

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, May 7, 2008
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The Special Hearing – Ordinance 2008-03 – Regulating the Installation of Outdoor Fuel Burning Furnaces and/or Appliance held prior to the May Meeting of Borough Council which was conducted on Wednesday, May 7, 2008. The Special Hearing was held at 7:06 P.M. followed by the Regular May Council meeting held at 7:13 p.m. The Meetings were held in Borough Council Chambers, 2nd Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna and Commonwealth of Pennsylvania. Council members in attendance were President Gerri Carey, Vice President Patrick Williams, Mr. Roy Davis, Mr. Bob Bennett, Mrs. Kathy Drake, Mrs. Barbara Evans and Mr. Herman Johnson. Also attending were Borough Manager/Secretary Virginia Kehoe, Police Chief Louis Vitale, Mayor Harry Kelly and Solicitor Ernest Preate. There being a quorum present the Meeting was called to order by Council President, followed by a brief period of self-directed meditation and then the Pledge of Allegiance.

SPECIAL HEARING – ORDINANCE 2008-03:

A special hearing was held regarding the regulation of outdoor fuel burning furnaces and/or appliances. Virginia Kehoe stated that Council has addressed this situation at past meetings and work sessions and that she and members of Council have worked together to develop an ordinance with proper language to address the issue. This Ordinance No. 2008-03 is presented this evening and has been available for public review. President Carey opened the issue to public comment prior to the vote, which will be held during the regular meeting.

Mr. John Jeffrey spoke and asked about the term “appliance”. Virginia Kehoe explained that this is limited to a structure that is intended to heat a building or home, and that it does not apply to chimneas or fire bowls, etc.

With no further comment, the Hearing was concluded.

PRESIDIO CONDITIONAL USE:

Attorney Frank Bolock spoke on behalf of the Walsh family, the owners of Presidio Realty, LLC. Attorney Bolock explained the steps that have been taken to secure the Conditional Use. He always spoke regarding the damaged retaining wall located on the Walsh property. In exchange for the Conditional Use being granted, Mr. Bolock stated that in the event that there is a collapse of the wall and injuries were to occur either to people or property, Presidio Realty, LLC would not seek reimbursement from Clarks Summit Borough. He shared this document with Attorney Preate earlier. Presidio Realty, LLC is also willing to provide any necessary temporary construction agreements in order for the wall to be fixed. He also stated that the wall is partially on the Presidio property, which could be poor survey job years earlier, etc. but that they would not be seeking any imminent domain. He asked in consideration of these provisions that Council vote favorably for Presidio Realty in the Conditional Use decision. He stated that the Planning Commission has recommended, after their review of the Conditional Use application, that Council approve the said application.

Attorney Preate expressed his appreciation of Attorney Bolock and the Walsh family and their willingness and cooperation to get this situation resolved. There was discussion of a January letter from Mr. Walsh in which he complained that the wall was unsafe and wanted to determine whose land the wall was on. He explained that after some investigation and new surveying that the property is on both Clarks Summit property AND on Presidio’s property. He stated that he and Attorney Bolock were working toward some sort of agreement.

Robert Naegele invited questions from Council. He was asked if the wall was safe and if it could last another 50 years. He stated that question was nearly impossible to answer, in that they’ve only been monitoring the wall for approximately 5 months. He did state that he does not believe the wall is an imminent danger, but that in the future, it should be looked at. He stated that data does not indicate that the wall is moving toward the building consistently or at any type of alarming rate. Virginia Kehoe asked Council to consider including the drilling of boring holes into their motion, as they are costly and will help Council move toward budgeting to fix the wall in the future. Robert Naegele stated that at this time, the members of his firm have discussed the issue and believe that monitoring is all that is necessary at this time. Attorney Preate stated that he is comfortable with engaging in discussions and working together toward a resolution as time goes by, with the understanding that the wall will eventually need to be fixed.

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He stated that the Borough is doing everything reasonable to maintain safety and that they are taking the necessary steps to protect themselves from liability down the road. He recommended that Council approve the conditional use. Patrick Williams questioned whether Council was acting prematurely in not resolving the situation prior to approving the Conditional Use. Roy Davis stated that he believes Council is being overly-cautious and that in consideration of Attorney Preate's comments, he is willing to approve the Conditional Use. There was discussion, and comments by citizen Ray Davis, that there should be a monetary contribution by the property owner.

Roy Davis made a motion to approve the Conditional Use. The motion was seconded by Barbara Evans and, after the previous discussion, carried 7-0, with Robert Bennett voting "in advice of the Solicitor."

GRANDVIEW STREET: There was discussion regarding physically closing the end of Grandview Street which is still being used daily, despite its closing. Attorney Preate stated that there has been cooperation with Mr. Nogi and Mr. Noakes and that there have even been designs as to what the physical barrier can be which would be functionally and aesthetically appropriate. There was discussion regarding the potential for the Nature Conservancy to take over the property, which was not possible, as the land did not meet their qualifications. Mr. Roy Davis stated his frustration with the continued expense being incurred to benefit a few when there are other issues throughout the Borough. He wants to know when the end is going to come to this issue. Several members of Council shared this sentiment.

APPROVAL OF AGENDA:

Mr. Bennett moved to approve the agenda. Motion was seconded by Mr. Williams and carried 7-0.

APPROVAL OF MINUTES:

Minutes were presented for the April 2, 2008 Presidio Realty Special Hearing; the April 2, 2008 ICA Special Hearing; the April 2, 2008 Regular Council Meeting; the April 7, 2008 Reconvene of the April Council Meeting.

A motion to approve all of the minutes was made by Roy Davis. The motion was seconded by Barbara Evans and carried 7-0.

PUBLIC COMMENT & INPUT:

Mr. Voakes spoke regarding his frustration with the Borough Streets and the various pave cuts. There was discussion regarding paving and the difficulty that the water company is creating in making so many cuts to the Borough roads. There was also discussion regarding that any place a cut is made must be repaved to the standards. There was discussion regarding the pave cut ordinance. Virginia Kehoe agreed to make sure that the Water Company is complying 100% with the ordinance. Virginia Kehoe agreed to compose a letter, under Borough Council President's signature, to address this issue.

Mr. Ray Davis spoke and stated that he believed when Mr. Don Moyer was on Council that he worked closely with the Water Company to ensure adequate planning. There was discussion as to who is responsible for checking on work.

BIDS AND QUOTATIONS:

Cameraing Sewer Lines: Virginia Kehoe stated that there are approximately 5,100 linear feet of sewer lines that need to be cameraed in order to address and plan for sewer repairs in advance of paying. She solicited quotes from five different companies, receiving three quotes for the Cameraing, which one of those three quotes not meeting the deadline. Mr. Rooter quoted \$1.35 per linear foot for pre-cleaning and Cameraing. Rotor Rooter quoted \$0.65 per linear foot for Cameraing plus \$.30 cents per linear foot for pre-cleaning. She stated that the third quote received

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was not lower than Rotor Rooter and she would recommend someone from Council make a motion to accept this bid.

Herman Johnson made a motion to accept Rotor Rooter's bid. Barbara Evans seconded the motion and it carried 7-0.

BOROUGH TREASURER'S REPORT:

The Borough Treasurer's Report, as of April 30, 2008 was before Council. Motion made by Mr. Johnson to approve the Report as presented. The motion was seconded by Mrs. Drake and carried 7 – 0.

COMMITTEE REPORTS:

Building & Plant Committee Report was given by Patrick Williams. Mr. Williams stated that a new entrance door to the building was recently installed and that all of the other projects are moving along well. Mr. Johnson asked if there were bids received for cleaning the building. Virginia Kehoe stated that they should be received and presented to the finance committee by next week.

Finance Committee Report was given by Kathy Drake. Kathy Drake reported that she was happy to say that overall Council is under budget, although not in very category of the budget. She stated that police over time is over budget in addition to gas & diesel, salt & cinders, and management consulting. Virginia Kehoe explained that while management consulting is over budget there is an income generated there which is not accounted for. Herman Johnson asked for a letter to go to the department heads that are over budget looking for an explanation as to why.

The Insurance Committee Report was given by Herman Johnson. No report.

The Personnel Committee Report was given by Pat Williams. No report.

The Police Pension Board Report was given by Herman Johnson. There will be a meeting at 4:00 p.m. on May 21st, 2008, wherein vendors will be giving presentations.

The Public Safety Committee Report was given by Bob Bennett. There was an issue, brought up by Patrick Williams, regarding a set of unsafe gas meters which was addressed by Mr. Bennett and Virginia Kehoe within 24 hours and resolved within 48 hours.

The Public Works Committee Report was given by Roy Davis. There was discussion of the Senior Center parking lot with regard to the Community Garden.

The Recreation Committee Report was given by Pat Williams. He stated the cutting and the mulching of the parks is under way and is going well.

The Recycling Committee Report was given by Bob Bennett. Mr. Bennett stated that there are several projects in the works, including the pursuit of several grants. There is the yearly grant, a grant with regard to a feasibility study as well as a grant with regard to a vehicle. He stated the top priority is the feasibility study. Herman Johnson requested an e-mail regarding the deadlines and which grants have been applied for.

The Safety Committee Report was given by Pat Williams. No report.

The Abington Area Joint Recreation Board Committee was given by Pat Williams. There has been an individual hired to take care of the mowing, etc. in an effort to save the Borough money. There was also discussion of the Summer Youth Program, which should be quite successful.

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POLICE REPORT:

Mayor Kelly gave the April 2008 Police Report, and summary of police related activities. There was a comment regarding parking meters. There was also a comment regarding false burglar alarms and fines that could be incurred for consistent false alarm calls. Chief Vitale was thanked for his involvement in the Heroin presentation at Abington Heights.

BILLS TO BE PAID:

Motion made by Kathy Drake to pay bills as presented. The motion was seconded by Barbara Evans and carried 6-1, with Herman Johnson voting nay, as he needs more time to review them properly, and Robert Bennett waiving the Met Life bills, as always.

OLD BUSINESS:

Grandview: Virginia Kehoe requested that council make a motion to accept and sign the engagement letter for Borton Lawson as engineer for the case. Mr. Bennett made a motion to accept and sign. The motion was seconded by Patrick Williams and carried 7-0.

Nextel: The case will enter mediation on May 28, 2008 in Pottsville.

There was discussion regarding the Railroad Project.

Virginia Kehoe gave a DEP Update. She stated that Jackson is going to be allowed to go in and grade and reseed to satisfy the neighbors requests.

Laurelwood – Resolution 2008-25 – authorization to sign amendment to change the dates. Barbara Evans made a motion to sign the contract. The motion was seconded by Kathy Drake and the motion carried 7-0.

NEW BUSINESS:

The June 4th Regular Council Meeting was rescheduled to June 3rd

Ordinance 2008-03 – Regulating the Installation of Outdoor Fuel Burning Furnaces and/or Appliances was presented. Mr. Bennett made a motion to approve the Ordinance with the change of 20 feet clearance at the top of the furnaces. Mr. Williams seconded the motion and it carried 7-0.

Resolution 2008-28 – Records Destruction of tapes was presented. Mr. Williams made a motion to pass the Resolution. Mr. Johnson seconded the motion and it carried 7-0.

BOROUGH SEWER OFFICE REPORT:

The April 2008 Sewer Office Report was prepared by Virginia Kehoe and presented to Council. A motion was made by Mr. Johnson to accept the report as presented. Mr. Bennett seconded the motion and it carried 7-0.

SOLICITOR'S REPORT:

There was an update on a pass through and regarding the Moody litigation. CEO Willard Ziesemer commented. He stated that they are still looking for documentation regarding the tower and what could happen if it were to collapse. It was stated that the Borough has an undated extension, but that Moody's are to have the work done by the 30th.

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Attorney Preate stated that he was contacted by Scott Wallace. He stated that the drainage issue on Grandview is not resolved, as was previously thought. Attorney Preate stated that he did receive some information from Mr. Wallace and that the issue would be looked into further.

CORRESPONDENCE:

A thank you was received from AAJRB Community Garden Group.

A thank you was received from Shade Tree Commission.

EXECUTIVE SESSIONS:

Prior – April 2, 2008 regarding Litigation and Personnel
April 7, 2008 regarding Personnel

During – None

Subsequent – Immediately following

ADJOURNMENT:

With no further business to discuss Mr. Williams made a motion to adjourn. The motion was seconded by Barbara Evans and carried 7-0.

Respectfully submitted,

**Katie M. Bower
Borough Secretary**

**Geraldine A. Carey
Council President**