

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia, ex rel.  
TOWN OF PRATT, a West Virginia Municipal  
Corporation,

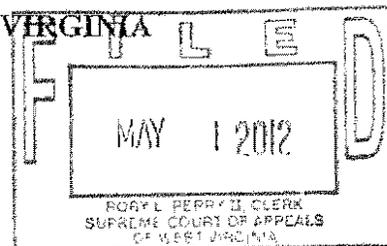
Petitioner/Defendant Below,

v.

No. 12-0442

THE HONORABLE JAMES C. STUCKY,  
Judge of the 13<sup>th</sup> Judicial Circuit, and  
ROGER PAUL CRIST, et al.,

Respondents/Plaintiffs Below.



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RESPONSE OF ROGER CRIST AND ROXANNA CRIST TO  
PETITION FOR WRIT OF PROHIBITION  
FROM THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
Civil Action No.: 11-C-1217

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NOW COMES the respondents, Roger Crist and Roxanna Crist, by and through their counsel, John R. Mitchell and the law firm of John R. Mitchell, L.C., and in response to the Petition for Writ of Prohibition, do state as follows:

**I. Introduction**

Respondents, Roger Paul Crist and Roxanna Crist, his wife, by counsel, John R. Mitchell, Sr., of the law office of John R. Mitchell, LLC, respectfully requests this Court reject the Petition for Writ of Prohibition filed on behalf of petitioner, Town of Pratt, a West Virginia Municipal Corporation, because the Honorable James C. Stucky, Judge for the Circuit Court of Kanawha County, West Virginia, did not commit clear error by denying petitioner's Motion to Dismiss or

Alternatively for Summary Judgment. Specifically, the circuit court correctly denied the motion on the grounds that discovery has not yet begun in this case.

In support of their opposition to the Petition for Writ of Prohibition, respondents set forth the following.

## **II. Statement of Facts**

The respondents, Roger Paul Crist and Roxanna Crist, (the "Crist's"), husband and wife, are the owners of real property located at 306 Campbell Avenue, Pratt, Kanawha County, West Virginia. This property was purchased by the respondents on October 29, 1974. The petitioner, Town of Pratt, is a West Virginia municipal corporation, located in Kanawha County, West Virginia. Defendant, Helen B. Berry, was appointed administratrix of the Estate of John Billo, shortly after his death. Prior to his death, John Billo was the owner of real property located adjacent to the property of the respondents which is the subject of the suit in this matter. Defendants, William M. Perry and Rosella Perry, purchased said property from of the Estate of John Billo and have conducted activities on the said property which are also the subject matter of this suit.

Since approximately 2003, prior to his death, John Billo began a landfill on his property which is adjacent to the property of the respondents. As a result of the landfill, the surface of Mr. Billo's property was raised above the property of the respondents and has caused a drastic change in the normal flow of drainage which has caused flooding on the property owned by the respondents. This landfill has caused water to stand on the respondents' property for long periods of time, has created a habitat for mosquito breeding, and has left the property uninhabitable.

After Mr. Billo's death, the defendants William M. Perry and Rosella Perry, continued to fill the property causing the existing problem to get worse. In the past, the respondents filed objections

with the petitioner, who refused to take any action even though it was aware of the landfill and the damage it was causing. The respondents requested documentation of permits for such landfill. To date, the respondents have only been provided with a copy of one such permit which was issued to defendant William Perry on August 31, 2007. The petitioner has been unable to provide documentation of any prior permits for such landfill prior to that date. Respondents contend that the failure of petitioner to take any action to correct the damage or to direct the defendants or the Estate of John Billo, or any other party responsible for the damage that has been done to respondents' property constitutes an act of negligence. As a proximate result of the negligence and failure of the petitioner, the respondents have suffered damages.

On July 22, 2011, the respondents filed suit against the said defendants and petitioner in this matter in the Circuit Court of Kanawha County, West Virginia. On December 12, 2011, the petitioner filed a motion for summary judgment in Kanawha County Circuit Court claiming sovereign immunity under West Virginia Code §29-12A-5(a)(9) which states that a political subdivision is immune from liability if a loss or claim results from its licensing powers or functions. On February 6, 2012, the respondent filed its response arguing, inter alia, that: (1) a "special relationship" exists between the respondent and petitioner and its defense claims of sovereign immunity must fail; and (2) that discovery is still ongoing in this case, so a granting of summary judgment would be premature at this time.<sup>1</sup> After a hearing on this matter was held on February 7, 2012, in front of the Hon. James C. Stucky, Judge, Kanawha County Circuit Court, petitioner's motion was denied. The court ruled that since no discovery has taken place in this case the court

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<sup>1</sup> See attached Exhibit 1-Plaintiff's Response to Defendant, Town of Pratt, Motion to Dismiss or Alternatively for Summary Judgment.

would take this matter up again at the appropriate time.

### III. Argument

#### A. Standard of Review

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1997).

In the present matter, petitioner is seeking a writ of prohibition to prevent the circuit court from enforcing its bench ruling which denied petitioner's Motion to Dismiss or Alternatively for Summary Judgment. This Court has previously stated that, "[w]here prohibition is sought to restrain a trial court from the abuse of its legitimate powers, rather than to challenge its jurisdiction, the appellate court will review each case on its own particular facts to determine whether a remedy by appeal is both available and adequate, and only if the appellate court determines that the abuse of powers is so flagrant and violative of petitioner's rights as to make a remedy by appeal inadequate, will a writ of prohibition issue." Syl. Pt. 2, *Woodall v. Lauriat*, 156 W.Va. 707, 195 S.E.2d 717 (1973). Furthermore this Court has stated, "[A] writ of prohibition will not issue to prevent a simple abuse of discretion by a trial court." Syl. Pt. 2, in part, *Preacher v. Sencindiver*, 160 W.Va. 314, 233 S.E. 2d 425 (1977).

**B. The Circuit Court of Kanawha County, West Virginia correctly denied petitioner's Motion to Dismiss or Alternatively for Summary Judgment on the grounds that no discovery has taken place in the case.**

Respondents argue that petitioner has incorrectly asserted that it is entitled to immunity under W.Va. Code § 29-12A-5(a)(9). Respondents state that, “[I]f a special relationship exists between a local governmental entity and an individual which gives rise to a duty to such individual, and the duty is breached causing injuries, then a suit may be maintained against such entity.” Syl. pt. 3, Benson v. Kutsch, 181 W.Va. 1, 380 S.E.2d 36 (1989). To establish that a special relationship exists between a local government entity and an individual the following elements must be shown: (1) an assumption by the local government entity, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on part of the local governmental entity's agents that inaction could lead to harm; (3) some form of direct contact between the local governmental entity's agents and the injured party; and (4) that party's justifiable reliance on the local governmental entity's affirmative undertaking.

The Circuit Court in this matter correctly denied petitioner's Motion to Dismiss or Alternatively for Summary Judgment on the grounds that discovery is still ongoing in this case and a granting of summary judgment would premature at this time. Respondents argue that interrogatories need to be answered, depositions need to be taken, and an investigation needs to be conducted to determine whether a “special relationship” exists between the petitioner and respondents. Thus, since discovery will be helpful in answering these questions, the court clearly has not committed clear error in its ruling and petitioner's petition should be denied.

**C. A question of fact exists as to whether a “special relationship” was created between respondent and petitioner.**

“In cases arising under W.Va Code § 29-12-5, the question of whether a special duty arises to protect an individual from a State governmental entity’s negligence is ordinarily a question of fact for the trier of facts.” Syl. Pt. 11, J.H. v. Division of Rehabilitation Services, 680 S.E.2d 392 (2009), citing, Syl. Pt. 12, Parkulo v. West Virginia Bd. of Probation and Parole, 199 W.Va. 161, 483 S.E.2d 507 (1996). Respondents contends that the evidence in this case will demonstrate that the petitioner was aware of respondents’ problems with the land adjacent to its property and petitioner made promises that it would help correct those problems. Respondents argue that since early 2003, the petitioner was aware that the “Billo property” needed a culvert and two feet of top soil to prevent extra water being routed onto adjacent properties. At that time, petitioner knew it was its responsibility to construct the culvert. Minutes from town meetings show that petitioner inquired to the county commission as to why it had not yet received the funds for the culvert.<sup>2</sup> Minutes also show that from early 2003 to 2005 that petitioner had full knowledge of the problems the respondents were having and were taking steps to have the situation resolved. Respondents argue that these promises lead to a “special relationship” between the petitioner and respondents and an affirmative duty on the part of the petitioner to take action to prevent the respondents from being further damaged.

As stated previously in Benson, to establish that a “special relationship” exists between a local government entity and an individual the following elements must be shown: (1) an assumption by the local government entity, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on part of the local governmental entity’s agents that inaction could lead to harm; (3) some form of direct contact between the local governmental entity’s

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<sup>2</sup> See attached Exhibit No. 2, Town of Pratt Regular Session January 14, 2003.

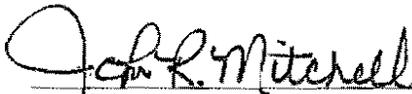
agents and the injured party; and (4) that party's justifiable reliance on the local governmental entity's affirmative undertaking. In this case, the petitioner had full knowledge that the "Billo property" was causing damages to the respondents' property and made promises to the respondents that it would be corrected. These promises made petitioner created a special relationship between it and the respondents, and the respondents relied on these promises to their detriment.

#### IV. Conclusion

For the foregoing reasons, Roger P. Crist and Roxanna Crist respectfully requests that this Court deny Petitioner's Petition for Writ of Prohibition, allowing discovery to proceed and the respondents to pursue their case.

**ROGER AND ROXANNA CRIST,**  
**By Counsel**

Respectfully submitted by:



John R. Mitchell (WVSB #2580)  
JOHN R. MITCHELL, L.C.  
206 Berkeley Street  
Charleston, West Virginia 25302  
(304) 346-0307

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February 6, 2012

Cathy Gatson, Clerk  
Circuit Court of Kanawha County  
Kanawha County Judicial Building  
111 Court Street  
Charleston, West Virginia 25301

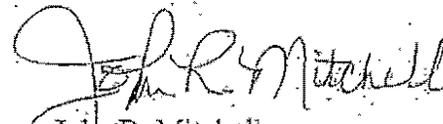
Re: Roger Paul Crist and Roxanna Crist v. Town of Pratt, et al.  
Civil Action No.: 11-C-1217

Dear Ms. Gatson:

Please find enclosed "Plaintiffs' Response to Defendant, Town of Pratt's Motion to Dismiss or Alternatively for Summary Judgment" for filing in the above-referenced civil action.

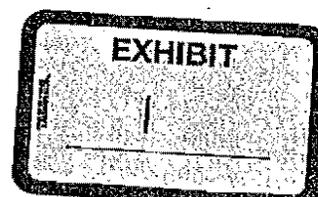
If you should have any questions regarding this matter, please do not hesitate to contact me at your convenience.

Very truly yours,  
JOHN R. MITCHELL, L.C.

  
John R. Mitchell

JRM/vw  
Enclosure

cc: Hon. Judge Jaines C. Stucky  
Harold S. Albertson, Esq.  
Johnnie E. Brown, Esq.  
Roger and Roxanna Crist



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ROGER PAUL CRIST and  
ROXANNA CRIST, his wife,

Plaintiffs,

v.

Civil Action No.: 11-C-1217  
(Hon. James C. Stucky, Judge)

TOWN OF PRATT, a West Virginia  
Municipal Corporation, HELEN B.  
BERRY, Administratrix of the Estate  
of JOHN BILLO, and WILLIAM M.  
PERRY and ROSELLA PERRY, his wife,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANT, TOWN OF PRATT'S, MOTION TO  
DISMISS OR ALTERNATIVELY FOR SUMMARY JUDGMENT

NOW COMES the plaintiffs, Roger Paul Crist and Roxanna Crist, his wife, by and through their counsel, John R. Mitchell, Sr., of John R. Mitchell, L.C., and pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, respectfully moves this Court to deny the defendant's motion to dismiss or alternatively for summary judgment. In support of this Motion, plaintiff states as follows:

FACTS

The plaintiffs are the owners of real property located at 306 Campbell Avenue, Pratt, Kanawha County, West Virginia. This property was purchased by the plaintiffs on October 29, 1974. The defendant, Town of Pratt (herein after "Town of Pratt"), is a West Virginia municipal corporation, located in Kanawha County, West Virginia. Defendant, Helen B. Berry, was appointed Administratrix of the Estate of John Billo, shortly after his death, before the Clerk of the County Commission of Kanawha County, West Virginia. Prior to his death, John Billo was the owner of real property located adjacent to the property of the plaintiffs which is the subject of the Complaint

in this matter. Defendants, William M. Perry and Rosella Perry, purchased the said property of the Estate of John Billo and have conducted activities on the said property which are the subject of the Complaint of the plaintiffs in this matter. Since approximately 2003 and prior to his death, John Billo began a landfill on his property which is adjacent to the property of the plaintiffs. As a result of the landfill, the surface of Mr. Billo's property was raised above the property of the plaintiffs and has caused a drastic change in the normal flow of drainage, causing flooding of a majority of the property of the plaintiff. The landfill has caused water to stand on the plaintiffs' property for long periods of time, has created a habitat for mosquito breeding, and has left the property uninhabitable, other than the area immediately surrounding the plaintiffs' home and that said damages are continuing in nature.

After Mr. Billo's death, the defendants William M. Perry and Rosella Perry, continued to fill the property causing the existing problem to get worse. The plaintiffs have filed objections with the defendant, Town of Pratt, who have refused to take any action even though it is aware of the landfill and the damage it has caused. The plaintiffs have requested documentation of permits for such landfill and have only been provided with a copy of one such permit which was issued to defendant, William Perry, on August 31, 2007. The Town of Pratt has been unable to provide documentation of any prior permits for such landfill prior to that date. The failure of the Town of Pratt to take any action to correct the damage or to direct the Estate of John Billo, or any other party responsible for the damage that has been done to the plaintiff's property, after the numerous complaints, constitutes an act of negligence. As a proximate result of the negligence and failure of the defendant, Town of Pratt, the plaintiffs have suffered damages.

#### ARGUMENT

- I. Defendant's, Town of Pratt, Rule 12(b)(6) motion should be denied and

heard as a motion for summary judgment.

The City of Pratt has filed a Rule 12(b)(6) motion to dismiss the plaintiffs' Complaint for failure to state a claim upon which relief can be granted or in the alternative for Rule 56 summary judgment. "Only matters contained in the pleading can be considered on a motion to dismiss under Rule 12(b) and R.C.P., and if matters outside the pleading are presented to the Court and are not excluded by it, the motion should be treated as one for summary judgment and disposed of under Rule 56 R.C.P. if there is no genuine issue as to any material fact in connection therewith." U.S. Fidelity & Guaranty Co. v. Eades, 150 W.Va. 238, 144 S.E.2d 703 (1965). When a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure is converted into a motion for summary judgment, the requirements of Rule 56 of the West Virginia Rules of Civil Procedure become operable. Riffle v. C.J. Hughes Construction Co., 226 W.Va. 581, 703 S.E.2d 552 (2010). The Court further states that once the proceeding becomes one for summary judgment, the moving party's burden changes and the moving party is obliged to demonstrate that there exists no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Therefore, since the defendant City of Pratt has filed simultaneous motions, the Court should deny the defendant's Rule 12(b)(6) motion and hear only the summary judgment motion.

**II. The Defendant, City of Pratt, cannot claim immunity in this matter because a special relationship existed between the plaintiff and defendant which precludes defendant from asserting such defense.**

The City of Pratt has filed a motion for summary judgment claiming sovereign immunity under West Virginia Code §29-12A-5(a)(9) which states that a political subdivision is immune from liability if a loss or claim results from its licensing powers or functions. Since a special relationship exists between the plaintiffs and the Town of Pratt, its defense claims of sovereign immunity must

fail. "If a special relationship exists between a local governmental entity and an individual which gives rise to a duty to such individual, and the duty is breached causing injuries, then a suit may be maintained against such entity." Syl. pt. 3, Benson v. Kutsch, 181 W.Va. 1, 380 S.E.2d 36 (1989). To establish that a special relationship exists between a local government entity and an individual the following elements must be shown: (1) an assumption by the local government entity, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on part of the local governmental entity's agents that inaction could lead to harm; (3) some form of direct contact between the local governmental entity's agents and the injured party; and (4) that party's justifiable reliance on the local governmental entity's affirmative undertaking.

**III. The Defendant, City of Pratt, owed plaintiff a duty as a matter of law, and triable issues of material fact exist as to whether defendant breached that duty.**

In this case the evidence will demonstrate that the Town of Pratt was aware of the plaintiff's troubles with the land adjacent to its property and had made several promises that it would help correct those problems. Since early 2003, the Town of Pratt was aware that the "Billo property" needed a culvert and two feet of top soil to prevent extra water being routed onto adjacent properties. At that time, the Town of Pratt knew it was their responsibility to construct the culvert and also was inquiring to the county commission as to why it had not received the funds for the culvert.<sup>1</sup> Minutes from town hall meetings from early 2003 to 2005 reflect that the Town of Pratt had full knowledge of the problems the plaintiffs were having and were taking steps to have the situation resolved.

These promises lead to a special relationship between the Town of Pratt and the plaintiffs and an affirmative duty on the part of the Town of Pratt to take action to prevent the plaintiff from being further damaged.

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<sup>1</sup> See attached Exhibit No. 1, Town of Pratt Regular Session January 14, 2003.

As stated previously in Benson, to establish that a special relationship exists between a local government entity and an individual, the following elements must be shown: (1) an assumption by the local government entity, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on part of the local governmental entity's agents that inaction could lead to harm; (3) some form of direct contact between the local governmental entity's agents and the injured party; and (4) that party's justifiable reliance on the local governmental entity's affirmative undertaking. In this case, the Town of Pratt had full knowledge that the "Billo property" was causing damages to the plaintiff's property and made promises to the plaintiffs that it would be corrected. These promises made by the Town of Pratt have created a special relationship between it and the plaintiffs, and the plaintiffs have relied on these promises to their detriment.

**IV. Triable issues of fact exist as to the legal cause of plaintiff's injury.**

Once duty has been established, if evidence on causation is such that reasonable minds could differ as to whether there was a causal link between the duty breached and the damages suffered, then a triable issue of material fact exists that precludes summary judgment. Under these circumstances, reasonable minds could differ as to whether a special relationship existed between the plaintiffs and the Town of Pratt and whether or not the Town of Pratt breached that duty owed to the plaintiffs. Thus, the Town of Pratt's motion for summary judgment must be denied.

**V. Standard of Review**

A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of law. Syllabus Point No. 4, Aetna Casualty & Surety Co. v. Federal Insurance Co. Of New York, 148 W.Va. 160, 133 S.E.2d 770 (1963). In determining on review whether there is a genuine issue of material fact between the parties, the court should construe the facts in the light

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ROGER PAUL CRIST and  
ROXANNA CRIST, his wife,

Plaintiffs,

v.

Civil Action No.: 11-C-1217  
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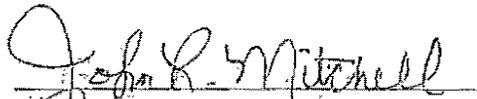
Defendants.

CERTIFICATE OF SERVICE

I, John R. Mitchell, and the firm of John R. Mitchell, L.C., counsel for the plaintiffs, Roger Paul Crist and Roxanna Crist, do hereby certify that service of the foregoing "Plaintiffs' Response to Defendant, Town of Pratt's Motion to Dismiss or Alternatively for Summary Judgment" has been made to counsel of record this 6<sup>th</sup> day of February, 2012, by facsimile and by placing a true and exact copy in a properly stamped and addressed envelope in the United States Mail, First Class, postage prepaid to the following:

Harold S. Albertson, Esq.  
P.O. Box 1989  
Charleston, West Virginia 25327-1989

Johnnie E. Brown, Esq.  
Pullin Fowler Flanagan Brown & Poe PLLC  
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Charleston, West Virginia 25301

  
John R. Mitchell (WV Bar # 2580)  
JOHN R. MITCHELL, L.C.  
206 Berkeley Street  
Charleston, West Virginia 25302  
(304) 346-0307

Minor

Town of Pratt  
Regular Session  
January 14, 2003

The Common Council of the Town of Pratt met in regular session on January 14, 2003, at 7:15 P.M. in the Municipal Building. Council members present were : Mayor Crookshanks, Recorder Smith, Buddy Hall, Bob Simile, and Helen Turner. There were 7 visitors present.

Flag salute led by the Recorder.

Minutes and Financial Statements

A motion was made by Helen Turner to accept the minutes of the December 10, 2002 regular meeting, 2<sup>nd</sup> by Buddy Hall. The motion was passed unanimously.

A motion was made by Buddy Hall to accept the financial statements for the town and utility co., 2<sup>nd</sup> by Bob Simile. The motion was passed unanimously.

Police Report-Russell Kees

1. Complaints heard and answered.
2. One DUI
3. Two breaking and entering
4. Two domestic violence problems.
5. One drug overdose.
6. Two civil action in magistrate court.
7. Terry Sayre, from State Department of Planning, will see about having a caution light placed at the intersection mouth of Paint Creek road and WV61.
8. Chief Kees asked the council to see if something can be done about large trucks parking on dead end streets. A discussion was held on the problem, the zoning committee will look into the problem.
9. He mentioned the break-ins that have been occurring in East Bank, Crown Hill, Hansford, and Pratt He asked the people to look out for strange vehicles driving around town slowly. He said that the Police are tagging Town businesses that they have checked for unlocked doors and other problems that may have occurred after closing.
10. Harley Vest was recognized as a recent graduate of the Police Academy.

Utility Report- Mayor Crookshanks

1. The request for a rate increase with UKVPSD was denied because it was not put in the newspaper soon enough, Gordan Bellhiemer has another request ready to put in the paper.



2. The mayor asked if we wanted to try again or turn UKVPSD's part back to them. A long discussion was held with the council deciding to do both. We will try to get an increase and will send a letter to UKVPSD telling them that within a year we will turn over their part to them. If we get the increase we will stay with the program. A motion was made by Bob Simile to publish the rate increase in the paper, 2<sup>nd</sup> by Helen Turner. The motion was passed unanimously. A motion was made by Buddy Hall to have the Town lawyer write a letter to the UKVPSD telling them that we will turn their part of the sewer and water over to them within a year, 2<sup>nd</sup> by Bob Simile. The motion was passed unanimously.

#### Recreation Committee-Chick Filbin

1. The senior dinner was a success with 80 people being served.
2. Thursday night is open gym.
3. Question on who will cut the grass on the lot at the intersection of Center Street and WV 61. The Pratt Woman's club should be checked with as they will probably cut the grass.

#### Old Business

1. A long discussion was held on the Boristein property and the problem the potential buyers are having. They have not been able to purchase a small parcel of land to use as parking.
2. We need to pass a resolution for a \$12,000 grant to purchase computers, typewriters, fax machine, and other office equipment. A motion by Buddy Hall to have the resolution passed, 2<sup>nd</sup> by Helen Turner. The motion was passed unanimously.
- 0-3. A discussion was held on a zoning committee being set up. This is the new zoning ordinance if passed. The Town Council shall decide upon any issues concerning zoning/building permits in the jurisdictions of the town of Pratt. The Council will act as the zoning committee and make decisions during the meeting following any request regarding zoning/building. The Council may extend the time of which they reach a decision if more time is needed to thoroughly evaluate the request. A motion was made by Buddy Hall to accept this as the first reading, 2<sup>nd</sup> by Helen Turner. The motion was passed unanimously.
4. A discussion was held on the Billo's property that has just been filled. A culvert needs to be put in place and 2' rect of top soil has to be put on the lot. Will want to know why the County Commission has not given us the money for the culvert. Helen Turner stated that she needs to have a culvert placed along her property because of the extra water which will be routed toward her property. She said that Mrs. Davenport's sewer runs across her property which needs to be changed.

New Business

- 0-1. Bob and Betty Hardy asked who is liable for anything happening in the Pratt Cemetery. Mr. Bellhiemer will check our insurance policy about this problem.
2. The mayor mentioned that we have a new sewer plant operator, Carol Hanson. We have hired Mike Parcell for one day a week to run the press. We need to check on hiring a new water operator because Kermit Mullins will be retiring soon. The mayor suggested that we hire Billy Samples full time in training so he can get his license back. A long discussion was held on the utility workers.

Motion to adjourn at 9:25 P.M. by Helen Turner

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Mayor

---

Recorder

Mirror

Town of Pratt  
Regular Session  
January 14, 2003

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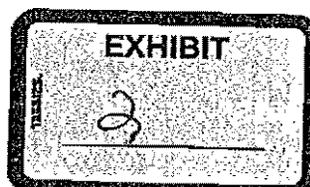
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5. One drug overdose.
6. Two civil action in magistrate court.
7. Terry Sayre, from State Department of Planning, will see about having a caution light placed at the intersection mouth of Paint Creek road and WV61.
8. Chief Kees asked the council to see if something can be done about large trucks parking on dead end streets. A discussion was held on the problem, the zoning committee will look into the problem.
9. He mentioned the break-ins that have been occurring in East Bank, Crown Hill, Hansford, and Pratt He asked the people to look out for strange vehicles driving around town slowly. He said that the Police are tagging Town businesses that they have checked for unlocked doors and other problems that may have occurred after closing.
10. Harley Vest was recognized as a recent graduate of the Police Academy.

Utility Report- Mayor Crookshanks

1. The request for a rate increase with UKVPSD was denied because it was not put in the newspaper soon enough, Gordan Bellhiemer has another request ready to put in the paper.



2. The mayor asked if we wanted to try again or turn UKVPSD's part back to them. A long discussion was held with the council deciding to do both. We will try to get an increase and will send a letter to UKVPSD telling them that within a year we will turn over their part to them. If we get the increase we will stay with the program. A motion was made by Bob Simile to publish the rate increase in the paper, 2<sup>nd</sup> by Helen Turner. The motion was passed unanimously. A motion was made by Buddy Hall to have the Town lawyer write a letter to the UKVPSD telling them that we will turn their part of the sewer and water over to them within a year, 2<sup>nd</sup> by Bob Simile. The motion was passed unanimously.

#### Recreation Committee-Chiok Filbin

1. The senior dinner was a success with 80 people being served.
2. Thursday night is open gym.
3. Question on who will cut the grass on the lot at the intersection of Center Street and WV 61. The Pratt Woman's club should be checked with as they will probably cut the grass.

#### Old Business

1. A long discussion was held on the Boristein property and the problem the potential buyers are having. They have not been able to purchase a small parcel of land to use as parking.
2. We need to pass a resolution for a \$12,000 grant to purchase computers, typewriters, fax machine, and other office equipment. A motion by Buddy Hall to have the resolution passed, 2<sup>nd</sup> by Helen Turner. The motion was passed unanimously.
- 0-3. A discussion was held on a zoning committee being set up. This is the new zoning ordinance if passed. The Town Council shall decide upon any issues concerning zoning/building permits in the jurisdictions of the town of Pratt. The Council will act as the zoning committee and make decisions during the meeting following any request regarding zoning/building. The Council may extend the time of which they reach a decision if more time is needed to thoroughly evaluate the request. A motion was made by Buddy Hall to accept this as the first reading, 2<sup>nd</sup> by Helen Turner. The motion was passed unanimously.
4. A discussion was held on the Billo's property that has just been filled. A culvert needs to be put in place, and 2 feet of top soil has to be put on the lot. We want to know why the County Commission has not given us the money for the culvert. Helen Turner stated that she needs to have a culvert placed along her property because of the extra water which will be routed toward her property. She said that Mrs. Davenport's sewer runs across her property which needs to be changed.

New Business

- 0-1. Bob and Betty Hardy asked who is liable for anything happening in the Pratt Cemetery. Mr. Bellhiemer will check our insurance policy about this problem.
2. The mayor mentioned that we have a new sewer plant operator, Carol Hanson. We have hired Mike Parcell for one day a week to run the press. We need to check on hiring a new water operator because Kermit Mullins will be retiring soon. The mayor suggested that we hire Billy Samples full time in training so he can get his license back. A long discussion was held on the utility workers.

Motion to adjourn at 9:25 P.M. by Helen Turner

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Mayor

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Recorder

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia, ex rel.  
TOWN OF PRATT, a West Virginia Municipal  
Corporation,

Petitioner/Defendant Below,

v.

No. 12-0442

THE HONORABLE JAMES C. STUCKY,  
Judge of the 13<sup>th</sup> Judicial Circuit, and  
ROGER PAUL CRIST, et al.,

Respondents/Plaintiffs Below.

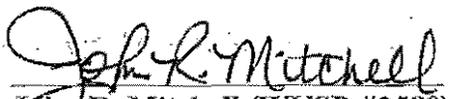
CERTIFICATE OF SERVICE

I, John R. Mitchell, counsel for the respondents, Roger Crist and Roxanna Crist, do hereby certify that service of the foregoing "Response of Roger Crist and Roxanna Crist to Petition for Writ of Prohibition" was made upon all counsel of record this 30<sup>th</sup> day of April, 2012, by depositing the same to them in the U.S. Mail, postage prepaid, in properly addressed envelope as follows:

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Charleston, WV 25327

The Honorable James C. Stucky, Judge  
Kanawha County Circuit Court  
Judicial Annex, 111 Court Street  
Charleston, WV 25301

  
John R. Mitchell (WVSB #2580)  
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