

**BOROUGH OF CLARKS SUMMIT**  
**May Council Meeting**  
**Wednesday, May 6, 2009**  
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The May Regular Meeting for Borough Council was conducted on Wednesday, May 6, 2009 at 7:01 P.M. The Meeting was held in Borough Council Chambers, 2<sup>nd</sup> Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna and Commonwealth of Pennsylvania. Council members in attendance were President Gerrie Carey, Vice President Patrick Williams, Mrs. Kathy Drake, Mrs. Barbara Evans, Mr. Herman Johnson, Mr. Murli Rajan, Mr. Kevin Yetkowskas, Mr. Jeremy Adelman and Mayor Harry Kelly. Also attending were Borough Manager/Secretary, Virginia Kehoe and Chief Vitale. Mr. Roy Davis was absent and Solicitor Ernest Preate arrived late. There being a quorum present the Meeting was called to order by Council President.

**CALL TO ORDER:** President Carey called the meeting to order and completed role call.

**PRESENTATION OF COUNTY CONSERVATION AWARD:** Mary Felley, Executive Director of Countryside Conservancy, made a presentation to Barbara R. Grabfelder. Barbara R. Grabfelder was presented with a Stewardship Award for the Abington Joint Recreation Board's Community Garden.

**MEDITATION:**

**PLEDGE OF ALLEGIANCE:**

**PUBLIC HEARING FOR ORDINANCES:**

Virginia Kehoe stated that four ordinances have been advertised and there are copies available for the public to review, and if Council wishes to do so, they may vote upon the ordinances this evening. The first is the Planning Commission Amendment that creates more specific guidelines for handling nuisance issues. The second, the MUA, allows the Borough to participate in a program which would allow for the purchase of discounted electricity rates. The third ordinance targets a small portion of School Street near a retaining wall at the Grove Street end for no parking. This is in the best interest of the community as any additional weight of parked cars could potentially create a safety issue for the community. The final ordinance would be a Curative Amendment rezoning part of Highland Avenue to CC, which Highland Associates would like to purchase for use as a parking lot. Virginia Kehoe opened the floor for questions or discussion on the four ordinances.

Ray Davis commented and stated that one of the advertisements had the wrong address. Virginia Kehoe state that was for the Zoning Hearing next week and that it has been corrected and re-run. Patrick Williams commented on the Highland Associates Curative Amendment. He asked how many houses will be removed to allow this parking lot to be built, were this Curative Amendment to be approved. Mrs. Barbara Wiley commented that it would only be her home, at 116 Highland Avenue. There was discussion that the Zoning Officer recommended not to grant this Curative Amendment and the question was asked if there was any action regarding that recommendation. Virginia Kehoe explained that there was no further action taken and that tonight's hearing and potential vote will be the next step.

Barbara R. Grabfelder asked that the nuisance ordinance be briefly described. Virginia Kehoe explained that the ordinance simply provides more specific definitions covering things such as junk vehicles, drainage of pools and ponds, etc. and gives more specific enforcement guidelines.

There were no further comments.

**APPROVAL OF AGENDA:**

Barbara Evans made a motion to approve the agenda as presented. Kathy Drake seconded the motion and it carried 6-0.

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**APPROVAL OF MINUTES:**

March 4, 2009 Regular Council Meeting – Pat Williams made a motion to approve the minutes as presented. Barbara Evans seconded the motion and it carried 6-0.

March 31, 2009 Special Meeting – Barbara Evans made a motion to approve the minutes as presented. Kathy Drake seconded the motion and it carried 6-0.

April 1, 2009 Regular Meeting – Kathy Drake made a motion to approve the minutes as presented. Patrick Williams seconded the motion and it carried 6-0.

**PUBLIC COMMENT AND INPUT:**

Charlie Martin wanted to thank the police department for a job well done. He also commented that the Grandview Street Neighborhood Association met on Tuesday evening and by Wednesday morning, all of the issues with the barrier were already addressed. He thanked the Borough for that, and also asked for a bill for the flowers at the end, as the residents of Grandview would like to take up a collection to contribute toward the expense of these flowers, etc. Solicitor Preate addressed some questions to Charlie Martin and Mari Van Wie regarding the ownership and maintenance of this area. He also addressed the incorporation of the Neighborhood Association and asked if they have established a board of trustees, officers and by-laws. They stated that they have elected officers, but have not established a board of trustees or by-laws. Attorney Preate suggested that this be addressed immediately, as Mr. Nogi is not interested in transferring this property until the Association is viable. Mari Van Wie stated that the Association is looking into insuring the property but that they do not intend to pay for other improvements until the property is deeded to the Association. She stated they do not intend to keep money in an account; rather, they will collect money on an as needed basis.

Gene Gallagher asked a few questions regarding fees charged to Mr. Swientisky. Virginia Kehoe stated that she had the information for Mr. Gallagher and would provide it to him after tonight's meeting. He also asked to clarify the Special Meeting date is scheduled for May 26, 2009. Virginia Kehoe confirmed that the Swientisky discussion would, in fact, take place prior to the regular agenda items scheduled for this meeting.

Ray Davis spoke and stated that he, too, would like to commend the police department for their work. He then stated that he had e-mailed Chief Vitale and other Council members on April 23<sup>rd</sup> which was not answered until today, 13 days later. He stated this was not exactly a timely response. He then stated his belief that everyone on Council, the Mayor and the Solicitor should have an e-mail which they check regularly. He complained that Mayor Kelly flat out refuses to get an e-mail address. Mr. Davis then reviewed the e-mail he sent to Chief Vitale and Council members. He asked about speed enforcement on Summit Hill and stated that it is basically a speed trap and the posted speed limit is inappropriate. He asked for a detailed police report which shows tax payers what type of speed enforcement is being done and where. He then addressed the sign ordinance with the tattoo parlor on State Street. He stated his belief that the signs are not in align with the ordinance.

Elizabeth Klein asked if the 400 block of Summit Avenue will be paved. Mr. Johnson stated that a blacktopping road maintenance project has begun. He stated that they do have a list, with roads prioritized by need, to be paved. He stated that he is not certain as to where Summit falls on that list, but assured Ms. Klein that it is being addressed. Virginia Kehoe explained that the DPW has surveyed all of the roads and submitted a list for this year, which unfortunately does not include Summit. Mr. Johnson stated the goal of having all of these roads addressed and on a regular maintenance schedule within the next 2 – 3 years. Congressman Carney has been asked for a significant appropriation to deal with these needs and citizens are encouraged to write him a letter supporting this appropriation. Mr. Williams did add that a great amount of time and thought has been put into prioritizing this list and that storm water work is also being addressed.

Tony Condella spoke about the nuisance ordinance regarding cardboard signs posted to poles regarding yard sales, etc. He stated his belief that it's illegal to put a nail into a pole, and Attorney Preate stated this is true. Mr. Condella questioned whether the issue of hanging signs on utility poles could be addressed within the nuisance ordinance. There was also discussion of permits being obtained for political signs and the removal of the signs after the election. There was discussion of yard sale signs and also of safety issues regarding parking for yard sales.

Emmett Mancinelli spoke regarding the Site Tech subdivision and a proposal he has created for handling the roads. He stated this is all being submitted to the County and asked if he could share this presentation. Solicitor Preate stated this needed to be forwarded to the Planning Commission. Mr. Mancinelli stated he has forwarded this to the Planning Commission and thanked Council for their time.

**OLD BUSINESS:**

- **Vote – Ordinance 2009-10 Highland Avenue Curative Amendment.**

Mr. Provini approached the podium to answer questions. Mr. Williams confirmed that there will only be one property affected if this goes through. Mr. Provini stated that this was correct. Mr. Williams asked why there is a need for extra parking. He stated that he observed several empty spots in the lot. Mr. Provini stated that some employees will park in other lots, including at the previous Convenient location or the Airline Petroleum lot. It is speculated that once Basilico's opens, all of that parking, with the exception of 4 spaces, will be lost. Mr. Williams stated concerns with traffic and asked for some terms, perhaps including "Right Turn Only" stipulations, etc. Mr. Provini stated that he is willing to agree to that. There was also discussion about using Colburn Street. Virginia Kehoe stated that in the past, Mr. Provini was told specifically not to use Colburn Street by the previous Council, though she does not know why. There was discussion regarding exits. Mr. Johnson stated he lives on Highland Avenue and that he doesn't believe any problems exist or that any safety issues will be created. Virginia Kehoe did state that she believed Colburn could become a safety issue if the exit were to be opened on that side, but that the Highland exit will not create a problem.

Solicitor Preate stated that a Curative Amendment cannot include the stipulation for the Right Turn Only, rather, this would be addressed within Planning Commission. He suggested that the Curative Amendment issue, changing the property from R-2 to CC be addressed at this time, and the other issues can be addressed through Planning Commission at the appropriate time. Suggestions and concerns can be sent to Planning Commission from Council during the Land Development proceedings. There was also discussion of a traffic study which would need to be conducted during such proceedings.

There was a question as to whether the change of zoning could allow ANY commercial development on this property, as opposed to the intended parking lot. Solicitor Preate stated that Mr. and Mrs. Wiley have created a restriction in the deed which states the property can only be used for a parking lot. Elizabeth Klein spoke again and stated that she worries this could cause a shift in the character of the area and town, by allowing commercial properties to spread into residential neighborhoods. Others shared this concern, but it was stated that there is no opposition from the neighbors.

Mr. Wiley spoke and stated that Highland Associates, throughout the years, has grown and developed and made every improvement they've been asked to make. He commented on their positive contributions to the Borough. He stated that the creation of this parking lot would be a way to right difficulties that have been experienced for twenty years. Mr. Wiley stated that everyone who is part of the "Highland Associates War" is supportive of this parking lot creation.

Attorney Preate questioned Mr. Provini. He questioned how many employees are employed at this building. Mr. Provini stated that he has 82 employees and 80 parking spaces, which also means they are short on the extra 30 spaces required. Mr. Provini described what the plans are for the proposed lot and went into detail about steps taken to protect the neighborhood from the lot such as buffers, lighting, etc. He also stated that there are stipulations in place that the property cannot be used for anything but a parking lot. Mr. Provini also discussed hazards of having to park at the Airline Petroleum lot, including the crossing of three highly traveled roadways and weather conditions, especially in winter. Solicitor Preate asked if Highland Associates is the largest employer in Clarks Summit Borough, and stated that their employees are professionals with higher incomes. Virginia Kehoe stated that this is likely accurate. Virginia Kehoe shared a technical review by the Borough Engineer, who agreed that CC zoning would be necessary for the parking lot, and that should such rezoning occur they would have to meet the requirements of the Subdivision and Land Development ordinance. He also stated that the proposed layout for the parking lot would seem to meet the requirements. Virginia Kehoe also shared a letter from Attorney Preate supporting this project.

Gene Gallagher spoke and commented on zoning changes in general, and some of the issues that have occurred since other zoning changes have occurred. He also stated that there are some opposed to this, including the Borough's Zoning Officer. Mr. Provini discussed the measures that have been taken to protect the neighbors, which the Wiley's ensured, prior to agreeing to sell the property. There was discussion as to whether or not this creates precedence for future cases, either here or throughout the Borough, and Solicitor Preate stated that no, it does not.

After discussion, Council was prepared to vote. Barbara Evans made a motion to change the Zoning in this area from R-2 to CC. This motion was seconded by Herman Johnson and carried 6-0.

- **Vote – Resolution 2009-02 Police COLA**

After discussion, including discussion about creating a more systematic approach based upon the full or under funding of the Pension and its performance, Herman Johnson made a motion to table the issue. Barbara Evans seconded the motion and it carried 6-0.

**NEW BUSINESS:**

- **Vote – Ordinance 2009-04 Nuisance Ordinance**

Gene Gallagher stated that while he can agree something like this might be necessary it is lengthy and he had some questions. He questioned commercial lighting, fine stipulations, and enforcement procedures. He feared the \$1,000.00 per day violation fee is too large and gives the Magistrate too much leeway. Virginia Kehoe stated the fine recommendation was the recommendation of Planning Commission and the Borough Planner. Solicitor Preate stated that this was created by Carson Helfrich, who is a well respected community planner. He stated that he is very pleased with the work of the Planning Commission, and that it is so detailed out of necessity. There were concerns expressed about the power granted to a judge and the fact that a judge could abuse this large limit. There was discussion that this nuisance ordinance gives the magistrate the power to resolve nuisance issues in the best interest of the community. Virginia Kehoe stated that all attempts possible are made prior to referring an issue to the magistrate. There was continued discussion regarding check and balance systems, and that Council is simply creating a law, which must then be enforced by a Judge. The law itself builds in opportunity for compliance, prior to fining. It was discussed that the Magistrate can also be bypassed and the issues could be directed immediately to the Lackawanna County

Court of Common Pleas should it be necessary. The District Attorney also uses a similar nuisance issue. Barbara R. Grabfelder pointed out a typographical error in §105 C, which should be changed from “per them” to “per diem.” Mr. Johnson made a motion to make this amendment. Mr. Ray Davis interrupted the motion and drew attention to other complaints he had with the ordinance, specifically with animals and noise. He stated his belief that the document is not well written and should not be voted upon. Virginia Kehoe commented that this document would not supersede separate ordinances addressing specific issues; rather, it fills in some gaps. Barbara R. Grabfelder spoke and encouraged Council to adopt this, in whatever written manor they choose, as a means of giving Borough Officials a tool for enforcement. There was discussion of having Mr. Helfrich attend a meeting to explain this and answer any questions. Barbara R. Grabfelder expressed her observation that month after month documents are presented and reviewed and restudied and that nothing ever gets accomplished or voted upon. It was her suggestion that committee’s be designated to review documents prior to meetings, in order to expedite the process of voting upon documents, etc. This was discussed.

Barbara Evans made a motion to table this issue until the next meeting, and for Carson Helfrich to attend the next meeting to explain the details of the ordinance. This does not need to be advertised. Herman Johnson suggested going with Barbara Grabfelder’s opinion and assigning a committee to this. Virginia Kehoe suggested the public safety committee. It was suggested it be clarified that this ordinance would not supersede other ordinances. It was also suggested that these ordinances be cross referenced. There was discussion of defining “a reasonable period of time” more specifically. It was discussed that this should not be more specifically defined, as a reasonable period of time varies per issue. Herman Johnson seconded Barbara Evan’s motion and it carried 6-0.

- **Vote – Ordinance 2009-08 MUA Cooperative Agreement**

The Mutual Utility Alliance cooperative agreement has been reviewed by Solicitor Preate. He stated his feelings that this is a wonderful idea and should be approved immediately. Kathy Drake made a motion to approve this agreement. Barbara Evans seconded the motion and it carried 6-0.

- **Vote – Ordinance 2009-09 No Parking School Street**

Virginia Kehoe stated that this is simply creating a no parking zone in the designated area of School Street. Barbara Evans made a motion to adopt this ordinance. Kathy Drake seconded the motion and it carried 6-0.

- **Vote – Resolution 2009-08 County EIT Collection**

This Resolution is attempting to give boroughs and townships more power in the way county taxes are collected. It was discussed that even though each community would be given a vote, the vote would be weighted by the population of the community, giving Scranton the ultimate determination. This could skew numbers, and lead to further issues such as situations with the Single Tax Office. Virginia Kehoe stated that eight other communities have already passed this. Patrick Williams made a motion to accept this Resolution. Mrs. Drake seconded the motion and it carried 6-0.

**BIDS & QUOTATIONS: None.**

**BOROUGH TREASURERS REPORT:**

The Borough Treasurer's report for the month of April was prepared and presented. Kathy Drake made a motion to approve the report as presented. The motion was seconded by Murli Rajan and carried 6-0.

**COMMITTEE REPORTS:** Mr. Williams gave a general report and thanks for those who participated in the Great Northeast Cleanup. There was discussion about the computer recycling collection as well as medication collection. Virginia Kehoe will communicate with the county on this.

**POLICE REPORT:** Mayor Harry Kelly and Chief Vitale presented the April 2009 Police Report. Chief Vitale made a comment on the speed at Summit Hill and the fact that the speed limit needs to be changed by Penn Dot, not the Borough. This was discussed. He also stated that the software available to the department does not allow for certain detailed reports to be easily generated, as were requested. There was discussion of handling Mr. Ray Davis' continued issues with the department and ways to deal with his continued attacks, which are getting out of hand.

Herman Johnson also asked Chief Vitale about the replacement of one of the police vehicles, which has excess mileage and needs to be phased out. There was discussion of replacement budgeted in next year's Capital Reserve. There was also discussion of grants which may be available.

**BILLS TO BE PAID:**

Kathy Drake made a motion to approve the bills to be paid, as presented. The motion was seconded by Barbara Evans and carried 6-0.

**BOROUGH SEWER OFFICE REPORT:**

The Sewer Reports were presented for April 2009 and May 2009. Herman Johnson made a motion to accept the reports as presented. Barbara Evans seconded the motion and it carried 6-0. There was discussion that Joe Guzik was elected President of the Sewer Authority, which is the first time in Borough history. Herman Johnson suggested sending Thank You notes to our Sewer Authority representatives for a job well done.

**SOLICITOR'S REPORT:**

Attorney Preate discussed the upcoming Hearing for Officer Kopicki's case. He stated the insurance carrier has a lawyer and therefore he is not involved. He discussed the pre-trial conference for Grandview Street trial which is the week of September 21<sup>st</sup>. There was discussion of the situation with Mr. Nogi transferring the portion of land to the Grandview Association and his letter regarding that property. Attorney Preate explained Mr. Nogi's hesitations and the need for the Grandview Association to become a viable group. There was discussion of preparations for the Grandview case, the paying of legal fees, Mr. Naegele serving as an expert witness, etc.

There was discussion of using the Senior Center beyond its regular 9 to 3 hours, and for other purposes. It is Solicitor's belief that because the Borough contributes 1/3 of the funds, we should be able to use it 1/3 of the time, for limited civic purposes. There was discussion of using it for summer camps, after school programs, etc. Clarks Summit Borough contributed 100% of the CBDB funds to build the facility which is presently only used 30 hours a week. Virginia Kehoe is researching this issue through various means. It was also discussed that all repairs and insurance since the building was constructed have been paid for by Clarks Summit Borough.

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**CORRESPONDENCE: None.**

**EXECUTIVE SESSIONS:**

Prior – April 28, 2009 – Personnel  
During – None  
Subsequent – None Planned

**ADJOURNMENT:**

There being no further business before Council, Herman Johnson made a motion to adjourn. The motion was seconded by Barbara Evans and carried 6-0.

**Respectfully submitted,**

**Katie M. Bower**  
**Borough Secretary**

**Germaine Carey**  
**Council President**