

**BOROUGH OF CLARKS SUMMIT
REGULAR COUNCIL MEETING
WEDNESDAY, SEPTEMBER 2, 2009
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The regular September Meeting of Borough Council was conducted on Wednesday, September 2, 2009 7:04 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, Mr. Roy Davis, Mrs. Kathy Drake, Mrs. Barbara Evans, Mr. Herman Johnson, Mr. Murli Rajan, Solicitor Ernest Preate and Mayor Harry Kelly. Also attending were Borough Manager/Secretary, Virginia Kehoe and Chief Louis Vitale. 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 led by Mayor Harry Kelly.

THANK YOU TO JUDGE BARRASSE

President Carey said Judge Barrasse has been very instrumental in the Neighborhood Initiative. A lot of work has been done in our Borough this summer. We saved around \$11,000.00 this year with this program.

Judge Barrasse said it was nice to be welcomed back. He stated a lot of money is put into law enforcement catching individuals, arresting them and prosecuting them. Treatment needed to be offered to individuals with drug and alcohol problems and hold them accountable. This program not only holds them accountable and gives back to the community but it also lets the community realize these are individuals who live among us. They would like to continue this program throughout Lackawanna County. A lot of funds are spent for their prosecution and we want to see them give back. He thanks Council for being a part of this. Judge Barrasse was presented with a token of appreciation from Council and residents of Clarks Summit Borough. Some photographs were taken.

Patrick Williams gave a presentation on behalf of Clarks Summit Borough to the Neighborhood Initiative. Mr. Williams said he personally dealt with Mr. Hoban and mostly Tommy Lavelle. He said these guys were fantastic. He was reluctant sometimes to ask them to do things and Tommy always said we can do it. And in fact they did. There was no hesitation what so ever on their part. Herman Johnson dealt with the normal daily procedures because Mr. Williams was at work. Mr. Williams presented the first Neighborhood Initiative to Bo Hoban. Mr. Williams presented the other to Tom Lavelle. Mr. Williams said he couldn't have asked for a better working relationship. There was applause after the presentation. Virginia said there is plenty of work if ever they want to come back.

PUBLIC HEARING – Ordinance 2009-12

Vote – Ordinance 2009-12 No parking Crestwood, Knapp, Bissell

President Carey gave a brief summary of this Ordinance. Roy Davis made a motion to accept the No Parking Ban Ordinance and Barbara Evans seconded the motion. Patrick Williams asked the Police Chief if they had any thoughts on this. Chief Vitale said he received a memo on this. Herman Johnson said he thought it was a good recommendation on part of the Safety Committee. He thinks the Safety Committee should stay in tact to monitor the traffic pattern in the Borough. There are more vehicles traveling the streets today and it's an accident waiting to happen. Mr. Williams is asking for more enforcement with parking on the wrong side of the street, etc. Ray Davis, resident of Clarks Summit Borough, asked if it was just Bissell Street. Virginia explained the advertised ordinance. Mr. Preate verified that the motion was a broad motion that covered the general parking ban. The vote carried 7-0. Roy Davis thanked Patrick Williams and Herman Johnson for taking the time to address these observations by fellow constituents of the community. They sent letters in that we reacted to. So many times we say we have a concern for safety. He wants to commend Council and the Safety Committee on taking the time and doing this in the right way. Roy Davis said one of his neighbors got rear ended and spent an extended period of time in the hospital. That neighbor is at the meeting tonight. Roy Davis continued saying that it is a very dangerous spot just coming off Route 6&11. Dale and Leslie Smith wrote a very compassionate letter about not being able to get in off of Route 6&11. He would love to see a traffic light there but Penn Dot won't consider it. He feels very satisfied with this team effort.

APPROVAL OF AGENDA:

Herman Johnson made a motion to approve the agenda. Barbara Evans seconded the motion. Patrick Williams said he had something under Committee Reports the "no left turn from Lansdowne"-. He would like that to be taken off the agenda because that is something we need to build on. Virginia did draft an

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Ordinance that we should present that we can modify once the safety committee works on it. Mr. Preate said all we want is a report from the Committee as to what's going on. Mr. Williams said he'd also like the response to Christine Spangler taken off the agenda because we are still looking into that. President Carey said that would be the same situation. The vote carried 7-0.

APPROVAL OF MINUTES

June 30, 2009 Work Session:

Kathy Drake made a motion to approve the minutes. Murli Rajan seconded the motion and it carried 7-0.

July 1, 2009 Council Session:

Murli Rajan made a motion to approve the minutes as amended. Kathy Drake seconded the motion and it carried 7-0. Herman Johnson pointed out under the approval of the agenda that Ray Davis seconded the motion. It should say Roy Davis made a motion to accept the agenda. Virginia said we will correct that.

PUBLIC COMMENT & INPUT:

1.) Charles Martin who lives at 405 Grandview Street called Donna up to the podium. Mr. Martin said Donna did an outstanding job on Grandview Street with the plantings and the trees and it is absolutely beautiful. He encourages everyone to go to the end of the street where it is closed off and take a look at the work this young lady does for us. He presented a monetary gift to the Shade Tree Commission from the citizens of Grandview Street on behalf of the work Donna has done. The Grandview Street Neighbors Association went out and solicited funds. They have a list of people who have contributed to the fund. They picked up exactly \$850. They had expenses. The deed of filing was \$52.50, the notary fee was \$15, the insurance for 117+ change square feet. That is in case anyone decides to go down from the other side and run into the rocks, kill the flowers and trees so they are covered is \$522. They had a donation to the Shade Tree Commission of \$200. Cash on hand they have \$60.50 left. It is an ongoing process. Ray Davis asked if that \$522 was per year. Mr. Martin answered yes. Donna Zagrapan from the Shade Tree Commission said she planted two Dogwoods, Canadian Hemlock trees, in the spring they planted a whole host of different perennials.

2.) Ray Davis who lives on Barrett Street in Clarks Summit said he is going to tape record the meeting. Mr. Preate said we have an official record. Ray Davis said he wished Swientisky's last month had recorded their meeting especially when Matt said he had his lot surveyed a long time ago and the surveyor made a mistake because that was not a truthful statement. He says he wished they'd have it taped because they don't realize what they say sometimes. Mr. Preate asked why he wanted to tape the meeting. Ray Davis said it doesn't matter. Ray Davis asked how many people here think you can't record a meeting. Mr. Preate said he didn't think he could. Patrick Williams said that was a leading question. Ray Davis said we were wrong because of the Sunshine Act. There are two things you have to do in a meeting. You run it by Robert's Rule and also the Sunshine Law is applicable. He said the Sunshine law says people can record public meetings. He double checked it with the Pennsylvania Newspaper Association. Gerry Carey said we will check into it. His point to Mr. Martin is just because an attorney tells you something, don't think all attorneys are all knowing in all matters. Mr. Preate said the Sunshine Act requires them to notify the public our meetings and to conduct them and all decisions in public. Ray Davis said he asked Council to do something about coming out of Weis Market, the right turn. What have we discovered on that during the month? Gerry Carey said it's not on our agenda for tonight because we didn't feel it should be on the agenda. Mr. Preate said Weis is in South Abington Township and it's a State highway and Clarks Summit Borough has no control over it. Ray Davis brought up the police report. He wants to know why Council does not want to use the managed reporting system to show exactly what the police do during the month. Council was just talking about safety and he'd like to know what time was spent monitoring Oakford Road for example. Have there been any citations or warnings? He wants to know why the speed of traffic isn't monitored going through town. He's researched it and it's not a lot of time on the part of the secretary downstairs to put this report together. He says it's all about accountability. Ray Davis asked if the Chief has taken police management courses. Gerry Carey said if Ray Davis has questions for the Police Chief he is available every day. Ray Davis said he wants to hear from Council because they are in charge of the budget. He stated that he'll put everything on his web site.

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3.) Victor Alfano who lives on Lansdowne Avenue wanted to speak on the Resolution on Lansdowne Avenue. Virginia said the request for the no left turn from Lansdowne onto State came from the police department. Mr. Alfano said it is the most stupid thing he's ever heard. He doesn't want to have to go up the hill to go to Weis Market. He thinks it's ridiculous. Gerry Carey said we are looking for opinions. She reminded Mr. Alfano of when the old Weis closed and the developer offered to keep the road open so residents can access the traffic light and residents did not want that because they felt it would be used as a short cut. Gerry Carey said we are looking into it and it's not something we're going to vote on. Herman Johnson said the safety committee could hold a public hearing so the citizens could voice their opinion on it. Mr. Alfano said a neighbor infringed on Borough property by putting one of those fences up that you see on a cattle range. It goes all the way to the curb. Virginia said the house is for sale and she called the realtor and explained that when the new owner comes in that they need to be aware that the landscaping and fencing did go into the right of way. Mr. Alfano said the fence was put there because the owner didn't want to shovel snow anymore. Mr. Preate would like to instruct our Code Enforcement Officer to immediately get that down. He said to make sure it's on our property and to have it taken down. It's our right of way and no one can infringe on our right of way.

4.) There was a short discussion on Ernie Preate's tomatoes.

5.) Tim Rowland, President of the Clarks Summit Fire Company, wanted to inform Council of an email he received from the treasurer. He said the millage we pay the fire company every year, not one cent goes toward operating the ambulance.

Roy Davis made a motion to move section 10E to 3B on the agenda. Pat Williams seconded the motion and it carried 7-0.

Vote – Use of Court Stenographer

Herman Johnson feels that we need a court stenographer at the Council Meetings and not the Work Sessions so that we have everything just right. He's finding out as he's reading through meeting minutes and other documents that things were said and it didn't record properly. It seems like over the years we've had quite a few lawsuits and when we go back and try to review some of the things that happened either it wasn't documented properly or people forgot what they said. He did his own research throughout Lackawanna County and we do have 40 municipalities and there are quite a few who use court stenographers. He thinks we need our meeting minutes documented properly. Herman Johnson made a motion to hire a court stenographer just for Council Meetings for a trial basis of two months. If it doesn't work out, well and good. If it does, continue doing it. Barbara Evans seconded the motion. Murli Rajan said initially, he didn't think we needed this but last week Mr. Preate said a recording is not admissible in the court of law. Mr. Preate highly recommends this. He would like to know the cost and the turnaround for this. Lisa Graff, Court Reporter, said she gets paid by page. She has been the court reporter for the Zoning Hearing Board for 10 years. She charges the Borough an appearance fee and \$3.50 per page. It's a bound, full transcript. There are 25 lines on each page. You can make as many copies as you want of it. For a court document, you're not allowed to do that. She can also email a transcript to Virginia. The public hearing was six pages at the beginning of this meeting. She said it's usually about 50 pages an hour. Roy Davis asked if Lisa only transcribes portions of the meeting, if it's admissible in court. Virginia answered that for the purpose of minutes which are what we're obligated to keep for the Borough. Minutes need to be a recording of the motions taken with who indicated what. It's supposed to document who spoke and the subject of which they spoke about. Beyond that, it's Council's preference. Transcripts need everything in. He also asked if we can afford it because some employees haven't gotten a raise in three years. Are we becoming legally paranoid in everything we do? Herman Johnson said we are not paranoid that he is dramatizing it. We need good management, good constructive meetings and we need documentation. A committee did meet and never came back to Council with a recommendation. Lisa Graff said the turnaround is two weeks. The motion carried 7-0.

BIDS AND QUOTATIONS:

Vote – 2009 Street Paving

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Herman Johnson made a motion to accept Slusser Brother's bid. Barbara Evans seconded the motion. Mr. Preate said we should think that over because they did a bad job on Country Club Road where he lives. Mr. Johnson said he thought we had to accept the lowest qualified bidder. Herman Johnson withdrew his motion. Kathy Drake made a motion to accept Slusser Brother's bid. Murli Rajan seconded the motion and it carried 6-1 with Herman Johnson voting no. Ray Davis suggested that we place an ad in the paper for an inspector.

Vote – RR Restoration Project

Virginia said Lombardo Trucking out of Yatesville was the low bidder at \$104,914.02. Because we have never heard of Lombardo Trucking and the Engineer has never dealt with them Virginia got references. She researched the references and the recent projects that they did. She has not gotten one negative report. Kathy Drake made a motion to accept the bid. Barbara Evans seconded the motion and it carried 7-0.

BOROUGH TREASURER'S REPORT:

Month of July

Kathy Drake made a motion to accept the July Borough Treasurer's Report. Barbara Evans seconded the motion and it carried 7-0.

Month of August

Murli Rajan made a motion to accept the August Borough Treasurer's Report. Barbara Evans seconded the motion and it carried 7-0.

COMMITTEE REPORTS:

Safety Committee – Vote – Ordinance 2009-15 No left turn from Lansdowne onto State

President Carey said we are going to table this so we can look into it further. Virginia said she does have a draft Ordinance when the Safety Committee wants to push it through they can let her know so she can advertise it. We are looking for a vote in November is they discuss it further in October.

Building & Plant – Vote – response to Christine Spangler – re: dog training classes

President Carey said we are going to table this because we have further information that we want to compile.

Herman & Pat – Mission Statement

Mr. Johnson said he submitted a Mission Statement but the committee is still working on it. He said at the next meeting they will have an in depth report for Council.

Gerrie, Barbara & Barbara G. – Community Garden Nomination – NEPA

President Carey said Barbara Evans, herself and Barbara Grabfelder sent a letter in to nominate the Community Garden to NEPA in response to the job Barb Grabfelder did on the garden. Virginia said September 24, 2009 is the dinner. She believes September 11, 2009 is the date they will find out the top three nominees. At the dinner of the top three, one will be awarded. Ray Davis asked what this is all about. Mr. Preate gave some background on this award.

ZHB – Vote – Replace Tom Philbin

Herman Johnson made a motion to table this to another meeting until he can review the alternate's qualifications. Murli Rajan seconded the motion and the vote carried 7-0. Roy Davis made a motion to accept Tom Philbin's resignation effective 9-2-09. Herman Johnson seconded the motion and it carried 7-0. Patrick Williams wanted to make sure we give Mr. Philbin some type of recognition. Mr. Preate said this replacement is very important because the Zoning Hearing Board is a separate body from Council. Mr. Preate suggested we have a committee appointed to study the issue. This is a rare event. Mr. Kranick has been on for 20 years. President Carey said we can use the Personnel Committee.

POLICE REPORT:

The Police Report for the month of August was presented by Chief Vitale. Herman Johnson asked if Officer Orzalek ever received his letter. Virginia said she did the letter and is not sure why it is not

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there. She apologizes that she did not make sure it was forwarded. She said she will make sure he gets it. Ray Davis asked the Chief if the scooter is working. Chief Vitale said as far as he knows it works.

BILLS TO BE PAID:

Murli Rajan made a motion to pay the bills. Kathy Drake seconded the motion and it carried 7-0.

OLD BUSINESS:

Vote – Highland Associates Land Development and Minor Subdivision Plan

Virginia qualified a couple issues that are going on with Highland Associates. Council received a recommendation for land development from the Planning Commission in July for the August meeting. Additionally, it was determined that they needed a minor sub-division. That recommendation came after the August meeting from the Planning Commission. They also needed to go before the Zoning Hearing Board and get some variances. Will Ziesemer, Code Enforcement Officer, offered a prepared statement for Council. After his review, he has found that the conditions have been met. The only thing that has not been met is the paying of the allowable and customary fees. Virginia said we just received the August invoices from the Engineer and the Attorneys. As soon as we put them together, we will let Highland Associates know what they owe us. Will stated that the review fees for the land development and the minor sub-division have been collected in advance by the Borough with the applications. Will is requesting for Council to sign the plan for a matter of record if they approve this land development. Virginia said President Carey and Virginia would sign that at that point. Patrick Williams voiced some concern with the water issue. Will has stated his concern to Council about Highland Avenue. Mr. Johnson has requested some additional requirements. Will said they have met all the conditions that we have before us within our powers to put against Highland under our Ordinance requirements. They have met all those obligations. Herman Johnson said he thinks Mr. Provini has met the requirements and as the EMA director, he is satisfied. Mr. Ziesemer did caution the Borough about adding more water from construction to our old Stormwater system. The system does need to be updated. We have to be careful when increasing lot coverage and what we give relief to. Barbara Evans made a motion to accept the Highland Associates Land Development and Minor Subdivision Plan review. Patrick Williams seconded the motion and it carried 7-0.

Vote – CDGB Commitment to United Cerebral Palsy

Herman Johnson asked Mr. Preate if we can use public monies on this. Mr. Preate said grant money is public money and yes, you can use it. The question is how much do you want to obligate the Borough treasury for five years? He made a suggestion at the last meeting that seeks to limit that. Virginia said it's not coming out of our general fund. President Carey stated there might not be any money next year for CDBG. Roy Davis said that's why he suggested going with a percentage. Murli Rajan made a motion to commit 5% of the CDBG money for 2010. Herman Johnson seconded the motion and it carried 7-0.

NEW BUSINESS:

Meet with S Ab to discuss Clarks Green Joining Sewer Authority

Virginia offered this reminder to get a committee together. As part of the ACT 537 Plan that's being implemented, we're obligated to readdress the setup of the Sewer Authority. It doesn't mean we have to change it but committees have to meet to discuss it and make sure that it's the best it can be. The specific question is should or should not Clarks Green be incorporated into the Sewer Authority as a voting member? We have until February to come up with some form of formal agreement between Clarks Summit and South Abington.

Vote – Resolution 2009-15 – Vote on delegate for EIT

President Carey said we spoke with Jim Burke from PennStar Bank. Mr. Burke was interested in filling the vacancy on Council. He has a tremendous financial background and we asked him if he would be interested in representing us. Virginia said we need a delegate voted on by September 15, 2009. If we do not have a delegate, we will not have representation in the County selection. Patrick Williams made a motion that we select Mr. Burke for our delegate. He has been here and has been very concerned with the Borough. He is certainly well qualified. Murli Rajan seconded the motion and it carried 7-0.

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2009-13 Zoning amendment for vote in October

Virginia said the Planning Commission has finally concluded their recommendations for improvements in the Zoning Ordinance. A draft has been given to Council to review. At such time they feel they would like to pursue this and if they want to pursue this, we'll advertise this and add it to the agenda for vote.

MMO

Virginia said this is for information purposes and for the record the 2010 Minimal Municipal Obligation. We have copies of those numbers for the pension fund.

Vote – Resolution 2009-14 Lackawanna County Mutual Aid

Virginia said the County is asking that we join them in a Mutual Aid Agreement. She handed out the recommended Resolution from them. Herman Johnson made a motion that we accept Resolution 2009-14 with Lackawanna County. Kathy Drake seconded the motion and it carried 7-0.

Senior Center

Herman Johnson said he sent an email to Council asking if they would consider having the Finance Committee research to see if we can let the Senior Center go rent free for this month because of the State budget not being passed for two months and now the Senior Citizen's Center is closed two days a week. He thinks they are going to need help just trying to get through for the next month before the budget is passed. Virginia said if there is no budget, they are closing September 14, 2009 until a budget is passed. Kathy Drake said she'd like to get some volunteers so the center could be open but they would have to bring their own food. Virginia said Telespond is under contract and they have to pay rent weather they are there or not. They are closing because they cannot make payroll and they cannot do the hot lunches. Our insurance covers us to continue to keep it opened as long as we have volunteers staffing it. If we pay someone, then we need a separate insurance policy. The hours would be up to us and what days. Herman Johnson said the two days it's closed now, he would work it from 9:00AM to 3:00PM. Virginia confirmed Tuesdays and Thursdays starting next week. President Carey asked if there was something we can do to get lunches served that day. She suggested calling local restaurants. Virginia said there is extra liability involved when you get into the food.

BOROUGH SEWER OFFICE REPORT:

Barbara Evans made a motion to accept the Sewer Report from August 1, 2009 to August 31, 2009. Kathy Drake seconded the motion and it carried 7-0.

SOLICITOR'S REPORT:

Vote – Atty. Cowley on retainer for Grandview Litigation

Mr. Preate would like to have Attorney Mike Cowley, solicitor for the Planning Commission, assist him in Grandview Street litigation. Mr. Cowley agreed to do this and has already started some work on it in anticipation because the trial is coming up on the 21st. Mr. Preate said the trial will be from 9:30AM to 4:00PM. It could vary. Virginia said it's scheduled for Monday through Friday. Mr. Preate said it's important that Council make an appearance. Barbara Evans made a motion for Attorney Mike Cowley to be put on retainer for the Grandview Street Litigation. Herman Johnson seconded the motion and it carried 7-0. Patrick Williams asked if he would be considered an expert witness. Mr. Preate said no, he is the lawyer. He would be Mr. Preate's assistant on the case. And just in case Mr. Preate got sick and missed a day then he can step in and be able to answer questions. He has already done some very good work for us. He would get paid the same rate as a paralegal.

Digital Justice

Mr. Preate would like Council to hire an expert, Digital Justice, from Easton. We need to be able to present to the Judge and Jury that the hearings and trial coming up the excerpts from voluminous record that's been developed in this case over the last six years. The other side already has a person. Barbara Evans made a motion to accept the Digital Justice from Easton. Herman Johnson seconded the motion and it carried 7-0.

CORRESPONDENCE: None

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EXECUTIVE SESSIONS:

Prior – August 5, 2009 Litigation

During –

Subsequent – Immediately Following

ADJOURNMENT:

With no further business before council, Barbara Evans made a motion to adjourn at 9:42 PM. Kathy Drake seconded the motion and it carried 7-0.

Respectfully submitted,

**Lori A. Harris
Borough Secretary**

**Germaine Carey
Council President**