

**BOROUGH OF CLARKS SUMMIT
RECONVENE OF REGULAR NOVEMBER 1, 2006 COUNCIL MEETING
WEDNESDAY, November 8, 2006
Page 1 of 4**

4The regular November Meeting of Borough Council was reconvened on Wednesday, November 8, 2006 at 7:00 P.M. The Meeting was held in Borough Council Chambers, 2nd Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna, Commonwealth of Pennsylvania. Council members in attendance were Council President Donald H. Moyer, III, Council Vice-President Margaret (Peg) Jackson, Councilperson Gerry Carey, Councilman James Colman, Councilman Roy Davis, Councilman Ray Taylor, and Councilman Patrick Williams. Also attending were Mayor Kelly and Borough Manager/ Secretary Virginia Kehoe. Police Chief Vitale and Borough Solicitor Frank Bolock were Absent. There being a quorum present the Meeting was called to order by Council President.

APPROVAL OF AGENDA – Motion made by Mrs. Jackson, seconded by Mr. Roy Davis to approve the Agenda as presented. Discussion: None. Motion carried 7 – 0.

PUBLIC COMMENT & INPUT:

Mrs. Van Wie, Grandview Street, Clarks Summit, asked Council who was going to be hired as counsel for the Grandview Street Board of View litigation. President Moyer replied that Mr. Ferguson is currently serving as Council's choice for lead attorney in the matter. Mr. Ferguson was given the authority to hire whomever he feels he needs to help him as long as he comes back to Council. Mrs. Van Wie stated that by doing that Council is wasting the taxpayer's money.

Mr. Charles Martin, 405 Grandview Street, Clarks Summit, stated that Council has told the public that they are on an austerity program and trying to save money every way that they can. Why would you hire Mr. Ferguson at \$165.00 per hour when Mr. Preate said that he would do it at \$85.00 per hour which is the old rate when he was the Borough Solicitor. Why are we spending almost twice the money for an attorney when we're trying to save money?

Mr. Tim Rowland, Sunset Street, Clarks Summit spoke to Council saying that he felt Council "spun the roulette wheel" when they voted to not accept a negotiated settlement of having only the 39 single family homes have access to Grandview Street. People knew full well then that if the settlement offer was rejected, the case was going to a Board of View, which is exactly where it is now. Now we're looking at a 1, 2, 3, or 4 million dollar possible payment for taking this. It is not a safety issue anymore. It's a matter of he had a road, we by our resolution and court order closed the road and now he's looking for damages. I think if you're going to spend money on an attorney, I wouldn't vote for Ernie Preate, I'd vote for the guy who did the work for the Department of Transportation on the Casey highway taking. Because that's where we're at. It's a lot of money putting on this case. But its not about Ernie's experience. Ernie was the road closer and we won that. Unfortunately, I liken it to winning the battle but losing the war because now we have half a dozen people from Grandview here tonight, again asking Council to take on a special attorney to handle this when in fact this is something that the ENTIRE borough is going to have to face and Council has to do the best job in minimizing those damages and Joe Ferguson clearly has experience in imminent domain proceedings and that's the guy we should be going to. If he needs Ernie for whatever expertise that Ernie offers, certainly he should feel that he could call Ernie in. I think that you're on the right track.

Mr. Charles Martin said that this is the same fatalism that we had when we started. If you go into something with a negative or losing attitude, that's going to permeate. Nobody from Council has stepped up and said, "we're going to win" because we haven't done anything to affect this gentleman's property. This man's property is in South Abington Township, not Clarks Summit Borough. He's had more than one way to access the property from the beginning.

**BOROUGH OF CLARKS SUMMIT
RECONVENE OF REGULAR NOVEMBER 1, 2006 COUNCIL MEETING
WEDNESDAY, November 8, 2006
Page 2 of 4**

Mrs. Van Wie stated that Noto and Amoto have the burden of proof. They have to PROVE that they have lost money. She offered to meet with members of the audience or Council and show them a list of items that are problems with their case and they will have to prove that they have actually lost money. It is a matter of record that when Judge Mazzoni ruled that the road could be closed he also said that they were not entitled to damages because their land was not landlocked. She said no one is more familiar with this case than Mr. Preate. She said there are already discrepancies between what Mr. Noto testified to in court and what he actually ended up doing with that property. No one will be able to pick that our more quickly than Ernie Preate. For example, Joe Ferguson didn't even know where T-390 was and how can we expect him, on his own, to be able to figure out the inconsistencies in the testimony at trial with what has actually been done with that construction. He absolutely needs Ernie's help and Ernie should be the one to make the decisions as far as who the experts are and things like that. If you do not include him in this case, you will be putting the Borough at a severe disadvantage and when the verdict comes down I will be the first to speak up and say that tonight is where you made the mistake.

COMMITTEE REPORTS

Finance Committee – Mr. Taylor reported that the changes made in the 2007 General Fund Budget at the November 1, 2006 regular Council Meeting have been made, including the reduction of 2 mills in the millage rate. The 2007 Sewer Budget was distributed for Council's review. Motion made by Mrs. Jackson, seconded by Mr. Roy Davis, to advertise all the 2007 Budgets (General Fund, Capital Reserve, Liquid Fuels, and Sewer Fund) to meet all requirements so that they can be voted upon at the December 6, 2006 regular Council meeting. Discussion: None. Motion carried 7 – 0.

Mr. Taylor commented on the sewer bills and where we're heading. Since coming on Council, he has investigated the sewer billing and was astounded to find that the sewer bills had been lowered; we used to pay more per quarter than we pay now. Is it best for us now to consider a usage-based sewer charge? He looked into this and feels it would be much to our advantage to change over to a use base. He would suggest using the same method of billing as we are now with Pennsylvania American Water Company, but folks who are using more water would pay more and in this way a single person or older couple would not be paying more than their fair share. He asked Council if he should pursue his investigation. Mr. Moyer said that one reason that we went with the water company was that we are now set up to know the actual water usage of each customer. It was the consensus of Council that Mr. Taylor should continue investigating the possibility of changing to a usage basis for billing at some point in the future.

OLD BUSINESS

Grandview Street Representation – President Moyer reiterated that Council met with both attorneys, Preate and Ferguson. As it stands now, Joe Ferguson is the lead attorney and if he feels he needs to hire Mr. Preate or anybody else, he can come back to Council to let them know where they are and where they're going. Motion made by President Moyer, seconded by Mrs. Jackson to keep the Grandview Street legal representation as it stands now whereby Mr. Ferguson is the lead attorney and he can come to Council at any time and let Council know who or what he needs. Discussion: Mr. Moyer said that Mr. Appleton had some good suggestions also and if Joe Ferguson needed to contact Mr. Appleton that would be fine with Council. Mr. Roy Davis said that his impression in talking with Mr. Ferguson was that Mr. Ferguson would not mind at all working as co-counsel with Mr. Preate. My understanding was that we were going to meet tonight to decide if Mr. Ferguson needed more support. Mr. Taylor spoke saying he appreciate having the meeting with both lawyers. If there was any question on whether we were well represented by Mr. Ferguson, it was well answered by that meeting. Ernie also had a well laid out plan. Mr. Taylor directed a question to Mr. Preate specifically, asking what would Ernie bring to this case. Mr. Preate complimented Joe Ferguson by saying Joe was doing a fine job and if he could help Joe, please call me. In Mr. Taylor's opinion, Council is abiding by the Grandview Street resident's request and asking Mr. Preate to be available however Mr. Ferguson can use him; we're just not making him the lead attorney. The only thing that Council asked was that they be given a weekly or bi-weekly summary of the hours being billed just to make sure that we're not digging a hole we can't get out of. Mr. Moyer agreed and stated again that he has no trouble with Joe

**BOROUGH OF CLARKS SUMMIT
RECONVENE OF REGULAR NOVEMBER 1, 2006 COUNCIL MEETING
WEDNESDAY, November 8, 2006
Page 3 of 4**

Ferguson hiring Ernie Preate or even John Appleton. In fact, John Appleton has been around and was here when they originally closed the road between the two municipalities.

Mr. Williams called for the floor. He stated that we don't need more than two attorneys. He said we should all have our input. Mr. Moyer said you must have a motion and a second before you can have any discussion. That's why he made the original motion. Mr. Williams said, I'm not sure, under Robert's Rule of Order, that the President can even make a motion. Mrs. Carey said she was under the impression that Mr. Ferguson and Mr. Preate would be satisfied with co-counsel status. Mr. Moyer said he felt you need a lead attorney to be in charge and set the direction of the case. Mr. Davis said that he came to every meeting, went to the court house to hear testimony, and he must say that he has learned very little at this table. Mr. Davis said looking at this from the outside looking in, maybe your opinion is somewhat tainted because you were here over the long haul. He said he made the statement at the Executive Session and he's making it publicly tonight. He thinks we should put the best team forward that we possibly can to try to win this. Another thing that needs to be said tonight is that Mr. Preate made several public promises. He said that he was extremely confident that this thing will NEVER GO to a Board of View. Well, it did go to the Board of View. And secondly, he said that he was so confident that if it did, he would do the work pro bono. And of course, we know that he responded to that saying he couldn't honor that promise. We're sitting here as lay persons so we hear one thing and your mind tips one way; then we hear something else and it tips back the other way. We accepted Mr. Preate's offer of recanting his offer and I think Council was very generous in accepting that recant and inviting him back. For myself, alone, I know how important this thing is. It has evolved into something that has become bigger than the Borough. I want to put the best team out there because I really want to win. However, I would suggest to the people of Grandview, that maybe they should have taken a little field trip around the Borough and instead of just analyzing the pros and cons of what it was going to do to Grandview Ave., drive around the Summit and find out traffic in the last 15-20 years has affected other parts of our community. Believe me there are other roads that have been affected as much or even more. There are other pressures coming to us in this town. But it just seems like the people on Grandview don't want to hear that. We are where we are on Grandview and we can't deny that. There's no going back. I do want to win. I don't think your pleas have been falling on deaf ears. I think you're right on the border of being brow beating in some cases because we're hearing the same thing over and over and over. As Mr. Rowland said before, we're at the Board of View. We're not in front of Judge Mazzoni on deciding whether or not we can close the road; that's done. I implore Council to consider all of that. This has been a trying, traumatic experience for 2 ½ years.

Mr. Moyer addressed Mr. Martin and assured him again that this Council wants to win and is doing everything in its power to win.

Mrs. Van Wie stated that she has the highest regard for Joe Ferguson as an attorney. She is simply saying that he doesn't know the case. Ernie does know the case. They took testimony for days and days and days and there are volumes and volumes of transcripts. That is a tremendous amount of paperwork to go through when you don't know the case. Fiscally, it doesn't make sense to pay someone whatever Joe Ferguson is charging us to look through all that testimony. I think it is an excellent idea to have them as co-counsel.

Mrs. Carey stated that she assumed also, that following the meeting with both attorneys, it was going to be a co-counsel situation. She felt that Joe Ferguson even stated that Ernie had a lot more information on that and that they could really work together. You NEED the two working together, rather than just saying, oh, if he needs Ernie, he could ask for him.

Mr. Herman Johnson, Highland Avenue, Clarks Summit, said that this is frustrating because nobody is following Robert's Rules of Order. Council is arguing amongst themselves saying I heard it one way, and somebody else saying no, I heard it another way. This is why the community is confused on this issue. Right now you should go on with the question because you have a motion. Mr. Moyer said I'm going with the question. Mr. Johnson stated that under Robert's Rules the President can't make a motion.

Mr. Moyer said he would rescind his motion.

**BOROUGH OF CLARKS SUMMIT
RECONVENE OF REGULAR NOVEMBER 1, 2006 COUNCIL MEETING
WEDNESDAY, November 8, 2006
Page 4 of 4**

Mr. Williams made a motion, seconded by Mrs. Carey, that Council hire Mr. Preate as the lead attorney and hire Mr. Ferguson as the co-counsel for the Board of View matter. Discussion: I'm making this motion because Ernie won the first case and after that it all went downhill with the other attorney's we had. A roll call vote was taken: Mrs. Jackson – NO; Mr. Davis – NO; Mr. Williams – YES; Mrs. Carey – YES; Mr. Taylor – NO; Mr. Colman – NO; Mr. Moyer – NO. Motion was defeated with 2 yes votes and 5 no votes.

Mr. Davis made a motion, seconded by Mrs. Carey, that Council hire Mr. Ferguson and Mr. Preate to act as co-counsel as a team. Discussion: None. A roll call vote was taken: Mrs. Jackson – NO; Mr. Davis – YES; Mr. Williams – YES; Mrs. Carey – YES; Mr. Taylor – NO; Mr. Colman – NO; Mr. Moyer – NO. Motion was defeated with 3 yes votes and 4 no votes.

Mr. Taylor made a motion, seconded by Mrs. Jackson, to continue with Mr. Ferguson as lead counsel as we have with the additional comments that we would allow him to hire Ernie Preate to help him as needed and any other firm which he spoke to us about which would be necessary to win this case. Discussion: Mrs. Carey said she felt that they have to work as a team. If they're not going to work as a team, Ernie is not going to want to just wait there in the wings. I think we'll be most successful if they work as a team. Mr. Davis said however, that Ernie expressed himself that he would be willing to work with Mr. Ferguson or any firm. A roll call vote was taken: Mrs. Jackson – YES; Mr. Davis – YES; Mr. Williams – NO; Mrs. Carey – NO; Mr. Taylor – YES; Mr. Colman – YES; Mr. Moyer – YES. Motion carried with 5 yes votes and 2 no votes.

EXECUTIVE SESSIONS

President Moyer stated that an Executive Session was held prior to the meeting and we had one afterwards both regarding litigation, none were held during this meeting and none were scheduled subsequently.

ADJOURNMENT

There being no further business, Mr. Moyer adjourned the meeting.