, you know,
23 if you can't afford a Cadillac, then don't
24 buy it. If you can afford -- if you can
25 only afford a Ford, then that's all you can

1 afford. So, if we can only afford a Ford,
2 we cannot pay a Cadillac price because that
3 would be financial suicide.

4 MR. MONAS: Andy Monas. I mean, I
5 hate to say this, I'm not an attorney, I've
6 been in business my whole life, and what you
7 just said was so not to get a result.

8 I mean, when you said you can get a
9 Ford -- you make it sound like you're on the
10 driver's end of this. You're not.

11 MR. PREATE: No, I'm not.

12 MR. MONAS: No. But you're making
13 it sound like you are. And if we can't
14 afford it, we're out of luck?

15 MR. PREATE: No.

16 MR. MONAS: That's what you made it
17 sound like.

18 MR. PREATE: No, I'm not saying
19 that.

20 MR. MONAS: Yes. You said we have
21 all of our accountants, we have all these
22 people looking at what we can afford. This
23 isn't about what we can afford, this is
24 about getting a settlement, because in the
25 end, if you say this is what we can afford,

1 and they say, Oh, I'm very sorry, but that's
2 not what we want, you know, the negotiation
3 process is going to result in, you know, in
4 the finished product, not what we can
5 afford.

6 Because trust me, I don't know any
7 of you, you don't know me, but you know
8 what, none of us can afford a dime, but the
9 reality of it is we're all going to get
10 together sometime down the road. And you're
11 shaking your head at me and saying --

12 MS. KEHOE: Andy, quickly, you're
13 both right in this, but what you need to
14 understand is there's a certain amount of --
15 there's limitations on taxes, there's a
16 limitation on how much your --

17 MR. MCQUEEN: We know that.

18 MS. KEHOE: So, what Ernie is
19 referring to is we need to be sure of how
20 much we can afford to settle. I mean, if we
21 can't come up with \$2.5 million, then \$2.5
22 million is not a settlement option for us.
23 That means bankruptcy. We don't want
24 bankruptcy.

25 MR. MCQUEEN: I went to my banker

1 today.

2 MS. KEHOE: So, we're working on our
3 math right now to find out how far we can go
4 with this and we are definitely --

5 MR. MCQUEEN: Just for your
6 information, I went to my banker today, you
7 can borrow \$2.5 million, it will cost you
8 about \$274,000 a year for 20 years. Can you
9 afford \$274,000?

10 MR. COWLEY: You know, that's not
11 really a good question to be asking of
12 Council right now, and I'm going to tell you
13 why. Earlier tonight it was represented to
14 you that all options are being pursued. I
15 just want you to take that and think about
16 what that means.

17 MR. MCQUEEN: I took it, but then I
18 hear you're going to drag it out for 120
19 more days.

20 MR. COWLEY: You're trying to get
21 Council to commit to a number or discuss a
22 number that may not be relevant to what's
23 going on and it may not be doing Council or
24 the borough a service, although you're
25 certainly entitled to say it, I just

1 question whether or not it's the time to say
2 it.

3 MR. MCQUEEN: I'll stay after and go
4 to the executive session and I'll state it
5 there. I'm getting all wound up again.
6 I'll shut up.

7 MR. JOHNSON: Madame President, I
8 think there was a motion on the floor to
9 table it and we can meet in executive
10 session and meet the gentleman so we can
11 interview him and see what hours that we
12 want to allot him, so I think we should
13 either vote on it or table it or move on.

14 MS. CAREY: We will take a table on
15 that.

16 MS. KEHOE: Do we have a second on
17 that motion?

18 MS. EVANS: I'll second it.

19 MS. CAREY: Okay. All in favor.

20 MR. WILLIAMS: Aye.

21 MS. CAREY: Aye.

22 MR. DAVIS: Aye.

23 MS. DRAKE: Aye.

24 MS. EVANS: Aye.

25 MR. JOHNSON: Aye.

1 MR. RAJAN: Aye.

2 MS. CAREY: All opposed? Favors
3 have it.

4 MS. KEHOE: Okay. Behind tab eleven
5 is not the sewer report, and I do apologize.
6 I have been a little overwhelmed with some
7 of the other duties that have been going on
8 the past couple of days in this office and I
9 just never had the moment to complete it, so
10 I will have this report in with next month's
11 report next month, okay?

12 MS. CAREY: Okay. Thank you. And
13 our solicitor has been giving a report all
14 night, so is there anything else --

15 MS. KEHOE: The only thing he was
16 going to do was -- the one thing he had
17 committed to in the last meeting was just
18 follow up, and I know we talked about it at
19 a work session but not on the record, the
20 response to Ray about recording the Sunshine
21 Act and recording the minutes.

22 MR. PREATE: Yes. You all asked me
23 at the last meeting to make a report to
24 study the open records law, sometimes known
25 as the Sunshine Act, it used to be known as,

1 but it allows for equipment to be --
2 recording equipment to be used during
3 meetings such as this.

4 And I researched it, I've got the
5 statute, and a person, it says in the
6 statute, that a person attending a meeting
7 of a governmental body, such as this, shall
8 have the right to use recording devices to
9 record all the proceedings. Nothing in this
10 section shall prohibit the agency, which is
11 this governmental body, from adopting and
12 enforcing reasonable rules for use of such
13 recording devices.

14 And then there's a case that my
15 research discovered, and that case said that
16 same thing, that we can promulgate rules for
17 the utilization of recording devices in this
18 proceeding, in the legislative proceeding
19 that you would undertake.

20 So, you can't -- we're not banning
21 video cameras. There was some cameras here
22 tonight, photograph cameras, but what you
23 can do as the borough's association has said
24 that you can restrict, and you'd have to do
25 this by adopting a regulation, you can't

1 just do it helter skelter, you'd have to
2 actually study it and come up with a
3 reasonable set of regulations, such as, you
4 can't use the electric power of the borough
5 or you can't put wires all over the floor
6 that people are going to trip over them, you
7 can, therefore, allow somebody to come in
8 with, like Ray wants to come in with a video
9 recorder, not a video, but a tape recorder
10 and he can tape record with his battery
11 powered tape recorder.

12 And that may be the, you know, one
13 of the reasonable restrictions that you can
14 say, we'll allow battery powered recorders,
15 but that the real record of the case,
16 emphasize real record of the proceedings, is
17 going to be what is taken down by the court
18 reporter, because we all know that tape
19 recordings can be altered and doctored and
20 all that sort of thing.

21 So, that -- the real record is still
22 going to be the minutes of the meeting as
23 transcribed by Lisa Graff or whoever is
24 there from her --

25 MS. CAREY: Thank you.

1 MR. PREATE: That's it.

2 MR. RAY DAVIS: Okay. Mrs. Carey,
3 I'm going to make this very brief. You, as
4 the borough manager, Virginia, when I
5 brought this up, I told you it was from the
6 Sunshine Act. Are you telling me that the
7 borough actually paid the solicitor at \$165
8 an hour to look up what he just read, which
9 everybody in this room can understand very
10 easily here, there's nothing, no legales,
11 nothing in there, did we actually pay him to
12 look this up?

13 MS. KEHOE: That was the Council's
14 decision.

15 MR. RAY DAVIS: How many hours did
16 you put in?

17 MR. PREATE: One.

18 MR. RAY DAVIS: One hour, so that
19 was \$165.

20 MR. PREATE: No, no, no. It's \$150
21 an hour. \$165 is for litigation, \$150 is
22 for normal work.

23 MR. RAY DAVIS: So, the point I'm
24 making, Council, again, is you're not
25 watching the money. The borough manager,

1 there it is. It's real simple. There's the
2 Sunshine Act. There was nothing complex
3 about it. Yes, she can do it. Hold on.
4 Yes, she can do it. You can put
5 restrictions. Reasonable restrictions are,
6 don't disrupt the meeting, don't have
7 cameras in the center, don't use -- real
8 simple. The borough is bleeding money on
9 all these kind of issues. There's lots of
10 them.

11 MS. CAREY: Virginia did do the
12 research on that as far as to find out if we
13 could or couldn't.

14 MS. KEHOE: Yeah, this was discussed
15 in the Council meeting last week and then
16 Council made its decision to proceed this
17 way. This was not necessarily my
18 recommendation.

19 MR. RAY DAVIS: No, but this was not
20 something you needed legal help at \$150 an
21 hour.

22 MS. CAREY: I agree. Okay.
23 Executive session, September 7, 2009,
24 litigation and personnel. Do I have a
25 motion to accept the executive session from

1 September 7 --

2 MS. KEHOE: I don't think we need a
3 motion. We just need to report them on the
4 record.

5 MS. CAREY: Okay. We are reporting
6 September 7, '09, September 29 for
7 personnel, October 1, '09, and October 5 for
8 litigation.

9 MR. MCQUEEN: Can I ask one more
10 question and I won't bother you any more?

11 MR. WILLIAMS: You're not bother.

12 MR. MCQUEEN: The October 5 meeting,
13 I didn't know it was going to be recorded,
14 but I guess this is great, I just want to
15 know if the Van Wies were part of that
16 executive session.

17 MS. CAREY: No, the Van Wies were
18 not part of that executive session.

19 MR. MCQUEEN: Thank you.

20 MS. CAREY: The only one at the
21 executive session was Council and our two
22 solicitors.

23 MR. MCQUEEN: That's all I wanted to
24 know.

25 MS. CAREY: And our mayor.

1 MS. KEHOE: And me.

2 MS. CAREY: Oh, sorry about that.

3 MR. PREATE: And executive session,
4 just to let you know, executive session is
5 just the members of Council, the borough
6 manager and the attorneys for the borough
7 and, and anybody that they chose to invite
8 to enlighten them on an issue, a particular
9 issue.

10 MR. MCQUEEN: I understand that.

11 MR. PREATE: But we didn't -- there
12 was nobody in the executive session.

13 MS. CAREY: You didn't invite them.
14 That's fine.

15 MR. PREATE: They were not invited.

16 MS. KEHOE: And just for the record
17 and to apologize for any confusion, the
18 meeting with the attorneys was scheduled in
19 advance of our executive session. They were
20 already scheduled to come, so we sat -- once
21 we decided that we needed to have an
22 executive session, we set that up out here
23 in Loughney Hall and we went into chambers.

24 So, it's unusual that we would have
25 two such things happening at once, but after

1 this one meeting is scheduled, we decided
2 there was a need for a second. A bit
3 coincidental, and I do apologize for that.

4 MS. CAREY: Does any council member
5 need an executive session?

6 MS. KEHOE: We're going to have an
7 executive session tonight --

8 MR. JOHNSON: Yes.

9 MS. KEHOE: -- immediately following
10 this. We need a motion to adjourn.

11 MS. CAREY: Are we going to adjourn
12 or recess? So, if we recess, then we can
13 call another meeting if we need one on
14 Thursday or Friday or whatever?

15 MR. PREATE: Well, you might want to
16 --

17 MS. KEHOE: We can call another
18 meeting if there's one needed as a new
19 meeting.

20 MS. CAREY: If somebody comes
21 forward that has a solution that we are
22 going to move on, a new direction, then we
23 can come back --

24 MS. KEHOE: Gerry, before we do
25 anything further, I think we were just

1 discussing the fact that we are talking
2 about filing that motion that we discussed
3 earlier on Friday, we're thinking on the
4 record it would be appropriate for us to
5 have a motion from Council and a vote on
6 that before we proceed with it.

7 MS. CAREY: Okay. Everyone's aware
8 of the motion that --

9 MR. JOHNSON: What's the motion?

10 MR. COWLEY: The motion is for the
11 filing of the motion for judgment NOV and
12 new trial.

13 MR. PREATE: You've seen this
14 document.

15 MR. COWLEY: It has to be filed
16 before ten days, but it will be filed, I
17 guess, on Friday.

18 MR. PREATE: Friday.

19 MR. RAJAN: So, do we have to make a
20 motion on that?

21 MR. PREATE: Yeah, we need a motion.

22 MR. RAJAN: So, what is that called
23 again?

24 MR. PREATE: A motion for judgement
25 not withstanding the verdict and/or a new

1 trial.

2 MR. RAJAN: I'll make a motion.

3 MR. WILLIAMS: I'll second that.

4 MS. CAREY: Okay. We had the
5 question. All in favor?

6 MR. WILLIAMS: Aye.

7 MS. CAREY: Aye.

8 MR. DAVIS: Aye.

9 MS. DRAKE: Aye.

10 MS. EVANS: Aye.

11 MR. JOHNSON: Aye.

12 MR. RAJAN: Aye.

13 MS. CAREY: All opposed? Favors
14 have it.

15 MS. KEHOE: Okay. So, then at this
16 point we can always call an emergency
17 meeting, if we need one, but I don't think
18 there's any reason for to us reconvene this
19 meeting.

20 MS. CAREY: Okay.

21 MS. KEHOE: So, we'll accept a
22 motion to adjourn.

23 MS. EVANS: I'll make a motion to
24 adjourn.

25 MS. DRAKE: I'll second it.

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MS. CAREY: All in favor.

MR. WILLIAMS: Aye.

MS. CAREY: Aye.

MR. DAVIS: Aye.

MS. DRAKE: Aye.

MS. EVANS: Aye.

MR. JOHNSON: Aye.

MR. RAJAN: Aye.

MS. CAREY: All opposed? Favors
have it.

(MEETING WAS ADJOURNED.)

C E R T I F I C A T E

1
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3 I hereby certify that the proceedings and
4 evidence are contained fully and accurately in the
5 notes taken by me on the hearing of the above cause and
6 that this copy is a correct transcript of the same
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