

BOROUGH OF CLARKS SUMMIT
June Council Meeting
Wednesday, June 3, 2009
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The June Regular Meeting for Borough Council was conducted on Wednesday, May 6, 2009 at 7:07 P.M. The Meeting was 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 Gerrie Carey, Vice President Patrick Williams, Mrs. Kathy Drake, Mrs. Barbara Evans, Mr. Herman Johnson, Mr. Jeremy Adelman and Mayor Harry Kelly. Also attending were Borough Manager/Secretary, Virginia Kehoe, Borough Solicitor Ernest Preate and Chief Vitale. Mr. Rajan and Mr. Yetkowskas were absent. 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.

MEDITATION

PLEDGE OF ALLEGIANCE

EAGLE SCOUT PRESENTATIONS: Presentations were made by Mayor Kelly to the new Eagle Scouts. He discussed the Scouts' projects and achievements. Scouts recognized were Matthew Moyer, Nicholas Matisse and Greg Moyer.

PUBLIC HEARING – TEFF INC LIQUOR LICENSE REQUEST:

President Carey opened the Public Hearing regarding the application for liquor license. Virginia Kehoe suggested Mr. Ziesemer share his evaluation of the application. Mr. Ziesemer introduced the application and shared his opinion. Mr. Ziesemer stated several inconsistencies within the application. The existing use and proposed use of the property is that of a convenience store. On the liquor license application it is proposed as a restaurant license, not a convenience store. The current permitted uses of the building include one retail and two apartment uses. Mr. Ziesemer explained that should a change of use take place for this building the necessary steps must be taken to make sure the use is in compliance. He stated that this property is located in a CC Zoning District and that a convenience store is not permitted in this Zoning District.

There were also issues regarding the type of liquor license applied for. An eating place liquor license could, perhaps, better fit this location as opposed to a restaurant liquor license. This is an opinion by Mr. Ziesemer, based on research that he performed. He stated the definition for the eating place relatively matches the Borough's ordinance defining a convenience store. He also discussed definitions of taverns and restaurant uses.

After discussion, Mr. Ziesemer stated his feeling that a hasty approval or hasty denial without some further attention and adjustments would be inappropriate.

Attorney Fannucci gave a presentation on behalf of TEFF Inc. and its proprietor Mr. Emmet. Attorney Fannucci stated that when he completed the application he was not aware that the principal use of this business was listed officially with the Borough as a convenience store. He moved to amend the application to list the business as a retail store which is, in fact, the proper use for the business carried out there. He believed this would immediately clear up the issue. He also expanded upon what Mr. Ziesemer addressed. He stated that a restaurant liquor license is the highest and best category available in terms of liquor licenses. He stated that nearly every establishment in PA has a restaurant liquor license. He stated that when Convenient, which was located in Clarks Summit, operated with their liquor license they operated under a restaurant liquor license. He also stated Mr. Emmet's sole intention is to provide carry-out six packs, which is perfectly allowed with a restaurant liquor license, and has no intention of providing a full array of liquor. He stated that Mr. Emmet has no intention whatsoever to open or try to open a restaurant at this location. He reiterated that it's simply the name of the license. Eatery licenses are few and far between and Mr. Emmett stated that Mr. Emmet has been under contract for over a year with this particular license.

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Attorney Fannucci explained that until they receive a signed Resolution from Council approving this, they cannot even submit their application to the Liquor Control Board. Mr. Emmett reiterated that he has to operate within the confines of the LCB permitting system. He stated that he has supplied Mr. Ziesemer with all necessary information when asked to provide it.

Roy Davis spoke regarding some of his concerns with regard to underage drinking and the location of the property. Roy Davis also asked if the new restaurant, Basilico's, would be applying for a liquor license in that area.

Mr. Emmett discussed the fact that the buying trends, throughout the country, reflect the sale of tobacco, lottery and carry out alcohol in one store. There was discussion of Mr. Emmett's approval from South Abington Township for the operation of this type of business, which was also situated near residential areas, prior to the closing of the building which Mr. Emmett had been renting. He owns the building where he is now situated. Attorney Fannucci expressed his frustration in not having been notified of these inconsistencies with the exception of a brief telephone conversation earlier today. Attorney Preate and Attorney Fannucci discussed the standards by which the application would be considered by Council. There was discussion about the sale of foods and the establishment of chairs and tables at the location.

Attorney Preate stated that Clarks Summit is different than South Abington Township. Attorney Fannucci responded with the fact that while he respects the difference between the characters of the two areas, the fact remains that Mr. Emmett is legally operating a retail business in a properly zoned location and that no Borough Ordinance prohibits the sale of alcohol from such a business. He stated that this is a permitted principle use. He also stated that if this liquor license was already located in Clarks Summit it could have been transferred without a Hearing. Attorney Fannucci also stated that no matter who possesses a license to sell tobacco or liquor, regardless of where in the state the business is located, will lose his or her license if they sell to underage consumers.

Mr. Ziesemer stated that in accordance to the ordinance liquor cannot be sold in a retail shop. He was asked by Attorney Fannucci where it specifies against it. After re-reading the ordinance Mr. Ziesemer could not find where it is expressly prohibited. There was discussion that a change of use might need to be obtained from Zoning Hearing Board. Attorney Fannucci disagreed, stating that if both uses are permitted under code, a change of use is not necessary. Junior Councilman Jeremy Adelman commented regarding Attorney Preate and Mr. Ziesemer's reference to "tavern", stating that the definition of tavern qualifies that alcohol must be the primary merchandise, which it is not.

There was discussion of square footage required for meeting the seating for 30.

Parking requirements were discussed regarding a change of use. Mr. Ziesemer offered his opinion and belief on other licensing requirements. Attorney Fannucci stated that Mr. Ziesemer's conclusions are incorrect. Mr. Davis asked if Attorney Fannucci would be satisfied with completing the evening's Hearing and then allowing Council the permitted 45 days to make their decision. Attorney Fannucci agreed, and stated concerns could be addressed through memos, etc.

Public comment was opened. Ray Davis, 211 Barrett Street, spoke. Mr. Davis suggested that a Hearing like this be scheduled for a separate meeting, as opposed to adding it to the regular meeting. He asked for clarification on some of the issues discussed. Mr. Davis asked how Mr. Emmett planned on carding and documenting his prevention of serving minors. Mr. Emmett stated that he has cameras installed and intends to photo copy licenses.

Mr. Paul Canaberry of Thurston Street, who is Mr. Emmett's closest neighbor, stated his opinion that Mr. Emmett's business is nothing but an asset to the community.

Mr. Johnson made a motion to table the issue. Mr. Davis seconded the motion and it carried 6-0. The Hearing was closed.

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APPROVAL OF AGENDA:

Herman Johnson made a motion to approve the agenda as presented. Ray Davis seconded the motion and it carried 6-0.

APPROVAL OF MINUTES:

April 28, 2009 Work Session – Pat Williams made a motion to approve the minutes as presented. Kathy Drake seconded the motion and it carried 6-0.

May 6, 2009 Council Meeting – Kathy Drake made a motion to approve the minutes as presented. Barbara Evans seconded the motion and it carried 5-1, with Herman Johnson opposing.

PUBLIC COMMENT AND INPUT:

Swientisky: Mr. Gene Gallagher asked about the current standing with the Swientisky case and what sort of monies Mr. Swientisky has paid for cancelled meetings, etc. Virginia Kehoe stated that some of the money has been received, but that additional costs have also been incurred. Mr. Johnson also stated his desire to know what he owes. The amount is in upwards of \$10,000.00.

Mr. Gallagher made the suggestion that the Borough place a lien on the property. Mr. Johnson concurred. Attorney Preate commented and stated that Mr. Swientisky has a battle on his hands and he believes he will work toward resolving the issues.

Menichello: Matthew Keris, Colburn Avenue, spoke on behalf of himself and his neighbors, who are present, regarding the Menichello property and the belief that construction is taking place which does not meet Borough code. He stated they are here as a means of trying to avoid litigation. He explained that two residential structures are being built on one single lot. He presented deeds and explained the neighborhood has retained Attorney Jim Reed. Mr. Keris also stated the impression that the Borough encouraged the Menichello's to develop the property as it is now being developed. Mr. Johnson asked him to clarify this statement. Mr. Keris reiterated this "hearsay" as he described it and asked Council what their formal position is on this situation.

Attorney Preate commented on a letter he composed addressing the issues. Virginia Kehoe stated that she had encouraged Mr. Menichello to cease construction, but according, again, to hearsay, his attorney advised him to continue building. Mr. Ziesemer was asked what Mr. Menichello was given. Mr. Ziesemer stated he was given a permit for the first structure and shared his opinion that Mr. Menichello has a right to build on both non-conforming lots and that issuing two permits would not violate code. Mr. Keris explained that they do not agree and do have any attorney retained in order to fight this, should that become necessary.

Theresa Marciano questioned Mr. Ziesemer how he could give approval for the first permit when it didn't have the mandatory 90' frontage without a variance. Mr. Ziesemer stated that it was a non conforming lot of record and didn't need a variance. Ms. Marciano stated ten years prior she had three non conforming lots which she was denied the right to build on. Mr. Ziesemer stated he could not begin to assume why a past code enforcement officer would have made the decision he made. There was also discussion about the fact that the property is currently only one tax parcel, which would need to be divided, which would require a public hearing.

After clarifying with Attorney Preate, Virginia Kehoe instructed Mr. Ziesemer not to issue a second permit, as that permit would be illegal. Mr. Davis made a motion, that in response to Attorney Preate's suggestion, CEO Mr. Ziesemer not issue the second permit. Mr. Johnson seconded the motion.

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Mollie Philbin spoke regarding her involvement with this issue. She read from the Zoning Ordinance and questioned the wording and application of the current ordinance to this issue. She asked why Mr. Ziesemer didn't operate under this ordinance and stated that Mr. Ziesemer stated he acted in accordance to Attorney Preate's advice.

There was clarification of the motion proposed by Mr. Davis. There was discussion regarding whether or not Mr. Menichello could be told to discontinue construction on the first property. It was determined that while it would be foolish Council voted on the previous motion, directing Mr. Ziesemer not to issue a second permit and that Mr. Menichello must cease construction on the second structure. The motion passed 6-0. Mr. Keris provided Council with his address and asked that he be provided with all communications regarding this property.

Mr. Bill Icono of Main Avenue stated his suggestion that Council not change the ordinance, because if they do, it will make this issue legal.

Grandview: Mari Van Wie updated Council on the Grandview Street Neighbors Association. She stated that they have taken all of the necessary steps, such as adopting by laws, to make the association viable. They also stated they will not continue to water until they receive a deed for the property. Mr. Davis stated his opinion that there must be some point in time where Grandview Association realizes that the Borough does not revolve around their needs and that he resents the threat to discontinue watering, etc. Mrs. Van Wie argued their position and stated they are sick of Mr. Nogi forcing them to bend over backward and this is the only bargaining chip they have. She stated all of this has only served to improve Mr. Nogi's property.

Ray Davis spoke and expressed his discontent with various issues in the Borough.

NEW BUSINESS:

- **Thank you to Junior Councilmen**

President Gerrie Carey presented Junior Council person Jeremy Adelman with a formal thank you. Mr. Adelman spoke and thanked Council for all he's learned about government functions. Mr. Kevin Yetkowskas will also be provided with a formal thank you.

- **Mission Statement for Council**

Herman Johnson discussed creating a mission statement for Borough Council. Michael Filarski of Grand Avenue presented a mission statement which he began working on after a conversation with Mr. Johnson. There was discussion of creating a mission statement committee to help in creating this document. There was discussion with creating a master plan to align with the mission statement. Council decided to form a committee and then they would instruct Virginia Kehoe to get in touch with Mr. Filarski.

BIDS & QUOTATIONS:

- **Vote – Grove Street Project:**

Virginia Kehoe suggested that the low bid, provided by Rock Bottom, be thrown out due to the fact that the bid was not received by the 3:00 deadline, rather it was received at 3:07 and that not all of the necessary paperwork was submitted. She suggested moving to the second lowest bid, T. Brennan, contingent upon the approval of their paperwork by the Borough Engineer. Herman Johnson made a motion to reject the bid by Rock Bottom in that it was not received in a timely manner and the paper work was not complete. Patrick Williams seconded the motion and it carried 6-0.

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There was discussion of creating some sort of mechanism with regard to receiving bids which could prevent accepting bids from those who have done work poorly in the past, simply because they are the lowest bidder.

Barbara Evans made a motion to accept the bid by T. Brennan contingent upon approval and clarification of pricing by the engineer. Roy Davis seconded the motion and it carried 5-1, with Herman Johnson opposing.

SOLICITOR'S REPORT:

Nextel Pretrial Conference – June 29, 2009: He explained that the case is back in front of Judge Minora again. He stated he has not received responses to his calls made to Nextel and there was discussion of the purchase of service from the Verizon towers. He stated he would have more details for the July meeting.

Attorney Preate also explained his increased fees in relation to these cases. There was also discussion regarding Officer Kopicki's disability status, the noise ordinance, and the Police Pension Resolution. Roy Davis discussed making the wording clearer in that a COLA will not be automatic. Virginia Kehoe stated that is in the Ordinance, and that this is simply the Resolution for 2009 to pass the COLA. Virginia Kehoe provided this Ordinance to Council.

- **Vote – 2009-02 Resolution: re: Police Pension COLA** – Herman Johnson made a motion to table this issue in order for the Resolution to be rewritten. Barbara Evans seconded the motion and it carried 6-0.

BOROUGH TREASURERS REPORT:

The Borough Treasurer's report for the month of May was prepared and presented. Kathy Drake made a motion to approve the report as presented. The motion was seconded by Herman Johnson and carried 6-0. There was discussion regarding removing Junior Council's names from the bank account until new Councilpersons are determined. It was determined Christine Tsaklas would be added temporarily.

COMMITTEE REPORTS: None.

POLICE REPORT: The Police report for the month of May was presented by Chief Vitale. Herman Johnson discussed setting money aside for a new vehicle. Virginia Kehoe would follow up with Wansacz and Carney.

BILLS TO BE PAID:

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

OLD BUSINESS:

- **Vote – 2009-10 Resolution: Sidewalk Sale Days** – Barbara Evans made a motion to pass Resolution 2009-10. Patrick Williams seconded the motion and it carried 6-0.

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NEW BUSINESS (Con't):

- **Vote – 2009-11 Resolution: CDBG monies**
- **Vote – 2009-12 Resolution: CDBG monies**

Virginia Kehoe stated that Council has decided to move the CDBG monies to the residential rehab. These resolutions would allow the county to move forward with their interviews, etc. Pat Williams made a motion to approve both resolutions. This was seconded by Kathy Drake and carried 6-0.

BOROUGH SEWER OFFICE REPORT:

The Sewer Reports were presented for June 2009. Kathy Drake made a motion to accept the reports as presented. Herman Johnson seconded the motion and it carried 6-0.

CORRESPONDENCE:

Care Givers of America – Care Givers of America would like to purchase the property in question, located on Knapp Road. A letter has been sent to the property owners and some movements are being made to make the property safer while the owners determine what they wish to do with the property. This would include sending the UCC officer to determine the necessary work and hire someone to do the work. It was determined Virginia Kehoe could send a photocopy of the yellow pages to assist the current owners in hiring someone to maintain the property.

Request from Jeanne Oravic – A request was received for the Borough to assist in expenses incurred by Ms. Oravic for backflow preventers, etc. DPW has placed flow meters in the area to try and determine the cause of the problem. It was determined Council would wait and see what results are received from the flow meters. Barbara Evans discussed a comment by Roto Rooter stating there is a crack in the main line. Virginia Kehoe would look into this. There was discussion of researching who is at fault for each of the incidences. Virginia Kehoe would ask Roto Rooter for written statements.

EXECUTIVE SESSIONS:

Prior – None
During – None
Subsequent – Immediately Following

ADJOURNMENT:

There being no further business before Council, Barbara Evans made a motion to adjourn. The motion was seconded by Kathy Drake and carried 6-0. The meeting adjourned at 11:10 p.m.

Respectfully submitted,

Katie M. Bower
Borough Secretary

Germaine Carey
Council President