

**BOROUGH OF CLARKS SUMMIT
BOROUGH COUNCIL REGULAR MEETING
WEDNESDAY, DECEMBER 3RD 2003
Page 1 of 6**

The regular December Meeting of Borough Council was conducted on Wednesday, December 3rd 2003 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 Lackawanna. Council members in attendance were Council President Edward M. Bush, Sr., Council Vice President Donald H. Moyer, III, Councilman Robert Bennett, Councilman Thomas Bradley, Councilperson Gerry Carey, Councilperson Linda Jenkins and Councilman Patrick Williams. Also attending were Mayor Robert Kester, Solicitor Ernest D. Preate, Jr., Chief Joseph English and Borough Manager/Secretary James G. Vones, Sr.

There being a quorum present the Meeting was called to order at, followed by a moment of silent/self-directed meditation and then the Pledge of Allegiance To The Flag.

APPROVAL OF AGENDA:

The Agenda for this night's Meeting was pre-approved by the Council President.

APPROVAL OF MINUTES:

November 5th 2003 Regular Council Meeting

Motion by Mr. Moyer to approve the Minutes as presented. Second by Mr. Bradley. Discussion followed, with Mr. Williams asking about the cost associated with the new UCC (Page 1, last paragraph). It was noted that the cost is not fully known yet, since the state is still finalizing the regulations (PA Department of Labor & Industry). Mr. Bradley did note that when the new state requirements come into effect, the cost of all construction would go up \$1,000 to \$2,500. Motion carried 7-0.

BIDS & QUOTATIONS:

Borough Municipal Solid Waste & Recycling

The Borough Manager/Secretary provided an overview on the Bids. This was a joint bidding process with Clarks Green Borough, South Abington Township and Newton Township. The low Bidder, J.P. Mascaro was significantly higher for year 2004 than they currently charge the Borough (2003). President Bush stated we can reject these Bids and get a hauler from the Wilkes-Barre area. We can go week to week for a period of 90 days. That would give the Borough time to re-do the Specifications and re-advertise the Municipal Solid Waste (MSW) and Recycling Bid. This Bids was put out too late and our back is against the wall and the haulers know it. We are in a "accept or reject" situation tonight. President Bush recommended that Council reject the Bids from both Waste Management and J.P. Mascaro and negotiate with J.P. Mascaro and two (2) other haulers. We currently provide these services under contract with J.P. Mascaro and we pay for it out of the Tax Base.

Mr. Augustine of J.P. Mascaro was present and offered the following comments. The Mascaro bid is a good bid and should not be rejected here. You (the Borough) have a guaranteed price for five (5) years with this bid. It is 50% higher than it was five years ago, but since then insurance, fuel, and costs have risen. House Bill 2004 caused great impact on the industry, not only with fees, but the penalties are much greater now. Mr. Augustine went on to overview the impact HB 2044 had on J.P. Mascaro and others. He also noted that landfill space in Pennsylvania is very limited, and this bid would provide a service over the next five years (disposal). We are providing a five (5) year bond and guarantee to this Borough. Mr. Augustine stated that J.P. Mascaro would continue its current service in the Borough for one (1) month (January 2004) at a rate of \$183.53 per household. He stated that he believed, South Abington Township would accept their bid offer next week, and commit to J.P. Mascaro for a five-year bid. President Bush stated that perhaps we already have another hauler to provide this service. Mr. Augustine responded that this was a fair bid price and you (Council) rejects this and re-bids this contract, the price will surely be higher.

**BOROUGH OF CLARKS SUMMIT
BOROUGH COUNCIL REGULAR MEETING
WEDNESDAY, DECEMBER 3RD 2003
Page 2 of 6**

President Bush stated that if another hauler was secured the service may not be perfect, but the price would be much better. If we re-bid this there is a possibility that a smaller hauler could respond. We went into this too late, now we are "boxed in". Mr. Augustine objecting to this comment. President Bush, clarifying, stated we put ourselves into this box. If we reject this Bid Offering we have 90 days plus two weeks to get a new Bid out. The currently specification require very high insurance limits and small haulers cannot bid this. If we review and revise the limits, perhaps more bidders and lower bidders will come next time.

Mr. Rowland asked about the value to price out our work. A hauler now only has to send out one bill per month; in South Abington Township the residents get the bills and it is not a part of the property tax base. President Bush noted that both Clarks Green Borough and Clarks Summit provide this service and pay for it out of the property tax base.

Mr. Rowland stated that perhaps if the Bid Specifications are re-done, the large item/bulk item pickup could be a listed option. What is the price for this service, rather than a part of the MSW total contract? If this were re-bid the other companies would have to be bonded and insured, perhaps not to this high level.

Mr. Meincke (1016 Sleepy Hollow Road) asked about trash and recycling collection after the holidays?

Mr. Rowland stated that J.P. Mascaro would continue for two (2) months, beyond the end of the current contract? President Bush responding, no, only one month per Mr. Augustine tonight.

Mr. Rowland asked about Christmas tree collections and bulk pickup after the Holidays. If you (current Council) re-bid this, then you should involve the new Council, since they must live with it.

President Bush stated that at the end of 2002 we had a \$80,000 surplus and in 2003 we are leaving you with the same \$80,000.00 surplus. I am recommending to this Council that you reject these Bids and secure a temporary hauler for a few months and re-bid this matter.

Mr. Archangelo (Councilman from Clarks Green Borough, present in the audience) asked if Clarks Summit would consider a quarterly surcharge to its residents/per household surcharge to cover the price increase?

President Bush stated that we need 90 days to review and re-think this matter and get a new Bid out, the surcharge could be discussed then.

Solicitor Preate stated that there are two legal considerations here and wanted his comments noted in the Minutes of this Meeting. The first is you can accept or reject these Bids, but if you reject you have to have a good reason to do it. Secondly, It is a Misdemeanor in the 3rd Degree (crime) if there is bid rigging. The except here is that the current Council has no intention of violating Section 1403 and the rejection is reasonable, cautious and prudent. The rejection, due to price and its impact on the Borough General Fund and tax base would be prudent, if Council determines it will reject these Bids.

Mr. Augustine again, you have a fair bid in front of you, we have given you (Council and the Borough) every opportunity and consideration and wish to continue our service here for another three or five years.

Mr. Meincke asked if the Borough had considered a per bag charge for trash? That would benefit older residents who do not produce so much household trash.

Mr. Williams thanked President Bush, Councilman Bradley and Jim Vones for their efforts in this matter. He told Mr. Augustine he had made a nice presentation, tonight. We have to think about this. J.P. Mascaro picks up everything now, trash, recycling and bulk items. They do half the Borough one day and the other half the next day. If we re-bid this it will be long and drawn out process again.

**BOROUGH OF CLARKS SUMMIT
BOROUGH COUNCIL REGULAR MEETING
WEDNESDAY, DECEMBER 3RD 2003
Page 3 of 6**

Mr. Bradley noted that a three-year surcharge could be imposed to cover the cost increase beyond what we are paying in 2003.

Mr. Bennett reviewed the annual; increases, per year in the J.P. Mascaro Bid Proposal, over what the Borough was paying now (2003); on a per household basis.

Motion by Mr. Williams to accept the low Bidder and give a five (5) year contract to J.P. Mascaro. The motion died for a lack of a second.

Mrs. Carey motioned to reject the Bids (Waste Management and J.P. Mascaro) and secure an alternate, lowest responsible bidder/hauler for 90 days. Second by Mrs. Jenkins. Discussion followed. President Bush noting that this will give the newly elected Borough Council a chance to look at this whole issue.

Mr. Bradley asked what was the Borough Solicitor's opinion on this? Solicitor Preate stated that Council could reject these bids on several issues, including cost. He noted that if they are rejected, there is no intent to circumvent the state's bidding/purchasing/advertising requirements.

Mrs. Jenkins asked if Mascaro could come back for the 90-day period? Solicitor Preate stated the Borough would be re-miss if they did not request a bid/quotation from J.P. Mascaro. They have been here for five years and provided good service to the residents during that period.

On the motion to reject; Carey – yes, Bennett, yes, Bradley – yes, Jenkins – yes, Williams – no, Moyer – yes, Bush –yes. By a vote of 6-1 the Bids for Clarks Summit Municipal Solid Waste (MSW) and Recycling (Three-year contract 2004 to 2006 or a five-year contract 2004 to 2008) were rejected.

BOROUGH TREASURER'S REPORT:

The Borough Treasurer's Report for the month as of November 30th 2003, as prepared by Dee Ann Stephens was before Council. Motion by Mr. Bradley to accept the Report as presented. Second by Mr. Bennett. Discussion – None. Motion carried 7-0.

COMMITTEE REPORTS:

Mrs. Jenkins requested an Executive Session during this Meeting to discuss litigation and personnel issues.

POLICE REPORT:

Mayor Kester gave the Police Report for November 2003. He thanked the Police Department, the Fire Company, the Borough's Emergency Management, and the Fire Police for the fine job they had done with the problem on the Summit hill (water line break and lane closure on Routes 6 & 11).

Mayor Kester noted that the Clarks Summit Police Department had been provided gun safety locks. They were free to residents and encouraged people to use them to promote gun safety and accidental discharge.

Mr. Bennett asked about the number of false alarms again reported in the November Police Department Report. He noted that persons given a ticket for false alarms should also be included in the report (number of tickets/not individuals by name).

BILLS TO BE PAID:

Motion by Mr. Bradley to pay the current obligations, specifically \$ 46,085.24 from the General Fund, \$ 21,612.96 from the Payroll Account, and \$ 8,000.00 from the Sewer Fund; and to approve the payments made between November 12th 2003 and November 25th 2004, \$ 42,615.03 from the General Fund;

**BOROUGH OF CLARKS SUMMIT
BOROUGH COUNCIL REGULAR MEETING
WEDNESDAY, DECEMBER 3RD 2003
Page 4 of 6**

\$ 20,382.94 from the Payroll Account; and \$ 93,105.98 from the Sewer Fund. Second by Mrs. Jenkins. Discussion followed. Mr. Bennett questioned a payment to Old Dominion and Mr. Williams questioned payments for trees. Motion carried 7-0.

OLD BUSINESS:

None

NEW BUSINESS:

Resolution 2003-19 – Parking Meter Suspension

Motion by Mr. Moyer to adopt Resolution 2003-19, per the request for the Abington Business and Professional Association (Holiday Parking Meter suspension). Second by Mrs. Carey. Discussion – None. Motion carried 7-0.

Resolution 2003-20 – 2004 Tax Anticipation Note (TAN)

Motion by Mr. Moyer to adopt Resolution 2003-20. Second by Mrs. Carey. Discussion – None. Motion carried 6-0-1 (President Bush abstaining).

Sewer Fee Request of Colarusso's Restaurant

Motion by Mr. Bennett to have Council President research this request and handle it with the staff. Second by Mrs. Carey. Discussion – None./ Motion carried 7-0. (Colarusso objecting to the quarterly sewer imposed at the new restaurant.).

BOROUGH SEWER OFFICE REPORT:

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

SOLICITOR'S REPORT:

Solicitor Ernest D. Preate, Jr. gave the following report, for his activities during the past month:

Preate filed a Petition with the Court of Common Pleas to Close (a portion of) Grandview Street, a Hearing would be held on December 12th 2003 at 10:00 A.M. in Scranton.

There was an Equity Suit filed by Noto and Amato and a Hearing held on November 13th.

On November 21st 2003, Noto and Amato had requested a Board of View action.

On December 3rd 2003 Solicitor Preate had filed two (2) Motions. The first, rules to show cause on re-opening the Hearing and to submit a supplemental record. On November 21st Attorney Van Wey had filed a motion, following the November 13th Hearing. This was no longer urgent; Noto had stated that the barriers removal could wait until the Hearing in December. There is no immediate and irreparable harm with the barriers at Grandview Street. This is a material fact at law, and Noto and Amato are not entitled to a Hearing on this. We have a motion by default; they (Noto & Amato) have adequate remedy at law to resolve this/these issues.

They (Noto & Amato (their attorneys)) are being aggressive, and we (the Borough) are being aggressive.

**BOROUGH OF CLARKS SUMMIT
BOROUGH COUNCIL REGULAR MEETING
WEDNESDAY, DECEMBER 3RD 2003
Page 5 of 6**

Mr. Williams asked by Judge Minora is concerned about the placement of the barriers? Solicitor Preate responded we put them up to protect our liability. If the barriers were not there and someone came down the road (Grandview Street) that was unfamiliar with the area they could have been hurt or killed. (The paved portion stops quickly and the dirt road narrows with deep stormwater swales on either side). We did it to protect the citizens and motoring public. It was Noto who disturbed the "status quo" when he removed the dirt pile.

Mr. Williams, good job (Solicitor Preate)! Key word here is aggressive.

Mr. Bennett asked questions about, based on past actions, what would be the consequences if the barriers were moved? Solicitor Preate stated they are the issue being addressed by Judge Minora.

CORRESPONDENCE:

The Borough Manager/Secretary reviewed November 2003 correspondence:

November 9th 2003 Warns Letter (Chairman Architectural Committee/Fieldstone Estates Townhouse Association) re: inspections of Hedge Row Run.

November 13th 2003 PA One Call re: Water Main Break at Knapp and South State Street.

November 24th 2003 Thank You Letter to Officer Shedlock, re: Law Merit Badge/Troop 160.

Undated United States Bankruptcy Court Southern District of New York re: Chapter 11 (Jointly Administered) Adelfia Communications Corp., et al.

EXECUTIVE SESSIONS:

President Bush stated that no Council Executive Sessions had been held prior to this Meeting, one would be held during this Meeting (Grandview Street Litigation and personnel), and none were scheduled following this Meeting.

PUBLIC COMMENT & INPUT:

Mr. Miencke stated that this was President Bush's and the old Council's last Meeting. He stated they had done a good job and saved the taxpayers a lot of money. He wished them all well in the future.

Professor/Mrs. Appleton stated that she had watched this Council work and would be watching the new Council when they came in.

President Bush thanked Mr. Miencke for his kind remarks. But that he had not done it alone.

Professor/Mrs. Appleton asked why Jones (Solicitor Jones of South Abington Township) was requesting a Board of View? President Bush stated it was not Jones, but rather Noto and Amato would have filed for a Board of View action at Lackawanna County.

President Bush stated that he had called Tim (Councilman Elect Timothy Rowland) and would make himself available to the new Borough Council members if they had questions.

Mr. Kumpas of Grandview Street asked if the Borough Council Public Hearings and Special Meetings conducted over the past several months be entered into the Court Record? Solicitor stated they may be, but the proceeding before the Court will be a whole new procedure.

**BOROUGH OF CLARKS SUMMIT
BOROUGH COUNCIL REGULAR MEETING
WEDNESDAY, DECEMBER 3RD 2003
Page 6 of 6**

Mr. Bradley thanked President Bush, Councilperson Linda Jenkins, Councilman Robert Bennett and Mayor Kester for they're past service to the Borough. He requested that Borough Resolutions be prepared for them.

Mayor Kester stated he was also available and would be prepared to assist the new Council and Mayor, as they required.

RECESS:

Council recessed at approximately 9:40 P.M.

RECONVENE:

President Bush reconvened the Meeting at approximately 11:23 P.M. No on was left in the audience.

LABOR AGREEMENT – BOROUGH MANAGER/SECRETARY:

Motion by Mr. Bennett to award a two (2) year Labor Agreement to Jim Vones as the Borough Manager/Secretary for the period of January 1st 2004 to December 31st 2005, with a salary adjustment of \$2,000.00 (similar to that given to Chief of Police English). Second by Mr. Bradley. Discussion – None. Motion carried 7-0.

LABOR AGREEMENT – BOROUGH DPW FOREMAN:

Motion by Mr. Bennett to award a two (2) year Labor Agreement to Neil Bartholme as the Borough DPW Foreman for the period of January 1st 2004 to December 31st 2005, with a salary adjustment of \$2,000.00 (similar to that given to Chief of Police English). Second by Mr. Bradley. Discussion – None. Motion carried 7-0.

GRANDVIEW STREET CONSULTING ENGINEER:

Motion by Mr. Bradley to authorize President Bush to sign the Borton Lawson (Engineer) Agreement/Contract for Grandview Street. Second by Mrs. Carey. Carey – yes, Bennett – yes, Bradley – yes, Jenkins – yes, Moyer – yes, Williams – yes, Bush – yes. By a roll call vote of 7-0 the motion passed.

APPRAISER:

Motion by Mr. Bradley to authorize Solicitor Preate to request proposals from Real Estate Firms/Real Estate Appraisers for possible use at the Board of View. Second by Mr. Bennett. Discussion – None. (This was authorization to solicit RFQs, but not engage any person or firm). Motion carried 7-0.

ADJOURNMENT:

There being no further business before Borough Council the Meeting was adjourned at approximately 11:25 P.M.

Respectfully submitted,

JAMES G. VONES, SR.
Borough Manager/Secretary

EDWARD M. BUSH, SR.
Council President