

**CLARKS GREEN BOROUGH
COUNCIL MEETING
NOVEMBER 20, 2013**

CALL TO ORDER: President Williams called the meeting of the Clarks Green Council to order at 7:00 p. m. with the Pledge of Allegiance.

ROLL CALL: Secretary Brown conducted roll call. The following were present: Mr. Barrasse, Mrs. Earley, Mr. Hughes, Mr. Phillips, Mr. Rinaldi, Mr. Williams, Mayor Thorburn, Solicitor Weinschenk.

EXCUSED: Marnie Palmer.

APPROVAL OF MINUTES: Mr. Hughes motioned, seconded by Mr. Phillips to approve the minutes of the October 16, 2013 Council meeting. All in attendance voted in favor.

MAYOR'S REPORT: Mayor Thorburn asked if anyone had any questions for Officer Siegler this evening. With no questions from Council for the officer, the Mayor then presented his Centennial report. He reported that Gerrity's Market in Clarks Summit is now selling the Centennial calendars. He thanked Charlie Sandercock from Summit Frameworks for re-framing the Borough photographs which were used in the calendar. In addition, he reported an additional 25 calendars have been sold and the Borough Bell is now on the insurance policy. At the meeting, the Mayor donated a 5' x 8' American flag to the Borough. He also reported that Gail Reese, Chair of the Clock Committee asked if a sign indicating clock donations could be placed at the park across the street. The sign fee of \$35.00 was discussed. Mr. Phillips motioned, seconded by Mrs. Earley to waive the \$35.00 sign fee. Mr. Barrasse, Mrs. Earley, Mr. Hughes, Mr. Williams, Mr. Rinaldi, and Mr. Phillips voted in favor. President Williams thanked the Mayor for the flag donation.

VISITORS: Atty. Donna Davis; Eric Hvezda, 316 N. Abington Rd.; Jake Hoinowski, 106 Park Blvd., Clarks Summit; Warren Watkins, 301 Stone Ave., Clarks Summit; Charles Saxe, 208 Tedrick St., Clarks Green; Tonya Saxe, 208 Tedrick St., Clarks Green; Gayle Snell, 404 Park Ave., Clarks Green; Mary Hvezda, 316 N. Abington Rd., Clarks Green; James Waters, 209 Bailey St., S. Abington Twp.; Larry Snell, 404 Park Ave., Clarks Green; Mike Pacyna, 309 Fairview Rd., Clarks Green; Atty. Patrick Lavelle; Lou Vitale, 119 Hall Ave., Clarks Green; Scott Siegler, South Abington Police Department; Mike Verbickus, Abington Journal reporter.

PUBLIC COMMENT: Atty. Donna Davis, representing Clarks Green residents Mary & Eric Hvezda, addressed Council regarding Courthouse Square Ventures located at 319 N. Abington Road, Clarks Green. Eric Hvezda also addressed Council regarding 319 N. Abington Road. Gayle Snell, a 25 year resident of Clarks Green spoke to Council regarding the refuse & recycling hauler, County Waste, as well as the fire protection

provided by Clarks Summit. James Waters, Fire Chief of Chinchilla Hose Company spoke about fire protection issues. Larry Snell, a member of the Clarks Summit Fire Department and a 25 year resident of Clarks Green discussed fire protection and the fire contract. Attorney Patrick Lavelle spoke to Council about the October 16, 2013 Courthouse Square Ventures Hearing and items pertaining to 319 N. Abington Road. He reported that On The Square, Inc. is the general partner of Courthouse Square Ventures which owns the property and is proposing the development at 319 N. Abington Road. Lou Vitale, a resident of Clarks Green since 1982, spoke about the Clarks Summit Fire Department history as well as response times for Clarks Summit as compared to response times from Chinchilla Hose Company. Atty. Donna Davis addressed Council once again, using the 5 minute speaking time of Mary Hvezda, to discuss the affidavit that Atty. Lavelle submitted. In addition, she reported on a conversation she had with Council member Rinaldi regarding testimony on the 319 N. Abington Road property. She also spoke about the abandonment issue. Mr. Rinaldi asked for permission to respond to Atty. Davis's statement in which he was referenced. He stated that what he told Atty. Davis is that the record consisted of the submissions and the hearing transcript. Atty. Davis stated that she did not know what he means by submissions. Mr. Rinaldi stated that all the documents which the applicant submitted are a part of the record.

LACKAWANNA COUNTY COMMUNITY RELATIONS: Gerard Hetman announced the Fall Legislative breakfast which the Lackawanna County Commissioners are hosting this coming Friday, November 22 from 8 a.m. - 10 a.m. at the PNC field in Moosic. In addition, he reported on the Lackawanna County budget, discussed upcoming County events for which handouts were distributed.

SOLICITOR'S REPORT: Solicitor Weinschenk reported on the PennDot drainage agreement on North Abington Road near Seneca Avenue. He discussed the proposed agreement with the Borough engineer who has also met with PennDot representatives. However, the problem he is concerned about is that it is an agreement between PennDot and the Borough and is not between PennDot and Waverly Township. If the drainage the Borough designs and is responsible for substantially increases the flow of stormwater onto Abington Road and into Waverly Township, there could be some responsibility for that runoff. Right now there is basically uncontrolled drainage on both sides of Abington Road once it exits Clarks Green Borough. There is damage and there are open trenches on each side of Abington Road that have never been rectified by PennDot or Waverly Township. If the Borough connects additional storm sewers to exit into Waverly Township, Mr. Scheuer is concerned about Borough liability to Waverly Township. Solicitor Weinschenk reported that at present it is a PennDot problem. Solicitor Weinschenk stated that due to liability issues, the Borough Engineer would not recommend signing the proposed agreement and under current circumstances, neither would he. Mr. Phillips inquired as to whether the Borough could speak with Waverly to come to some sort of agreement. Sol. Weinschenk responded that we do not know how much water will flow and that is beyond our control. Mrs. Earley also discussed the size of pipes involved. Mr. Hughes asked if it came to an issue of liability on increased flow, wouldn't they have to have some measurement of past flow. Sol. Weinschenk replied that it would become an issue of what was there before and what is there now. The

Solicitor also reported the Borough has received a disc from the Abington Regional Wastewater Authority which contains standard construction and material specifications for sewer extensions. This is part of the Corrective Action Plan that Clarks Green, Clarks Summit, and South Abington agreed to with ARWA and DEP for adoption of uniform standards for the extension of sewer systems. The only municipality which it would affect is South Abington Township. They developed a manual which provides specific standards for the extension of sewer systems. Clarks Green is obligated to adopt these uniform standards and material specifications. The information will need to be modified with name changes for Clarks Green. Solicitor Weinschenk will make the necessary changes, present it to Council for adoption by resolution as opposed to ordinance. He hopes to have this item on the December meeting agenda. In addition, the solicitor was asked to review certain drainage issues which were brought to Council's attention. The drainage issue on Grayson Drive between properties owned by Andrew Kettel and R. J. Williams was investigated and it was determined that the Borough does have a easement and maintenance repair and replacement agreement for the area between the two property owners. The grate, which periodically gets blocked with debris, was placed for the safety of neighborhood children. The second issue which Solicitor Weinschenk discussed was on Gordon and Crest Drive. He reviewed documents for the past forty (40) or fifty (50) years regarding the Gordon Estates. There are drainage systems on certain properties there but the Borough has no easement or maintenance agreement with regard to maintaining or repairing those stormwater ditches or piping. The collapsed pipe which is apparently on a property on Crest Drive is the property owner's responsibility. Mrs. Earley reported that she and the DPW Foreman visited the property owner and told her this information. The other item for discussion is 319 N. Abington Road which will take place later in the meeting. Solicitor Weinschenk reported on a conversation with Pat Connelly from 210 Vassar Avenue which he forwarded to Council via e-mail.

HEALTH & SAFETY: Mr. Barrasse reported he had been contacted by the DPW Foreman regarding the state law for replacing Borough street signs. The original requirement for the replacing of street signs was 2015, which has since been lifted. Pricing estimates to replace the current street signs and posts is currently \$13,035.00. Mr. Barrasse is asking Council to consider this amount for future funding. The DPW Foreman mentioned that it would be more cost effective to purchase the signs all at once. Mr. Barrasse also spoke about the three year fire contract, currently with Clarks Summit Fire Company which is up for renewal at the end of December 2013. Clarks Green received a request from Chinchilla Hose Company to also be considered for the contract. He distributed handouts and discussed proposed additions to the contract. In addition he spoke about dual dispatching which could only be a benefit to our residents. Mr. Phillips inquired as to whether Mr. Barrasse had any input from either of the fire chiefs regarding the proposed additions. Mr. Barrasse replied that he has not as of yet. Mr. Rinaldi noted that Council needed time to review the handouts provided by Mr. Barrasse. Mr. Rinaldi motioned, seconded by Mrs. Earley to table consideration of the fire contract for further discussion at the Work Session and to make a final decision at the December Council meeting. Mr. Phillips stated that the contract expires at the end of this year and inquired about re-writing the contract prior to the December 2013 meeting. Mr. Williams, Mr. Rinaldi, Mr. Barrasse, Mrs. Earley, Mr. Phillips, and Mr. Hughes voted in favor of the

motion. Mr. Barrasse thanked both fire companies for their service and expressed appreciation for their help with the contract.

BUILDING & GROUNDS: President Williams asked Mr. Phillips if he had any issues or items related to 319 N. Abington Road to report. Mr. Phillips replied that he did not have any additional information regarding 319 N. Abington Road. Mr. Phillips discussed a request from Hillside Park for the old Borough signboard. Council agreed to donate it to the park. Mr. Phillips will pursue this. Mr. Phillips reported on handicapped accessibility for the Borough building doors. The price to install the push button entries would be \$4,000 to \$5,000 for each door. He reported on possibilities for a grant and asked Mr. Hetman for assistance with this. Budgeting issues will be discussed at the Work Session. Mr. Hetman replied that Council contact George Kelly, Director of Economic Development for assistance with the grant. Mr. Phillips discussed replacing the Borough office computers. Mr. Rinaldi reported that he sent an e-mail to Mr. Phillips regarding upgrading the Borough office computer system which is currently using Windows XP. Microsoft will no longer support Windows XP after April 2014. Mr. Hughes will include the approximate \$5,000 cost in the 2014 Budget prior to the December meeting. Mr. Phillips asked that the Copier Service line item in the Budget remain, eliminating the word Contract. Mr. Hughes will make that change.

OLD BUSINESS: President Williams asked Solicitor Weinschenk to reiterate the issues concerning 319 N. Abington Road. Solicitor Weinschenk reported that he circulated to Council a copy of the standards and criteria set forth in Chapter 20, Section 1109 of the Zoning Ordinance that must be considered when Council undertakes review of a Conditional Use Application. Regarding the process, Solicitor Weinschenk reported that Council considers the application; Council has a public hearing and Council considers all matters in connection with the Application, not just what is presented at the Hearing. Subsequently, Atty. Lavelle submitted documents on behalf of Courthouse Square Ventures and On The Square Inc., its general partner detailing information regarding the property including an Affidavit. Council can consider that also as part of the process of its review. Regarding the issue of abandonment, the Ordinance states that failure to use the property for twelve (12) months can be considered an abandonment of that use, which was brought up in comments made at the Public Hearing. The situation is regarding a legal non-conforming use. The Borough issued a Certificate of Non-Conformity in 2008 or 2009 by the former zoning officer authorizing its use for professional offices in an R1-A District. It is a vested property right that the property owner has. If the property has not been used in a twelve (12) month period, it is only a presumption of abandonment which can be rebutted by testimony from the applicant that the property has in fact been used. One of the main questions was (1) was there abandonment? and (2) the second requirement of Pennsylvania law is an intent to abandon the property. In this particular instance, the property owner leased the property to a law firm since 2009 and the Affidavit indicates the property owner has used that property for storage and offices. They pay taxes and maintain the property. They did not change the use of the property from professional offices; they have been issued a Certificate of Non-Conformity, they were issued a sign permit and they repeatedly presented plans over the last two years to develop the property as professional offices. This information rebuts the initial

presumption, even if there was no activity for twelve (12) months, the applicant has submitted documentation to rebut an abandonment. The Borough is not in a position to prove that the use has been abandoned or that it was intended to be abandoned. Solicitor Weinschenk stated that based on the information submitted to date, he does not believe, in his opinion, a legal abandonment of the use of that property by Courthouse Square Ventures has occurred. He stated his opinion to Council in consideration of the Conditional Use which is for construction of a new building. He stated a controlling factor in the decision cannot be abandonment. In his opinion, there has not been abandonment in the legal use of the property. Other aspects that need to be taken into account by Council are in the criteria as far as fitting within the character of the neighborhood; traffic issues, etc. Council can deny the use with reason, approve as submitted, or Council can approve the Conditional Use with conditions. Those conditions can be imposed by Council to limit the Conditional Use and help control factors that Council feels could be problematic to the area. The deadline for Council to act on this is November 30. Solicitor Weinschenk reported that he requested the applicant enter into an extension of the time required for Borough Council to take action. They have agreed to the extension to January 31, 2014. The Solicitor reminded Council that all deliberations must take place at a public meeting. Mr. Hughes reported that he had only received the Hearing transcript the day before the Council meeting and he would like the opportunity to review the transcript. Council members concurred. Mrs. Earley motioned, seconded by Mr. Hughes to table the decision approving the Courthouse Square Ventures application to allow time to read the Hearing transcript. Mr. Williams, Mr. Rinaldi, Mr. Phillips, Mr. Barrasse, Mrs. Earley and Mr. Hughes voted in favor.

TREASURER'S REPORT AND BILL APPROVAL: Mr. Hughes presented the Treasurer's Report which was filed for audit. Current fund balances are as follows:

Capital Fund Money Market	\$	13,514.01
Centennial Checking		1,028.54
General Fund Checking		210,956.84
General Fund Money Market		35,239.30
Sewer Fund Checking		210,385.33
Sewer Fund Money Market		84,913.39
State Funds Checking		<u>3,050.88</u>
Total Checking/Savings	\$	559,088.29

Mr. Hughes reviewed various checking account balances and discussed these amounts in comparison to last month's and last year's figures. In addition, Mr. Hughes discussed items and amounts on the Budget vs. Actual report. Mr. Hughes motioned, seconded by Mr. Phillips to accept the Treasurer's Report and ratify the payment of the bills. Mrs. Earley, Mr. Hughes, Mr. Barrasse, Mr. Rinaldi, Mr. Phillips, and Mr. Williams voted in favor. In addition, Mr. Hughes discussed the Capital Fund account. Each year \$5,000 is transferred from the Sewer Checking account and \$5,000 from the General Fund Checking account into the Capital Fund account. Mr. Hughes motioned, seconded by Mr. Rinaldi to transfer \$5,000 from the Sewer Checking account and \$5,000 from the

General Fund Checking account into the Capital Fund. Mrs. Earley, Mr. Rinaldi, Mr. Phillips, Mr. Hughes, Mr. Williams and Mr. Barrassé voted in favor. Mr. Hughes then presented an update on sewer billing delinquencies and reported on the Borough properties which will be placed on lien. He also reported that he met with DGK Insurance representative Jeff Kyle and reviewed various insurance coverages with members of Council. He will discuss additional matters at the Work Session. He discussed increasing yearly deductibles on the policies from \$500 to \$1000 with Mr. Kyle. Mr. Kyle responded that it would only reduce the premiums by \$74.00 a year.

PUBLIC WORKS: Mrs. Earley reports the DPW is ready for winter related weather with the salt supply and with plows on the trucks. She reported that the 2011 dump truck needs four new tires which are in the budget. The DPW Foreman has secured three phone quotes with the lowest from Sandone Tire for \$1200.00. Mr. Hughes motioned, seconded by Mr. Phillips to purchase truck tires for \$1200.00. Mr. Barrassé, Mr. Rinaldi, Mr. Phillips, Mr. Hughes, Mrs. Earley and Mr. Williams voted in favor. Mrs. Earley reported on a free workshop for winter road issues to be held at Lake Wallenpaupack on November 22. The DPW would like permission to attend. Mr. Earley motioned, seconded by Mr. Barrassé to allow the DPW to attend the free workshop at Lake Wallenpaupack on November 22, 2013. Mr. Barrassé, Mrs. Earley, Mr. Williams, Mr. Phillips, Mr. Rinaldi and Mr. Hughes voted in favor. Solicitor Weinschenk sent a letter to the Vassar Avenue resident which prompted a phone call from the resident to the solicitor. The resident stated that he does not want to pursue the septic tank issue because he has received opinions from workmen that there would be a lot of work to get to the area where the DPW foreman believes the septic tank is located. The DPW can still smell odors emanating from that area, especially after a heavy rain. In the summer, his neighbors registered complaints. His next door neighbor did cooperate and had his septic tank drained and filled with soil by a company that specialized in this work. The DPW foreman and the septic tank company witnessed the area filling up with fresh sewer water. How do we want to proceed now in the face of this resident's refusal to act? Do we want to involve our Board of Health? Do we want to involve the Department of Environmental Protection? Mayor Thorburn replied to notify the Board of Health and Council members concurred. In addition, Mayor Thorburn discussed the street signs and requested purchasing one green and white street sign to lock in the color for Clarks Green Borough as opposed to blue or red.

REFUSE & RECYCLING: Mr. Rinaldi reported that no Refuse & Recycling complaints were received. He e-mailed Council requesting authorization to solicit bids for the Refuse & Recycling contract. Mr. Rinaldi discussed certain issues with the current contract, the first being when the Borough no longer used taxpayer money to pay the haulers and the homeowners became responsible to pay the hauler directly. An option would be for Council to consider returning to the method of the Borough paying the hauler. Millage would have to be increased about 8 mills to cover the amount. This is an option for Council to consider. Mrs. Earley asked if Mr. Rinaldi had received any complaints about the current refuse billing and he replied that he has not. Finance Chairman Hughes discussed millage issues. Mr. Barrassé discussed billing issues. Mr. Rinaldi reminded Council to keep in mind the following: (1) the Borough went from

dual to single stream recycling and he discussed the option of returning to dual stream; (2) whether or not the hauler provides receptacles which might have an impact on the bids received; and (3) bulk pick-up which is now unlimited vs. limited to an item or two per week. He cited houses being vacated with mounds of items left curbside. Council discussion ensued. Mr. Rinaldi motioned, seconded by Mr. Barrasse to authorize to bid for the Refuse and Recycling contract for a period of 4 years and 9 months and to bid single stream recycling, bid for receptacles supplied by the hauler or not supplied by the hauler and have unlimited bulk pick-up on a weekly basis or a limitation to the number (2) of items per week. Mr. Phillips, Mr. Barrasse, Mrs. Earley, Mr. Williams, Mr. Hughes, and Mr. Rinaldi voted in favor. Mr. Rinaldi will work with Solicitor Weinschenk to finalize the bid package and place the advertisement in the paper. President Williams inquired about a deadline. Council discussion ensued. Mr. Hughes discussed extending the Refuse & Recycling Chairman's position until the end of January 2014 to accommodate the Refuse & Recycling contract bidding. The Solicitor reminded Council the Reorganization meeting must be held on the first Monday in January. Mrs. Earley discussed the starting time for the haulers to be in the Borough, which can also be listed in the contract.

PERSONNEL: There was no report in Ms. Palmer's absence.

AAJRB: There was no report in Ms. Palmer's absence.

ACOG: President Williams reported on the Comcast Cable correspondence which was e-mailed to Council members regarding their upcoming contract and agreement. These items will be discussed at the Work Session.

OLD BUSINESS: Mr. Hughes thanked members of the Finance Committee as well as most members of Council for their assistance on preparing the 2014 Budget. A copy of the proposed Budget is being distributed this evening for discussion at the Work Session. Mr. Hughes noted that there is no proposed increase in the Real Estate Tax nor is there a proposed increase in the quarterly sewer assessment to residents. Mr. Hughes motioned, seconded by Mrs. Earley to adopt the Tentative 2014 Budget. Mr. Barrasse, Mr. Rinaldi, Mr. Hughes, Mr. Phillips, Mrs. Earley and Mr. Williams voted in favor. Mr. Williams discussed the vacancy on the Zoning Hearing Board created when Mr. Barrasse was appointed to Council. Rick Williams, Chairman of the Vacancy Board was asked to review his vacancy list for residents who indicated they wanted to serve the Borough in this capacity. President Williams was given a recommendation of Robert Ortiz, 422 S. Abington Road who has been a Borough resident for 19 years. Mr. Williams noted items of interest regarding Mr. Ortiz. Mrs. Earley motioned, seconded by Mr. Barrasse to appoint Robert Ortiz to the Zoning Hearing Board. Mrs. Earley, Mr. Hughes, Mr. Phillips, Mr. Rinaldi, Mr. Williams and Mr. Barrasse voted in favor. Mr. Williams discussed the timing for the Reorganization meeting and advertising the 2014 meeting schedule. Mr. Rinaldi reported the Proposed 2014 Budget will be posted on the website. In addition, he posted information on Twitter and Facebook about the Waverly Lodge Pancake and Sausage Breakfast this Saturday from 8 a.m. to noon. The message which will appear on the sewer bill was reviewed and approved by Council.

MOTION FOR ADJOURNMENT: Mr. Barrasse motioned, seconded by Mrs. Earley to adjourn the meeting at 9:25 p.m. All in attendance voted in favor.

Janice F. Brown, Secretary/Treasurer

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