

No. 5

7/7/86 \$558.52 (Westmont)  
7/7/86 \$558.52 (Southmont)PETITION FOR COSTS AND FEES

NICHOLAS J. MIKESIC, Esquire, in behalf of himself, T.L. LOCHER and CHARLES E. SLEP, all Commissioners in the above captioned case, respectfully represent as follows:

1. Nicholas J. Mikesic, Esquire, T.L. Locher and Charles E. Slep were appointed Commissioners in the above captioned case by Order of June 19, 1985, per H. Clifton McWilliams, President Judge.

2. Nicholas J. Mikesic, Esquire, in his capacity as Commissioner, researched the law, held several meetings with counsel of record, prepared advertisements and Affidavits of Notice, attended a View and Hearing, and prepared a Report and Recommendation, Proposed Order and Notice of Filing in the above captioned case, all of which required the expending of 7.1 hours.

3. T.L. Locher and Charles E. Slep have participated in a View and Hearing and a subsequent conference for the purpose of formulating a Report and Recommendation, during which they expended 4.5 hours.

4. Nicholas J. Mikesic, Esquire, in his capacity as Commissioner, advanced the following costs:

Photocopies	\$ 20.00
Cambria County Legal Journal-	
Advertisement and Proof of Publication	34.25
Johnstown Tribune Publishing Company-	
Advertisement and Proof of Publication	35.30
Sara Ann Sargent Court Reporting Service	45.00
<b>TOTAL</b>	<b><u>\$134.55</u></b>

5. Nicholas J. Mikesic, Esquire, charges a fee of \$75.00 per hour for similar services, and, T.L. Locher and Charles Slep each charge a fee of \$50.00 per hour for such services as they performed, all of which fees are fair and reasonable.

6. The Boroughs of Westmont and Southmont have agreed to equally divide the costs of the within proceedings as is evidenced by the joinder of and consent to the within Petition by the present Solicitors of the respective Boroughs.

WHEREFORE, petitioners pray your Honorable Court direct the Boroughs of Westmont and Southmont respectively to contribute equally to the following compensation and reimbursement:

NICHOLAS J. MIKESIC, Esquire, Commissioner	Fee: \$ 532.50
NICHOLAS J. MIKESIC, Esquire, Commissioner	Reimbursement: 134.55
T.L. LOCHER, Commissioner	Fee: 225.00
CHARLES E. SLEP, Commissioner	Fee: 225.00
<b>TOTAL</b>	<b><u>\$1,117.05</u></b>

Respectively submitted,

/s/ Nicholas J. Mikesic

WE DO HEREBY consent to and join in the above Petition to direct the Boroughs of Westmont and Southmont to contribute equally to the compensation and reimbursement of the appointed Commissioners.

/s/ William Gleason Barbin, Esquire

/s/ Barbara A. Halbay  
Witness

/s/ Daniel R. Lovette, Esquire

/s/ Thomas M. Kalinyak, Esquire

ORDER

AND NOW, this 2nd day of June, 1986, upon consideration of the within Petition and upon motion of NICHOLAS J. MIKESIC, Esquire, the Court finds that the fees and costs of the respective Commissioners in the above captioned case are fair and reasonable and that each of the Boroughs of Westmont and Southmont is responsible for an equal portion thereof, and, it is, therefore,

ORDERED AND DECREED that each of the Boroughs of Westmont and Southmont pay the sum of \$558.52 into the Office of the Clerk of Courts forthwith and, upon receipt of the total amount due from each of the Boroughs of Westmont and Southmont, the Clerk of Courts shall issue checks to the Commissioners in the following amounts:

NICHOLAS J. MIKESIC, Esquire	\$667.05
T.L. LOCHER	\$225.00
CHARLES E. SLEP	\$225.00

BY THE COURT: McWilliams, P.J.

Copies given to Atty. Mikesic, T.L. Locher, Charles Slep, Westmont & Southmont Boroughs (Mail).

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Company to direct a new Fire Hall without the complications as to receipt of foreign fire insurance, insurance premiums and payment of Workmens Compensation by the Borough in which the Volunteer Fire Company is located.

5. That further delays in this matter may tend to increase the construction costs of the Fire Hall and so place the cost beyond the ability of the Westmont Volunteer Fire Company to afford the same.

WHEREFORE, your Petitioner requests the Court an earned Order dismissing the Board of Commissioners and appointing a new Board in their stead with directions to hold a hearing within thirty (30) days from the date of appointment.

Respectfully submitted,

GLEASON, DI FRANCESCO, SHAHADE &amp; MARKOVITZ

By /s/ William Gleason Barbin  
William Gleason Barbin  
Westmont Borough Solicitor

Copies given by Attorney.

ORDER

AND NOW, November 15, 1985, by reason of Attorney William Gleason Barbin's letter attached, hereto, said Petition for replacement of Commissioners is dismissed forthwith.

BY THE COURT: McWilliams, P.J.

Letter Attached

Copies given to Attys. Barbin, Lovette (P.S.) and Mikesic (Mail).

Filed: 12-13-85

AMENDMENT TO PETITION TO ALTER  
BOROUGH BOUNDARY LINES

AND NOW comes the Petitioner, Westmont Borough, by and through their Solicitor, William Gleason Barbin, Esq., of the law firm, Gleason, DiFrancesco, Shahade & Markovitz, and makes the following amendment and additional allegation to the Petition to Alter Borough Boundary Lines, the case as docketed above averring:

8. That currently, a dispute exists between the Boroughs of Westmont and Southmont over the exact boundary lines in the area in question. The dispute arises from the fact that there has been no survey of the area for over fifty (50) years and that landmarks and points of reference have changed and has, in the past several years, and currently manifested itself in the form of disagreements over receipt of tax payments for the Lisanko property, the placement and maintenance of sewer lines servicing Southmont Borough in an area of Diamond Boulevard designated as Westmont Borough, a dispute over zoning responsibilities for properties divided by the Borough Boundary lines, and a dispute in recent law suit concerning responsibility for maintenance of Menoher Boulevard in the vicinity of its intersection with Mill Creek Road.

9. It is expected that there will be disputes in the future over responsibilities for zoning, taxation and contributions to Workmens Compensation Insurance for the Westmont Volunteer Fire Company, should they complete their plans to build on their property, which is now currently located in Southmont Borough. These disputes would be eliminated by actions sought in the original Petition to Alter Borough Boundary Lines.

Respectfully submitted,

GLEASON, DI FRANCESCO, SHAHADE &amp; MARKOVITZ

By /s/ William Gleason Barbin  
William Gleason Barbin  
Westmont Borough Solicitor

Copies given By Att. Barbin to Attorney Lovette and to Nicholas Mikesic.

ORDER OF COURT ALTERING BOUNDARY LINES  
BETWEEN WESTMONT AND SOUTHMONT BOROUGH  
AND ADOPTING MAP

6/12/86 \$7.50 (Westmont)  
7/7/86 \$7.50 (Southmont)

AND NOW, this 2 day of June, 1986, after view by, hearing before and upon recommendation of Commissioners, NICHOLAS J. MIKESIC, Esquire, T.L. LOCHER and CHARLES E. SLEP, the Court finds that a bona fide dispute or disputes exist as to the actual location of the boundary line between Westmont and Southmont Boroughs and that the requirements of Sections 502-506 of the Pennsylvania Borough Code of February 1, 1966, P.L. (1965) \_\_\_\_\_, No. 581, as amended (53 P.S. §§45502-45506) have been met by the parties and Commissioners; that no exceptions were filed by any person or political subdivision interested within thirty days of the filing of the Commissioner's Report; and it is, therefore,

ORDERED AND DECREED that the Commissioner's Report and Recommendation be and hereby is confirmed absolutely, and that the boundary line between the Borough of Southmont and the Borough of Westmont be and hereby is altered, ascertained and established in accordance with the Map Showing the Relocation of a Portion of the Boundary Line Between the Borough of Southmont and the Borough of Westmont, as prepared on April 1, 1985, by Hinks and Locher, Inc., which Map is incorporated by reference into this Order.

McWilliams, P.J.

Map attached.

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TO: DANIEL R. LOVETTE, THOMAS M. KALINYAK, &amp; WILLIAM GLEASON BARBIN

You are hereby notified that on the 27th day of May, 1986, I will file a Report and Recommendation in behalf of the Commissioners in the above captioned proceeding in the Office of the Clerk of Courts for the Court of Common Pleas of Cambria County, Pennsylvania, in which the Commissioners will recommend that the boundary line between Southmont Borough and Westmont Borough be altered, ascertained and established in accordance with the Map Showing the Relocation, etc. Pursuant to Section 504 of the Pennsylvania Borough Code of February 1, 1986, P.L. (1965) \_\_\_\_, No. 581, as amended (53 P.S. §45504), you will have thirty (30) days from said date within which to file exceptions to said report of you so desire.

NICHOLAS J. MIKESIC, Esquire  
T.L. LOCHER  
CHARLES E. SLEP  
Commissioners

/s/ Nicholas J. Mikesic

AND NOW, this 23rd day of May, 1986, I hereby accept service of the within notice and acknowledge receipt of a copy of same.

/s/ Daniel R. Lovette

AND NOW, this 28 day of May, 1986, I hereby accept service of the within notice and acknowledge receipt of a copy of same.

/s/ Thomas M. Kalinyak

AND NOW, this 28 day of May, 1986, I hereby accept service of the within notice and acknowledge receipt of a copy of same.

/s/ William Gleason Barbin

#### REPORT AND RECOMMENDATION

#### OF

#### ROAD COMMISSIONERS

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

NICHOLAS J. MIKESIC, Esquire, T.L. LOCHER and CHARLES E. SLEP were appointed by Order of June 19, 1985, per H. Clifton McWilliams, President Judge, to hold a hearing and view the lines and boundaries, and make a report to the Court, with regard to the joint Petition to alter Boundary Lines filed by William Gleason Barbin, Esquire, former Solicitor for Westmont Borough and Daniel R. Lovette, Esquire, Solicitor for Southmont Borough, and in accordance with the requirements of Sections 502-506 of the Pennsylvania Borough Code of February 1, 1966, P.L. (1965) \_\_\_\_, No. 581, as amended (53 P.S. §§45502-45506).

An Amended Petition was filed by the said William Gleason Barbin, Esquire, alleging the existence of a bona fide boundary dispute between the respective Boroughs and, thus, the necessity for adjustment of a portion of the boundary line between said Boroughs.

Pursuant to our appointment, the Commissioners ultimately fixed December 18, 1985, at 5:30 o'clock P.M. at the Westmont Borough Building, 1560 Menoher Boulevard, Johnstown, Pennsylvania 15905, as the date, time and place for hearing on the matter. Notice of hearing was advertised once on December 5, 1985, in each of the Johnstown Tribune Democrat and the Cambria County Legal Journal, and copies of said notice were delivered to interested property owners in accordance with the Proofs of Publication and Affidavits of Service attached hereto.

Immediately prior to said hearing, the Commissioners viewed the subject portion of the boundary line in the presence of counsel for both Boroughs. At the hearing of the Commissioners heard testimony from the following in behalf of Southmont Borough and Westmont Borough, respectively:

RICHARD W. BREHM, P.E.  
Southmont Borough Engineer  
FREDERICK R. POULEN  
Southmont Borough Zoning Administrator  
THOMAS J. DAILEY  
Southmont Borough Manager and Treasurer  
JAMES WIDMANN

A letter from ROBERT BEATTY, Westmont Borough Public Works Director, was read into the record without objection.

The cases were presented respectively by Daniel R. Lovette, Esquire, Solicitor for Southmont Borough, and William Gleason Barbin, Esquire, former Solicitor for Westmont Borough.

#### FINDINGS OF FACT

1. The subject portion of the boundary line between Westmont and Southmont Boroughs was never actually set by a surveyor or engineer.

2. No physical markers were heretofore erected, showing the actual location of said boundary line.

3. Several years ago, a dispute arose as the result of an automobile accident, and the parties were unable to determine the municipality in which the accident occurred.

4. A dispute between the Boroughs involving the Lazankas property specifically resulted in action being taken by the Zoning Hearing Boards of each Borough.

5. Disputes have arisen over the years regarding responsibility for paving roads on and about the disputed boundary line.

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6. Disputes have arisen between the Boroughs regarding the cleaning and maintenance of sewer lines and responsibility for fire protection.

7. A drawing was prepared on April 1, 1985, by Hinks and Locher Engineers, Inc., establishing an actual boundary line in the disputed area, and actual markings were affixed to the ground.

#### CONCLUSIONS OF LAW

1. The said Commissioners have jurisdiction in accordance with the Order of Court of June 19, 1985, and the Pennsylvania Borough Code, supra (53 P.S. §§45502-45506).

2. Notice of hearing was given to all interested parties according to law, and a view and hearing were held and testimony received on December 18, 1985.

3. Bona fide disputes exist and have existed between Southmont and Westmont Borough, necessitating adjustment and fixing of the boundary line under Section 503 of the Borough Code (53 P.S. §§45503).

4. The Commissioners adopt and recommend the Map Showing the Relocation of a Portion of the Boundary Line Between the Borough of Southmont and Borough of Westmont, prepared by Hinks and Locher Engineers, Inc., on April 1, 1985, a copy of which is attached hereto.

5. The Commissioners recommend that the Court enter an Order in substantially the form attached, in accordance with Section 504 of the Borough Code (53 P.S. §45504).

Respectfully submitted,

NICHOLAS J. MIKESIC, Esquire  
T.L. LOCHER  
CHARLES E. SLEP  
Commissioners

By /s/ Nicholas J. Mikesic

#### AFFIDAVIT OF SERVICE

(1) DANIEL G. MULKEY and ANDREW J. LITVIN, SR. (2) being duly sworn according to law, depose and say that they are competent adult; that they served the Notice of Public Hearing in the above matter on the following property owners:

<u>NAME</u>	<u>ADDRESS WHERE SERVED</u>	<u>DATE</u>	<u>TIME</u>
Mrs. Barbara Cassata	1618 Luzerne Street Ext.	2 Dec. 85	1:18 PM
Austin Greenland	Westmont Middle School	2 Dec. 85	1:27 PM
James Pasco	Rain Barrel	2 Dec. 85	1:31 PM
Doran Hurrell	1042 Luzerne Street	2 Dec. 85	1:44 PM
Charles Sprague	1044 Menoher Blvd.	2 Dec. 85	2:01 PM
Robert Lengel	1046 Menoher Blvd.	2 Dec. 85	2:05 PM
Debbie Wicks	3115 Elton Road	4 Dec. 85	9:30 AM
Mrs. Adelaide Templin	1046 Luzerne Street	4 Dec. 85	5:00 PM
Edwin Springer	826 Diamond Blvd.	4 Dec. 85	5:30 PM

personally, by handing to each of them a true and correct copy thereof and informing them of its contents at the respective addresses, dates and times.

Deponents further aver that, at the time of said service, each of the said property owners identified him/her to deponents.

/s/ Daniel J. Mulkey

/s/ Andrew J. Litvin, Sr.

#### AFFIDAVIT OF SERVICE

I, THOMAS J. DAILEY, Borough Manager, hereby certify that a true and correct copy of the Notice of Public Hearing in the above matter was served by United States Certified Mail, Restricted Delivery, Return Receipt Requested on each of the following property owners. The said Notices were sent to the addresses and on the respective dates listed, and received by the person noted. Copies of each of the said Return Receipts are attached hereto as Exhibit "A" through "E".

<u>PROPERTY OWNER AND ADDRESS</u>	<u>DATE RECEIVED</u>	<u>SIGNATURE OF RECIPIENT</u>
CAUFFIEL BROS. REAL ESTATE 616 Main Street Johnstown, PA 15901	December 9, 1985 (SEE EXHIBIT "A")	Clyde Cauffiel
MRS. SALLY PARKINS 91 Schrader Avenue Johnstown, PA 15904	December 7, 1985 (SEE EXHIBIT "B")	Sally Parkins
MR. FRANK CALANDRA 1330 Old Freeport Road Pittsburgh, PA 15238	December 5, 1985 (SEE EXHIBIT "C")	Joe McConnell
MR. DENNIS PETINEZAS 327 Freeman Avenue Johnstown, PA 15904	December 7, 1985 (SEE EXHIBIT "D")	Robin L. Mosteller
MR. JAMES EPSTEIN 1319 Menoher Boulevard Johnstown, PA 15905	December 9, 1985 (SEE EXHIBIT "E")	A.J. Epstein

/s/ Thomas J. Dailey

Borough Manager

Exhibits A thru E attached.

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ORDINANCE NO. 33 TO VACATE CERTAIN PORTIONS OF CERTAIN STREETS OR ROADS IN THE TOWNSHIP OF EAST TAYLOR, CAMBRIA COUNTY, PENNSYLVANIA

BE IT ORDAINED, and it is hereby ordained that the Township of East Taylor, Cambria County, Pennsylvania, hereby vacates as a public highway in the said Township the following described and mentioned streets, roads or lanes as public roads and highways of said Township and thereafter will no longer be or remain the responsibility of said Township for all purposes:

1. Section 4 of Ordinance No. 18-A be hereby vacated by the Township of East Taylor and no longer be a part of the public system of East Taylor which is described as follows:

BEGINNING at a point at the northwesterly intersection of Alfa Avenue, (formerly Washington Street) and Hannah Lane, (formerly Lincoln Avenue); thence along the northerly side of Alfa Avenue and Lots Nos. 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 68 on the A. M. Wagner Plan of Lots North 58° 55' East a distance of 1252.5 feet to a point; thence South 36° 18' East a distance of 40 feet to a point on the southerly side of Alfa Avenue; thence along the southerly side of Alfa Avenue South 58° 55' East a distance of 1252.5 feet to a point at the southwesterly intersection of Alfa Avenue and Hannah Lane; thence along the westerly side of Hannah Lane North 34° 15' West a distance of 40 feet to a point at the northwesterly intersection of Hannah Lane and Alfa Avenue, being the place of beginning.

2. Section 6 of Ordinance No. 18-A be hereby vacated by the Township of East Taylor and no longer be a part of the public system of East Taylor which is described as follows:

BEGINNING at a point at the southeasterly intersection of Margaret Lane and Oliver Avenue, (formerly Jefferson Avenue); thence along the easterly side of Margaret Lane land of Frank Crowley South 34° 15' East a distance of 240 feet to a point at the northeasterly intersection of Margaret Lane and Alfa Avenue, (formerly Washington Street); thence along the northerly side of Alfa Avenue South 58° 65' West a distance of 40 feet to a point at the northwesterly intersection of Margaret Lane and Alfa Avenue; thence along the westerly side of Margaret Lane and Lots Nos. 68 and 67 on the A. M. Wagner Estate Plan of Lots North 34° 15' West a distance of 240 feet to a point at the southwesterly intersection of Margaret Lane and Oliver Avenue; thence along the southerly side of Oliver Avenue; North 58° 55' East a distance of 40 feet to a point at the southeasterly intersection of Margaret Lane and Oliver Avenue, being the place of beginning.

3. Section of Ordinance No. 18-B be hereby vacated by the Township of East Taylor and no longer be a part of the public system of East Taylor which is described as follows:

BEGINNING at the intersection of Lyman Lane, (formerly Samuel Street) and Oliver Avenue, (formerly Lyman Street) and at corner of Lot No. 62 on the Riverview Plan of Lots as laid out by John A. Angus; thence along Oliver Avenue and line of Lots Nos. 62 and 4 South 40° 0' West a distance of 500 feet to a point at the intersection of Cullis Lane, (formerly John Street) and Oliver Avenue; thence along Cullis Lane North 50° 0' West a distance of 40 feet to a point at corner of Lot No. 3; thence along Oliver Avenue and line of Lots Nos. 3 and 63 North 40° 0' East a distance of 500 feet to a point at the intersection of Lyman Lane and Oliver Avenue; thence along Lyman Lane South 50° 0' East a distance of 40 feet to a point at corner of Lot No. 62, being the place of beginning.

4. Section 6 of Ordinance No. 18-B be hereby vacated by the Township of East Taylor and no longer be a part of the public system of East Taylor which is described as follows:

BEGINNING at a point at the northeasterly intersection of Oliver Avenue, (formerly Lyman Street) and Amos Lane, (formerly Harry Street) and at corner of land now or formerly of Amos Cover Estate; thence along Oliver Avenue the two following courses and distances for a distance of 946.26 feet North 60° 40' East and North 40° 0' East to intersection of Cullis Lane (formerly John Street) and Oliver Avenue; thence along Cullis Lane South 50° 0' East a distance of 40 feet to a point on Cullis Lane and line of land now or formerly of George K. Angus; thence along Oliver Avenue and line of land now or formerly of George K. Angus South 40° 0' West a distance of 442.21 feet to a point at the intersection of Oliver Avenue and George Lane (formerly George Street) and at corner of Lot No. 12 on the Riverview Plan of Lots as laid out by John A. Angus; thence continuing along Oliver Avenue and line of Lots Nos. 12 and 33 South 60° 40' West a distance of 504.05 feet to a point at corner of Lot No. 32 and intersection of Amos Lane and Oliver Avenue; thence along Amos Lane a distance of 40 feet to a point at corner of land now or formerly of Amos Cover Estate, being the place of beginning.

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5. Section 8 of Ordinance No. 31 be hereby vacated by the Township of East Taylor and no longer be a part of the public system of East Taylor which is described as follows:

Ritchey-Castine Line, 33 feet in width (measured 16 1/2 feet from the center line of the existing road) and extending from Rose Hill Road 1/2 mile, more or less to the end of the Ritchey property line.

6. Section 13 of Ordinance No. 31 be hereby vacated by the Township of East Taylor and no longer be a part of the public system of East Taylor which is described as follows;

Sumner Street, 40 feet in width, extending from the southerly line of Van Buren Street in a southerly direction for 296 feet to a southerly line of Quincy Avenue, per plan of Woodvale Heights.

7. A certified and attested copy of this Ordinance shall be filed in the office of the Clerk of Quarter Sessions of Cambria County.

ENACTED AND ORDAINED this      day of December, 1971.

TOWNSHIP OF EAST TAYLOR

ATTEST:

By /s/ Alfred B. Coleman

/s/ Charles Cobaugh  
Secretary

Chairman of the Board of  
Township Supervisors

JOSEPH F. O'KICKI

Solicitor