

**MINUTES OF A REGULAR MEETING OF THE
MAYOR & COUNCIL
HELD TUESDAY, JULY 22, 2008**

The meeting was called to order by Mayor Hipp at 8:25 p.m. with the following Councilmembers present:

Councilman Sommer
Councilman Genovesi
Councilwoman Inguanti
Councilman Sasso

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Councilman Fecanin - absent
Councilwoman Keyes - absent

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Mayor Hipp asked those present to join him in a salute to the flag.

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Council President Genovesi read the provisions of the Open Public Meetings Law.

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07/15

At the July 15, 2008 work session, the municipal consent hearing was held for the purpose of evaluating the application of Comcast of the Meadowlands, LLC for renewal of its consent to own, operate and maintain a cable television and cable communications system in the Borough of Rutherford. A full transcript of the proceedings is attached hereto and is part of these permanent minutes of the Mayor and Council.

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07/15

Councilman Genovesi moved the following resolution, seconded by Councilwoman Inguanti with all members present voting aye:

WHEREAS, the Open Public Meetings Act requires that a public body adopt a resolution at an open meeting before going into closed session to discuss a matter which excludes the public as permitted under the Act:

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NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Rutherford will hold a closed meeting on Tuesday, July 15, 2008 at 9:40 p.m. in the Committee of the Whole Room to discuss the following matter:

- Retirement/resignation packages
- Jr. Football building lease amendment
- Recycling Contract

The meeting re-convened at 10:30 p.m. on July 15, 2008.

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Mayor Hipp opened the hearing of citizens.

Bonnie Corcoran, 390 Montross Avenue asked for an update on certain items, such as the contracts for PBA and white collar; have they been settled; are they still being negotiated as the year is almost up. Ms. Corcoran asked the status of the crossing guards' request for a raise, she knows they are still working on the budget but there was an article in the Newsleader that they are getting down to the final numbers and she was just wondering about that.

As no other citizens wished to speak, Mayor Hipp closed the hearing of citizens.

Councilman Genovesi responded to Ms. Corcoran, in regards to the PBA contract they met with the PBA and the arbitrator, they have a hearing that they will be involved with to determine the contract, so as of yet they have not completed the contract, there are a few steps left in it.

The Borough Attorney said in regards to the white collar contract, they are still in the process of negotiating with them and perhaps by the fall they shall reach a resolution; the police will take longer, that won't be resolved ultimately before the end of the year.

Councilwoman Inguanti said in regards to the budget, they hope to pass the budget as the next Mayor and Council work session. Mayor Hipp said it will be amended and then at the Regular Meeting there will be the final adoption. Councilwoman Inguanti said that any increases to any wages will happen at that time and they will be made retroactively; they are very mindful that they have a number of employees that have gone for quite a while without seeing any increase but they obviously also have tremendous pressure on the budget as well.

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Councilman Genovesi made a motion to move that all the items on the Consent Agenda be passed, seconded by Councilman Sommer with all members present voting aye.

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Under the Consent Agenda, Councilman Genovesi moved to approve the Minutes of the Special Meeting of May 31, 2008, seconded by Councilman Sommer with all members present voting aye.

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Councilwoman Inguanti made a motion to approve the Minutes of the Regular Meeting of June 24, 2008 as amended with the correction on page 8, seconded by Councilman Genovesi with all members present voting aye.

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7/15 Under the Consent Agenda, Councilman Fecanin moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

RESOLVED: That bills in the amount of \$ 2,166,553.45 payable from the Current Account, \$247.48 payable from the Multi Cultural Account and \$5,795.29 from the Special Escrow Account all as detailed as follows on the attached sheets, be passed for payment, warrants drawn and charged to the proper accounts. A complete list of these bills is on file with the Borough Clerk.

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7/15 Under the Consent Agenda, Councilman Fecanin moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

RESOLVED: That the following warrants be issued in the amount indicated for the purposes stated:

1. In the amount of \$195.00 payable to Elsa Santiago – refund for day camp bus.
2. In the amount of \$27.00 payable to Christine Raffanello – refund for day camp bus.
3. In the amount of \$150.00 payable to Joanne MacMillan – refund for day camp.
4. In the amount of \$480.00 payable to Cici Nunez – refund for day camp.
5. In the amount of \$130.00 payable to Paul Kelly – refund for day camp.
6. In the amount of \$12.00 payable to Catherine Anniballi – refund for day camp trip.
7. In the amount of \$350.00 payable to Marco Andia – refund for day camp.
8. In the amount of \$680.00 payable to Yadira Feroz – refund for day camp and trips.
9. In the amount of \$45.00 payable to Lucille Scurti– refund for tennis lessons.
10. In the amount of \$265.00 payable to Tracey Carey – refund for day camp.
11. In the amount of \$70.00 payable to Kathy Chen – refund for day camp trips.

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- 12. In the amount of \$21.00 payable to Wendy Martinez – refund for day camp trips.
- 13. In the amount of \$410.00 payable to Steve Savitsky – refund for day camp.
- 14. In the amount of \$72.00 payable to Kathy Chen – refund for ½ day camp.
- 15. In the amount of \$35.00 payable to Karri Bille – refund for softball.
- 16. In the amount of \$200.00 payable to Boiling Springs Bank – savings bonds for baby parade.
- 17. In the amount of \$36.00 payable to Daphne Williams Fox – refund for day camp trips.
- 18. In the amount of \$100.00 payable to Tenafly Recreation – day camp playground.
- 19. In the amount of \$35.00 payable to Julie Kajouras – refund for soccer.
- 20. In the amount of \$49.00 payable to Camille Stillson – refund for day camp trips.
- 21. In the amount of \$240.00 payable to Sharon Clancy for a Day Camp refund.

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7/15 Under the Consent Agenda, Councilman Fecanin moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS there is an overpayment of 2008 second quarter taxes on the following property, and;

WHEREAS it has been determined that the party listed is entitled to a refund of this overpayment;

NOW THEREFORE BE IT RESOLVED that the Financial Officer be and he is hereby authorized to issue warrants totaling \$856.00 and charge same to 2008 taxes overpaid.

BLOCK	LOT	NAME & ADDRESS	AMOUNT
154	14 Qual. C01B7	Boiling Springs Savings Bank Re: 107 Orient Way- Unit 1B	\$856.00

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7/15 Under the Consent Agenda, Councilman Fecanin moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS the Borough of Rutherford has received the NJ Homestead Rebate for the following property owner and;

WHEREAS the following is now entitled to a refund of these monies as the property taxes are now paid;

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NOW THEREFORE BE IT RESOLVED that the Chief Financial Officer be and he is hereby authorized to issue a warrant in the amount of \$783.04 as follows:

BLOCK	LOT	NAME & ADDRESS	AMOUNT
40.01	16	Surin, Karin Re: 25 Hackett Place	\$783.04

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

RESOLVED: That bills in the amount of \$8,090,126.93 payable from the Current Account, and \$7,706,190.10 from the Capital Account all as detailed as follows on the attached sheets, be passed for payment, warrants drawn and charged to the proper accounts. A complete list of these bills is on file with the Borough Clerk.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

RESOLVED: That the following warrants be issued in the amount indicated for the purposes stated:

1. In the amount of \$1,320.00 payable to Madlyn Mignone – for softball camp.
2. In the amount of \$90.00 payable to Jeanne Pendleton – recreation refund.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

RESOLVED: That the following warrants be issued in the amount indicated for the purposes stated:

1. In the amount of \$35.00 payable to USTA – payment for membership in the Association.

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For, **FINANCE**, Councilwoman Inguanti reported that the Borough is getting closer toward completing the budget; their goal is to adopt the budget at the next meeting of the Mayor and Council in August. Councilwoman Inguanti said they sent out estimated tax bills which residents began receiving over the last few days which benefits the Borough tremendously as it preserved the positive cash flow and eliminated the need for tax anticipation note saving approximately \$250,000 in next year's budget. She said it is

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also an agreeable benefit to the taxpayers because they are not hit with two tax bills in quick succession in October and November. Councilwoman Inguanti said they continued to have successful meetings with the Department Heads and go through the capital budget requests to meet long-term improvements with already existing capital money. She said in fact they will most likely be able to restore some funding for curb and road repair which will augment grants. Councilwoman Inguanti said they were also fortunate to receive a \$200,000 in extraordinary aid payment from the State, this money is directed by Trenton to aid in direct tax relief for the residents and she assured that is exactly where it will go, they are very grateful to be the recipients of Trenton's magnificence.

Councilwoman Inguanti said unfortunately they are continuing to absorb legal fees in excess of what was budgeted. The reasons for the fees to date can almost entirely be linked directly to the continuing Encap debacle; her attempt to garner their legal defense for an Encap redevelopment fund for the Borough from the State has been met with sympathy but no money, so the municipality finds itself in the position of many neighboring municipalities having to defend themselves from decisions made in Trenton in which they have little or no say. Councilwoman Inguanti wished to make the point that while legal fees are high, that is a very specialized area of the law, redevelopment, it is also because of the good work of the people in Trenton it is changing hourly, the things they have to pay attention to, had they spent money in the first place back a few years ago appropriate in her opinion what would have been appropriate legal fees and getting appropriate legal advice they would not be having to spend the money now but they spend an inordinate amount of money over the last several years. She said the State has pumped a tremendous amount of money into Encap and there is nothing to show for it, she can assure all that the money they spend, the residents of Rutherford can rest assure that their interests are being represented at the table as the development and subsequent changes move forward. Councilwoman Inguanti said in her opinion they are in a squeeze play between very powerful forces, between politicians and developers and housing advocates and it is a very difficult position to be in, one which they need the best legal minds that they can get. She asked for the continued patience with it and hopefully the judge who is hearing the bankruptcy issue in regard to Encap is true to her word, she does not want to make it her life's work and those issues will be resolved and they will be reimbursed by Encap what they are owed. Councilwoman Inguanti said very simply what Rutherford makes Trenton takes and takes and then they give a little aid back for which they are exceedingly grateful.

Mayor Hipp said that Trenton basically withheld certain funds which by law are supposed to go back to the municipalities each year, known as contra-aide, that is comprehensive municipal property tax they paid and most of the municipalities received significant cuts in that aid and this is basically a consolidation of various fees and charges that the various statutes have enacted. Mayor Hipp said they are supposed to go back to the municipalities a hundred cents on a dollar, twenty years ago they were collected directly by municipalities throughout the State but in order to make it more business friendly the State decided to become the collection agent and none of them have received the full amounts since that happened. Mayor Hipp said these are some of the things that local public entities have to deal with, it is not aid, it is not generosity it is an obligation

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that the State obviously has the right to simply ignore that creates problems for all of them.

The Mayor said Councilwoman Inguanti and Councilwoman Keyes have done a terrific job basically getting arms around this year's budget, it has been a very difficult process, a time consuming process, one heck of a learning curve and he appreciates their efforts on behalf of the entire Governing Body because it has been a difficult one and he thinks they will actually be able to make a few more cuts before they finally adopt. Mayor Hipp said the process will be an amendment which will take place at the work session and then final adoption at the regular meeting in August.

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Mayor Hipp opened the continued public hearing on the municipal budget; as no one wished to speak the hearing was closed.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, the Mayor and Council of the Borough of Rutherford have been advised of the proposed amended settlement of a Tax Appeal filed on behalf of Union Avenue Rutherford, LLC under Docket Nos.: 005305-2006 and 005315-2007 for the years 2006, and 2007; and

WHEREAS, the said Governing Body has been advised as to the merits of the subject Tax Appeal by legal counsel, expert appraisal personnel hired by the Borough as well as the Borough Tax Assessor; and

WHEREAS, the proposed Tax Appeal settlement components are as set forth in Schedule "A" attached hereto and made a part hereof; and

WHEREAS, it is in the best interest of the Borough of Rutherford to settle the subject Tax Appeal in accordance with the settlement proposal set forth hereinabove.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Rutherford that settlement of the said Tax Appeal be finalized in accordance with Schedule "A" attached and with respect to same, the Mayor, Borough Administrator and/or any other appropriate official is hereby authorized to perform any act in order to effectuate the purposes set forth in this Resolution.

BE IT FURTHER RESOLVED that the Certificate of Availability of Funds pursuant to N.J.S.A. 40A:4-57 has been certified to by the Chief Finance Officer and is attached hereto and made a part hereof.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, the Mayor and Council of the Borough of Rutherford have been advised of the proposed amended settlement of a Tax Appeal filed on behalf of Big M, Inc. under Docket Nos.: 004520-2006, 001782-2007, and 001742-2008 for the years 2006, 2007, and 2008; and

WHEREAS, the said Governing Body has been advised as to the merits of the subject Tax Appeal by legal counsel, expert appraisal personnel hired by the Borough as well as the Borough Tax Assessor; and

WHEREAS, the proposed Tax Appeal settlement components are as set forth in Schedule "A" attached hereto and made a part hereof; and

WHEREAS, it is in the best interest of the Borough of Rutherford to settle the subject Tax Appeal in accordance with the settlement proposal set forth hereinabove.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Rutherford that settlement of the said Tax Appeal be finalized in accordance with Schedule "A" attached and with respect to same, the Mayor, Borough Administrator and/or any other appropriate official is hereby authorized to perform any act in order to effectuate the purposes set forth in this Resolution.

BE IT FURTHER RESOLVED that the Certificate of Availability of Funds pursuant to N.J.S.A. 40A:4-57 has been certified to by the Chief Finance Officer and is attached hereto and made a part hereof.

*

Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer all members present voting aye:

WHEREAS, the Mayor and Council of the Borough of Rutherford have been advised of the proposed amended settlement of a Tax Appeal filed on behalf of Arcade Realty under Docket No.: 010614-2007 for the years 2007; and

WHEREAS, the said Governing Body has been advised as to the merits of the subject Tax Appeal by legal counsel, expert appraisal personnel hired by the Borough as well as the Borough Tax Assessor; and

WHEREAS, the proposed Tax Appeal settlement components are as set forth in Schedule "A" attached hereto and made a part hereof; and

WHEREAS, it is in the best interest of the Borough of Rutherford to settle the subject Tax Appeal in accordance with the settlement proposal set forth hereinabove.

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NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Rutherford that settlement of the said Tax Appeal be finalized in accordance with Schedule "A" attached and with respect to same, the Mayor, Borough Administrator and/or any other appropriate official is hereby authorized to perform any act in order to effectuate the purposes set forth in this Resolution.

BE IT FURTHER RESOLVED that the Certificate of Availability of Funds pursuant to N.J.S.A. 40A:4-57 has been certified to by the Chief Finance Officer and is attached hereto and made a part hereof.

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Under the Consent Agenda, Councilman Genovesi made a motion to renew the dental contracts with Healthplex for 2008-09, seconded by Councilman Sommer with all members present voting aye.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, the Borough of Rutherford receives funds from time to time from the disposal of forfeited property, and

WHEREAS, the revenue for this item is not subject to reasonably accurate estimates in advance, and

WHEREAS, the prior written consent of the Director of Local Government Services is required to dedicate through the Budget dedicated revenues received during the year from the disposal of forfeited property,

NOW THEREFORE BE IT RESOLVED, that the prior written consent of the Director be requested by the Borough of Rutherford to place the fees received from the disposal of forfeited property in the Trust Fund and that such funds should be considered a dedicated by rider to the budget per N.J.S.A. 40A:4-39 for the sole purpose stated above.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, the Borough of Rutherford receives funds from time to time from the penalties exacted by the Fire Safety Department for fire safety violations, and

WHEREAS, the revenue for this item is not subject to reasonably accurate estimates in advance, and

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WHEREAS, the prior written consent of the Director of Local Government Services is required to dedicate through the Budget dedicated revenues received during the year from the receipt of fire safety violations penalties,

NOW THEREFORE BE IT RESOLVED, that the prior written consent of the Director be requested by the Borough of Rutherford to place the fees received from fire safety violations in the Trust Fund and that such funds should be considered a dedicated by rider to the budget per N.J.S.A. 40A:4-39 for the sole purpose stated above.

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Councilwoman Inguanti moved the following Resolution, seconded by Councilman Sasso. Councilwoman Inguanti explained that the amount also includes other related issues such as those in the process of opening a business in the State, if they have not received their CO as of July 18, 2008 they are subject to the Developer's Fee. She said it is anticipated that there will be substantial appeals to such; it is very difficult to express in a single meeting as has taken her many months to absorb. With the Borough Attorney and the Mayor as an attorney there are tremendous pressures being put on municipalities to comply with statutes in her opinion exceedingly complicated and they need someone to help because she nor the Mayor or the Borough Attorney can do it. Councilwoman Inguanti said that she loathes to give more money to the attorneys, with no offense to any attorneys present, but it is true what they say only the lawyers get rich and she really hates to ask for an increase in any fee but she can't see how they can avoid it and hopefully by spending the money now they will preserve the local character and the wishes of the people of Rutherford and avoid another Encap situation.

Councilman Genovesi said he concurs with the Councilwoman, he doesn't like spending money when they don't have too but Mr. Maraziti they have to go back and look at the firm as they are a by-product, their employment with the Borough is a result of what happened with Encap. He said they were not in the employment of the Borough prior to that so they need to look at how Mr. Maraziti and the firm came into the employment of the Borough as a direct response to what happened with Encap and the NJMC. Councilman Genovesi said they are there to represent their interest at the time and going on in the future; he thinks it is difficult for the Mayor or Council to sit months ago and determine how much was going to be expended by having the services of the firm with the total uncertain picture of what is going on with Encap and the various litigations. He said the resolution is capped at \$75,000 should the legal fees go any higher than that they would have to go the Council in order to get more money. Councilwoman Inguanti said to date the firm received approximately \$50,000 and she believes they are near a breathing point in the Encap litigation; at this point it is going to go into the bankruptcy special counsel that was hired last month again a result of Encap to appropriately protect the Borough's interest. All members present voting aye:

WHEREAS, in March 2008 the Borough of Rutherford retained Joseph J. Maraziti, Esq., of Maraziti, Falcon and Healey, LLP, as Special Counsel for ENCAP and related

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matters under a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.4 and N.J.S.A. 40A:11-1 et seq; and

WHEREAS, it appears that Special Counsel will exceed the amount provided in the Contract; and

WHEREAS, there are additional ENCAP and related matters, which the Borough desires Joseph J. Maraziti, Esq., of Maraziti, Falcon and Healey, LLP, to address; and

WHEREAS, the Chief Financial Officer has certified or will certify the availability of funds as the services are rendered;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Rutherford authorizes the Mayor to enter into an amended contract with Joseph J. Maraziti, Esq., of Maraziti, Falcon and Healey, LLP, of Short Hills, New Jersey to extend the contracted amount from \$17,500.00 to not exceed \$75,000.00 as described herein; and

BE IT FURTHER RESOLVED, that the Borough Clerk will place public notice of this appointment in accordance with law.

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As Liaison to the PLANNING BOARD, Councilwoman Inguanti said they are requesting to pass the resolution in support of the NJ League of Municipalities who have filed a notice of appeal with the Appellate Division of the Superior Court of New Jersey to appeal the regulations adopted by the New Jersey Council on Affordable Housing on June 2, 2008. She said the appeal being brought by the League of Municipalities focuses on the economic imbalances of the regulations, the flawed methodology, comprising of vacant land analysis, the computation of jobs and housing projections through 2018. Councilwoman Inguanti said COAH has had three rounds of compliance that have been visited upon the municipalities, they are now up to the third round and an amendment to that round that has been passed by the Assembly and signed by the Governor referred to 8500. She said it is problematic, it has incompatibilities, there was an article referencing it in the Star Ledger in which they got into a helicopter and flew over the State and looked for vacant land to put housing and the COAH identified median strips, exit ramps, peoples yards, municipal building yards as places appropriate for affordable housing to be placed. Councilwoman Inguanti said it was not a precise process and as such it was subject to gross error but it got written into the law as such there is unreasonable demands being placed on municipalities for the number of housing they are responsible for. She said in Rutherford as a member of the NJMC and New Jersey Sports and Exhibition Authority and everyone knows Xanadu is coming which generates an affordable housing component but the NJ Sports and Exhibition Authority are not required to fulfill but the Borough is. She said there are going to be law suits because as she said before the lawyers always get rich in the end and it is unfortunate because money will be spent and at the end of the day it will be nothing to make NJ more affordable, it is unfortunate that millions of dollars will be spent and it is not going to help anyone. Councilwoman Inguanti requested they join the Leagues appeal, it will require a sum of \$500 again much less expensive than

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engaging in their own law suits, there are over 200 municipalities that have joined the League's law suit so they are in good company and it is important for Rutherford to say they are a built out community, very limited developable land and they need to reserve the right to do appropriate developments for the community, not for a social engineering experiment hatched in Trenton.

Councilwoman Inguanti moved the following Resolution, seconded by Councilman Genovesi.

Councilman Genovesi commented to Councilwoman Inguanti that he agreed with her, the COAH is something he has looked at and he doesn't feel it is fair the way COAH supersedes the sovereignty of the local municipalities and he thinks that the regulations act is a shield for the developers so they can walk into the municipalities however, this comes along with that and it is usually the COAH requirements that they tried to exploit to get the housing units which is what they really only care about. He said he wonders about the label of affordable housing, he is in the midst of trying to look for a house and he can't afford anything so he believes that is a joke. Councilman Genovesi said they build a unit that is said to be affordable and after one owner they turn around and sell it for what every other house is selling for anyway; so where is the truth in the affordability, it is not there. He said he believes the regulations are being imposed unfairly, they are a municipality that should be able to decide on its own type of development that they are seeking and she is correct in saying they are built out. Councilman Genovesi said it is not the thought of the term of affordable housing that he disagrees with, he would love to see that but also sees the housing that fits with the character and most times affordable housing is condominium, town-house type style and for someone that is looking for a single family home that may not be what they are looking for. He said the reason he is going to support this is because he is tired of feeling as a municipality they can no longer determine anything for themselves and once they loose that they are handing the right to govern themselves.

All members present voting aye:

WHEREAS, the New Jersey League of Municipalities has filed a Notice of Appeal with the Appellate Division of the Superior Court of New Jersey, to appeal the regulations adopted by the New Jersey Council on Affordable Housing on June 2, 2008; and

WHEREAS, the appeal focuses on the economic imbalances in the regulations, and the flawed methodology comprising the vacant land analysis, the computation of jobs and housing projections through 2018; and

WHEREAS, the New Jersey League of Municipalities has requested its member municipalities to make a pledge of \$500.00 toward its efforts; and

WHEREAS, the Chief Financial Officer has certified or will certify to the availability of funds for this purpose.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough

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of Rutherford that:

The Mayor and Council endorse the efforts of the New Jersey League of Municipalities to correct the economic imbalances in the regulations, and the flawed methodology comprising the vacant land analysis, the computation of jobs and housing projections through 2018 contained in the COAH growth share rules and in the recent amendments to the Fair Housing Act and appropriate the sum of \$500.00 to be paid to the New Jersey League of Municipalities to support its legal action to correct this unjust state policy.

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Under the Consent Agenda, Councilman Genovesi moved to authorize the Borough Attorney to review the by-laws and amendments to the Planning Board Regulations, seconded by Councilman Sommer with all members present voting aye.

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As Liaison to the BERGEN COUNTY FILM COMMISSION, Councilwoman Inguanti announced they will be sponsoring a film festival the week of September 25th through 29th with lots of interesting movies.

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For **POLICE**, Councilman Genovesi reported that the Police Department has been busy as there were a number of activities conducted by the PD over the past month. He said the Police Director has met with officers from the BC Emergency Management and have started the process of obtaining ID cards for all department members. Councilman Genovesi said the policy on firearms and qualifications has been revised and issued to the dept. members; plans are in the works for National Night Out August 5th ; enforcement of Borough Ordinance 68-10 public intoxication which is up for first reading that evening. He reported that 26 summons were issued to teens which is more than any other town in BC for graduated driver license violations and this took place during a three week period aimed at making teens safer drivers; nine officers attended a total of nine days training, covering gang activity, date rape, arrest search and seizure, courtroom testimony, vehicle slow down and crime scene protection. Councilman Genovesi said for the month of June, 2008 there were 44 arrests, 43 adult, 1 juvenile; 11 drug related arrests; zero major crimes; 2 vehicles stolen; 4 DUI arrests; 3 missing persons all 3 were located; 911 calls 160; 63 reportable accidents; 13 non-reportable; 7 drivers injured and 1 pedestrian; total summons issued: parking 449 and moving 173.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, certain organizations have applied for a Raffle/Bingo License and have been approved by the Chief of Police and paid the required fees;

NOW, THEREFORE, BE IT RESOLVED that License be issued to:

- **BPOE #547 Rutherford Lodge** Instant Raffle
- **Rutherford Education Foundation** Off-Premises Merchandise

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, the following inactive Alcoholic Beverage License which expired June 30, 2008 has been issued a Tax Clearance Certificate,

NOW THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Rutherford do hereby authorize that the following renewals be issued:

0256-44-004-005
LoSpuntino Taste of Sonoma LLC
255 Highland Cross

AND BE IT FURTHER RESOLVED, that the Borough Clerk be authorized to sign the above license.

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Councilman Genovesi announced the request for rumble strips on certain streets has been removed from the agenda.

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Under the Consent Agenda, Councilman Genovesi moved the Borough Attorney be authorized to prepare an ordinance to repeal Boardinghouse license regulations, seconded by Councilman Sommer with all members present voting aye:

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\$14,000; officers will be trained with the new machine in September and he personally feels it is a vital piece of equipment for the PD.

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For **PUBLIC WORKS**, Councilman Sommer said that Item 3 on his agenda regarding a resolution authorizing CMX to continue work with 17-19 Meadow Road will be discussed on the Major's agenda.

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Under the Consent Agenda, Councilman Genovesi moved to accept the Snow Plow Agreement with Bergen County Dept. of Public Works for 2008-2010, seconded by Councilman Sommer will all members present voting aye.

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Councilman Sommer said there is a resolution regarding leaf collection and there is a requirement and it is very serious that they give attention to it in Rutherford because of the fact that they are out of compliance with the State Storm Sewer Acts which require that no debris, leaves, shrubbery, sticks by residents or landscapers be brought into the streets due to the natural consequence of what they do to the weather and the sloping of the roads. He said only naturally over time they will approach and clog until they enter the storm sewer systems and flow into the tributaries. Councilman Sommer said for a broader sense if they look at other towns within Bergen County it is their clear understanding that maybe two or three still provide for leaf pickup by having the residents push the leaves into the street; this is what one could put this under a very urgent environmental act that they need to step up to, one only needs to take a quick gander at the Passaic River and see all of the debris floating in it. He said a lot of that gets there from the sewer ports and pipes that enter from this and other towns. Councilman Sommer said he has seen that as a rower, so what they are proposing in the resolution is that this fall, they are going to have the resident's bag leaves or they can put them into a 32 gallon container and that is not unlike the majority of other communities. He said that will bring us into compliance and have us avoid significant fines that can be imposed on the Borough for being in violation.

Councilman Sommer moved to accept the following Resolution, seconded by Councilwoman Inguanti.

Councilwoman Inguanti concurred with Councilman Sommer with what was interesting the number of towns and the surrounding towns all require bagging and what has been observed over the last few leaf seasons as more and more municipalities have gone to bagging is that certain members of landscaping businesses have used the opportunity to dump their leaves in Rutherford from other municipalities. She said what the DPW is ultimately doing is subsidizing their business where they remove leaves from a

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different town and then the leaves are brought to Rutherford and dumped on the street. Councilwoman Inguanti said they have at least two incidents where they have photographic evidence of this being done and it is not fair so they have to act on a varieties of reasons. She said it is a question of equity in terms of the job of what they are asking the DPW to perform and the taxpayer's ultimately to pay for; so they will endeavor through the release of information over the next few weeks to ease the strain and newness of this as much as possible. She said there is going to be a learning curve as they move forward but it is just a function of the Storm Water Act, they mean business and the fines that can be levied against the municipality who does not comply are substantial, they are quit high.

Councilman Sommer added that when there is a change they are interesting to cope with and to adjust to but there has been careful and long thought put into how they can transition into the process. He said some examples is they will be distributing leaf bags for collection, they are recognizant of the fact they have a number of citizens who would find it difficult to bag, they have put out some thinking in that area and there are numerous non-profit community groups in both high schools where the upper grades are in need of performing community service, boys scouts, girls scouts and other organizations. Councilman Sommer said they will link those in need with those who would provide as a voluntary service to people who need assistance. He said as a community they are doing the right thing such as people leaving cars in the driveway and walking to the store to save and not put more pollutants in the air.

All members present voted aye on the following resolution:

WHEREAS, the Borough of Rutherford filed an application to obtain its annual Storm Water permit with the State of New Jersey Department of Environmental Protection; and

WHEREAS, the application was deemed deficient and non-compliant with applicable law and regulation, because the Borough Public Works Department is unable to effectively remove the large volume of leaves which are placed in the curb line or gutter area within a seven day period; and

WHEREAS, the accumulation of leaves adversely affects the regional storm water system; and

WHEREAS, the Borough of Rutherford needs to address a solution in this regard.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Rutherford that the Borough will institute a bagging program to address the volume of leaves placed on the streets; and

BE IT FURTHER RESOLVED, that the Mayor and Council will formally amend the Borough policy via ordinance and by other appropriate means, as applicable.

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As Liaison to the DOWNTOWN PARTNERSHIP, Councilman Sommer reminded all that the Hambletonian Parade will take place on Saturday, July 26th at 10:00 a.m.

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As Liaison to the FIRST AID, Councilman Sommer reported 98 calls for assistance, 71 medical emergencies, 15 traumas five of which were motor vehicle accidents. He urged residents if they could to become volunteers. Councilman Sommer continued to asked residents to remember Social Services Department of the Borough and to make any contributions they can.

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For **FIRE**, Councilman Genovesi reported that all items were consented to in the work session.

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Under the Consent Agenda, Councilman Genovesi moved to approve the request for membership of Robert Smith to Rescue Co. #5, seconded by Councilman Sommer with all members present voting aye.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

BE IT RESOLVED, that the Mayor and Council of Rutherford wishes to enter into a grant agreement with the County of Bergen for the purpose of using \$44,890.00 in 2008-09 Open Space Trust Funds for Wall Field Improvements in the Borough of Rutherford; and

BE IT FURTHER RESOLVED, that the Mayor and Council hereby authorizes Edward Cortright, CFO to be a signatory to the aforesaid grant agreement; and

BE IT FURTHER RESOLVED, that the Mayor and Council hereby authorizes Edward Cortright, CFO to sign all County vouchers submitted in connection with the aforesaid project; and

BE IT FURTHER RESOLVED, that the Mayor and Council recognizes that the Borough of Rutherford is liable for a dollar for dollar match for any funds awarded in accordance with the Trust requirements.

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Under the Consent Agenda, Councilman Genovesi moved the following Resolution, seconded by Councilman Sommer with all members present voting aye:

BE IT RESOLVED, that the Mayor and Council of the Borough of Rutherford wishes to enter into a Grant Agreement with the County of Bergen for the purpose of using \$57,608.00 in 2008 Community Development Block for Improvements to Grand Avenue; and

BE IT FURTHER RESOLVED, that the Mayor and Council hereby authorizes Edward Cortright to be a signatory to the aforesaid Grant Agreement; and

BE IT FURTHER RESOLVED, that the Mayor and Council hereby authorizes Edward Cortright, to sign all county vouchers submitted in connection with the aforesaid project; and

BE IT FURTHER RESOLVED, that the Mayor and Council recognizes that the Borough of Rutherford is liable for any funds not spent in accordance with the Grant Agreement; and that the liability of the Mayor and Council is in accordance with HUD requirements.

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For **BUILDINGS & PUBLIC UTILITIES**, Councilman Genovesi reported for the month of June, 2008 total value of uniform construction code was \$26,855; construction department revenue \$4,400; grand total of \$31,355; total value of construction for June \$789,799; total number of permits issued 157; total number of construction department inspections 635 as with all reports are on file with the Borough Clerk.

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For **HUMAN RESOURCES**, Councilman Sasso reported that the fireworks were held on July 4th as well as the 77th annual baby parade with approximately 24 participants which was sponsored by a local business, My Mortgage. He said for the first time, a chalk walk was organized by the Jr. Women's Club; it was a patriotic drawing contest held after the baby parade with approximately 40 participants and it was very well received by the children and adults and one they would like to make long term in Rutherford on the 4th of July. Councilman Sasso wished to thank the following organizations: Rutherford Volunteer Fire Dept., Rutherford PD, Rutherford EMS, Rutherford DPW, Rutherford Recreation as well as the vendors selling items – First Presbyterian Church, Fire Dept., Girl Scouts Troop No. 1, Rutherford Jr. Football League.

Councilman Sasso announced information regarding the Summer Concerts, one was held the previous Thursday which was added at the last minute mainly because it was a free concert by a local band "Mad Dog Mary" and it was one that was well attended; The Rutherford Community Band will be playing on 24th at 8:00 in Lincoln Park.

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Councilman Sasso said a letter was shared with the Recreation Dept. for the of "Shakespeare In The Park", it was a thank you letter addressed to Denise Brennan thanking them for their efforts and those also of the DPW workers who were instrumental in setting up the band.

Mayor Hipp said in reference to the performance of Richard II, for those who had the pleasure of attending it was terrific, a great outdoor Shakespeare production, there was about 45 people attending. The Mayor said even though there was no sound they could hear it all the way back and it was a wonderful very quick production of it, abridged version and he wanted to applaud the Library for their efforts in bringing that production to Lincoln Park.

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Under the Consent Agenda, Councilman Genovesi moved to accept the letter of resignation from Maria Mayo as Teacher Aide seconded by Councilman Sommer, with all members present voting aye.

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Under the Consent Agenda, Councilman Genovesi moved to accept the request to amend the fee ordinance to include a \$5.00 student tennis badge, seconded by Councilman Sommer, with all members present voting aye.

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MAYOR'S COMMITTEE REPORT

Mayor Hipp reported the Highland Cross Development Project refers to an application by Linque Developers to build a project in the area east of Rt. 17 by the office buildings, about 25 acres that they own and they want to develop. The Mayor said there is a developer's agreement entered into with the town back in 1998, it was amended in 2001 and what was supposed to have been built there was office buildings and a hotel. Mayor Hipp said there have been efforts by Linque to amend that developer's agreement; the three parties were the Borough of Rutherford, Linque Development, Meadowlands Commission because a majority of the land falls within the Meadowlands Commission's jurisdiction. The Mayor said on May 16, 2008 Linque submitted an amended application to the NJMC to build not just a hotel but to build retail and housing, high density housing in where they would characterize as a mixed used type of development, retail on the first floor and second floor and housing units, condos, apartments and the like in the upper floors. Mayor Hipp said that matter is going to be proceeding before the NJMC, they have asked the NJMC when it considers the proposal to hold public hearings in Rutherford at least two, if not all, so that residents of the town can conveniently come to attend to find out what is happening and to ask questions. The Mayor said unfortunately the Borough and the Planning Board does not have jurisdiction over the application - approximately

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one acre of the 25 acres fall within the jurisdiction of Rutherford and the Linque Development has no plans to develop that site, so all of this will be done exclusively before the Meadowlands.

Mayor Hipp said echoing Councilwoman Inguanti, the Special Counsel is not simply dealing with Encap, Mr. Maraziti's firm is what they would call Special Development Counsel. The Mayor said Encap was the main factor in hiring, so they could deal with that but Encap was a development project, Mr. Maraziti's firm has been advising them as to the Linque Development Project during at least two meetings held with Linque and he is advising them with respect to the affordable housing regulations that were promulgated on June 2. Mayor Hipp said it has become a necessity although the total amount of legal fees that will be expended this year will be far less than last year no matter what happens; it is a budget issue as opposed to an actual expenditure issue. The Mayor said the public needs to begin to understand what is happening in respect to affordable housing in the Meadowlands area and it is going to be an issue which they are going to hear a lot more about and he thinks the press is going to be reporting on it a lot more frequently and they will be talking publicly in detail over the next several months and into 2009. The Mayor said there are challenges to the current round 3- the League of Municipalities did file a challenge to it, and he understands the builder's conference group has filed a challenge to it and the coalition on affordable housing has also filed a challenge to it so there are at least three challenges that are now appearing before the Appellate Division on the matter. Mayor Hipp said the Hackensack Mayor's Municipal Committee has discussed this issue and its impact on the neighboring towns, it has not taken formal action as a group but they are discussing what act to take. The Mayor said there are some communities represented on that Counsel who are in favor of these regulations and so it has been a little difficult to get consensus. Mayor Hipp said it is going to be a major topic and have a major impact on the community probably over the course of the next 36 to 48 months.

Mayor Hipp said even though they may not be doing a lot of development, two areas within the borders which also lie within the Meadowlands borders are undeveloped at this time, the Linque and Encap areas. The Mayor said they will do their very best to keep the public as informed as possible with the status. Mayor Hipp said they need a plan so he has asked the Planning Board to consider various options not just with Highland Cross but generally, they need to discuss whether or not they want the protection against builders remedy lawsuits by applying for certification which means they have to have a fair housing element in place, one that was purposed in 2005 was rejected by the Council of Affordable Housing, right now they are exposed to builders remedy lawsuits because they do not have what is known as this certification. Mayor Hipp said there are a lot of issues they need to discuss as a governing body, a planning board and a community, they look forward to more discussion and asking for feedback as this develops.

Mayoral Appointments:

Shawn Tilt as a DPW Seasonal Laborer.

Councilman Genovesi moved confirmation, seconded by Councilman Sommer with all members present voting aye.

Substitute Park Rangers:

Damian Serafin, John Justice, Dawn DeCarlo, Karim Harrison.

Councilman Genovesi moved confirmation, seconded by Councilman Sasso with all members present voting aye.

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Mayor's Proclamations:

September – William Carlos Williams Month

Resolutions:

Mayor Hipp explained the HVAC change order saying that during the testing of the gas lines for the new boilers that were installed, gas leaks were discovered, the lines were not to be replaced as part of the original scope of the project. The Mayor said accordingly the contractor, Envircon, was not going to do it as part of their contract price and required an additional amount of money in order to repair the lines. Mayor Hipp said they had the lines tested on multiple occasions back in December; there was a bubble test which passed but at the request of the Building Dept. they required pressure test; three pressure test were performed and all three discovered leaks. The Mayor continued that he was informed by the Building Dept. that at the last test, everybody who needed to be present was there to observe and he has been assured that the repair of the pipe will be appropriate as opposed to the replacement of the entire line going back to the gas main which was a consideration. Mayor Hipp said it is \$2,299.00 and there is money that has already been set aside for the change order; he is always reluctant to ask the governing body to approve change orders on the project but he doesn't want leaks and they have to have it done by September so he asked the Council to approve the change order.

Councilman Sommer moved to accept the following Resolution, seconded by Councilwoman Inguanti.

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Councilwoman Inguanti wanted confirmation that this was the final inspection and that all the others inspections have been completed and this is just the one area. Mayor Hipp responded that was correct, that was the one area and the punch list items have all been taken care of.

Councilman Genovesi said because the leak actually occurred after the PSE&G meter in the section of the old piping, not the new, it was very difficult to assign any type of blame – did the leak occur because the piping was old or because of the new construction they really can't tell. He said the main thing is that the gas is off, the two boilers in the building, one is continuously providing hot water which is very important and the other one needs to be up and running the furnace by October or else the building won't have heat. Councilman Genovesi asked is this really the last change order. Mayor Hipp responded he could assure him it will be the last change order.

All members present voting aye:

WHEREAS, the Borough of Rutherford retained CMX to perform professional engineering services in connection with certain Heating Ventilation and Air Conditioning Renovations performed at the Rutherford Public Library ("the Project"); and

WHEREAS, another pressure test of the existing gas line in the Project confirmed that the gas piping did not hold the required pressure for any length of time; and

WHEREAS, CMX has recommend a change order to the Project to address the gas leak; and

WHEREAS, the Chief Financial Officer has certified or will certify the availability of funds as the services are rendered;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Rutherford hereby approve the change order recommended by CMX, as per the attached letter in an amount not to exceed \$ 2,299.00

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Mayor Hipp said the second resolution is to authorize CMX to continue work on the 17-19 Meadow Road project of the condominium complex. CMX was the engineer overseeing that project from the beginning and the resolution authorizes and amount of \$6,000 to be held in escrow pending the completion of the project which is almost complete. Mayor Hipp said that \$6,000 is to be paid by the developer and CMX will charge off of that amount so it is not a taxpayer amount, they are not authorizing this as part of their operational budget it is just the finish of the project. Mayor Hipp said they had the option of authorizing the new engineer to do it but his own view was that is was unfair to require the developer to actually put more money in escrow so that the new engineer would be able to be brought up to speed to do his job. The Mayor said since CMX was already familiar with the project it will actually be cheaper, it is also based upon

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the recommendation of all and John Uhl to continue with the project. Mayor Hipp asked the Council to approve the resolution.

Councilman Sommer made a motion to accept the following Resolution, seconded by Councilman Genovesi with all present voted aye:

WHEREAS, the Borough of Rutherford ("the Borough") previously retained CMX of Parsippany and Manalapan, New Jersey to perform professional engineering services in connection with the building project located at 17-19 Meadow Road in the Borough; and

WHEREAS, in the interest of cost and efficiency to the Borough and the Contractor the Borough is desirous of retaining the services of CMX for 17-19 Meadow Road; and

WHEREAS, CMX has proposed its current hourly of \$108.00 not to exceed an aggregate of \$6,000.00, which would be provided by the Contractor and deposited in the appropriate Borough escrow account.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Rutherford hereby approves the retaining of CMX to continue its engineering services for the building project located at 17-19 Meadow Road in the Borough at an hourly of \$108.00 not to exceed an aggregate of \$6000.00.

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ORDINANCES – 1st READING

Councilman Genovesi referred to the capital ordinance for \$61,500 for improvements to the Police Dept. He said this is a project he has been working on since mid-March and has been very fortunate to have the Police Director John Thompson, Captain Egbert and Captain Merli's cooperation, Borough Engineer Berge Tombalakian was a tremendous help. Councilman Genovesi said the building itself, since the PD moved across the street in 1981 has had little to no maintenance work to the actual structure of the building and it was his opinion that the building fell into very bad shape and when he took a tour he was shown a lot more problems than he was aware of. He said they may recall things such as the back stairwell which floods with water and it creates a mold condition with mold spores visible on the walls and in the winter time it creates a very dangerous time for officers trying to use the back stairwell because the stairs are covered in ice. Councilman Genovesi said the power box which is an 800 amp box was probably put there when the building was constructed in the 1950s, it is nothing seen in an updated building. He said in addition to that they are running out of record storage space. He said there is a lot of work that needs to be done with what he calls risk management involving the flooring itself, it is cracked and they now have, compliments of the DPW they have carpeting laid out to cover the cracks and slickness of the floor.

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Councilman Genovesi said when he went over the engineer's quotations the project totaled about \$160,000 which was too much of a burden to take on at once. He said of that amount, there are about 16 items that they were looking to fix in the building; amongst them were the bathrooms in the front to make them ADA compliant and the front vestibule will now have an electric door that opens and closes. Councilman Genovesi continued that the lighting in the front will be illuminated and the last item to be done will be the front counter be made more accessible if one is in a wheelchair. He said they narrowed the list down according to the available funds; these funds were in capital funds that were not issued and were paying interest on them since 2004 and another since 2006 and were listed as general improvement funds for the PD but nothing had ever been done with them. Councilman Genovesi said they took the \$160,000 list and narrowed it down to \$61,300. He said what is going to be replaced for that amount is visible in the Ordinance, improvement of air flow and cooling to the server unit that house all the PD computer information which are now being cooled off by fans and if they overheat there is a serious problem if that information is lost. Councilman Genovesi continued that sewer unit which is going to be housed in the vault – the weapons room and ammunition room; the room fills with humidity and the ammunition could go bad with ammunition being expensive due do the Iraq war and shortage on ammunition. He said in addition to not wanting to loose any of that, the moisture around weapons could cause a rust problem; the cell doors have to be changed because they have the traditional bar system - two cells that are not up to date, they are not allowed to hold anyone because of the suicide risk. Councilman Genovesi said the automatic door opener at the front door helps with ADA compliances. He said the funds are available and asked the Council for their support.

For **Ordinance on First Reading**, Mayor Hipp asked the Clerk to read by title only the ordinance.

The Clerk read the ordinance by title only as follows: **CAPITAL ORDINANCE TO APPROPRIATE THE SUM OF \$61,300 FOR VARIOUS IMPROVEMENTS TO THE POLICE DEPARTMENT ANNEX, IN, BY, AND FOR THE BOROUGH OF RUTHERFORD, IN THE COUNTY OF BERGEN, NEW JERSEY AND TO TRANSFER UNEXPENDED BOND ORDINANCE BALANCES AND REAPPROPRIATE SAME TO FINANCE SUCH APPROPRIATION.**

Councilman Genovesi moved this ordinance be passed on first reading and advertised according to law, seconded by Councilman Sommer.

Mayor Hipp opened the Ordinance for Council discussion; no one wished to speak the discussion was closed.

All members present voting aye.

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Councilman Genovesi said the following Ordinance was discussed last week where there is one instance of a boarding house left in Rutherford and that was a situation of a multi-family system so this would be an ordinance to repeal that chapter in the code book.

For **Ordinance on First Reading**, Mayor Hipp asked the Clerk to read by title only the ordinance.

The Clerk read the ordinance by title only as follows: **AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF RUTHERFORD, TO ABOLISH CHAPTER 14, ENTITLED, BOARDING HOUSES AND LODGING HOUSES.**

Councilman Genovesi moved this Ordinance be passed on first reading and advertised according to law, seconded by Councilman Sommer.

Mayor Hipp opened the Ordinance for Council discussion.

Councilwoman Inguanti spoke regarding an issue of private homes renting a room; does this Ordinance address that because it got into issues of property rights; the idea was maybe an elderly person wanted to rent a room to an individual and share expenses could you do that? She said there were questions if that was being abused where people do it for a profit instead of just covering their living expenses. She was just wondering if the Ordinance addresses that issue. The Borough Attorney said this is a follow-up to their discussion of last week, there was one boarding house left and now that is gone. He said the thing she was suggesting he believes is different. The Mayor said a boarding house was for lodgers on a temporary basis which the town has never permitted but this Ordinance basically allows for somebody to come and for rent and feed lodgers and as a result of the last boarding house closing its doors is an opportunity to preclude it from happening again.

Councilman Sommer said he is wondering if it covers with the College in town as many or some owners will rent out their house to multiple students who are unrelated and they share bedrooms, is that considered a boarding house. Mayor Hipp said no that is not, that use will be permitted as well as senior's basically renting out rooms that will continued to be permitted, this ordinance will have no affect.

All members present voted aye.

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Councilman Sommer said the following Ordinance is straight forward, the fund attorney contacted the Mayor and Council to let them know of a situation where there was some potential liability. He said it has to do with the area of being arrested for public intoxication. What was pointed out was that 30 years ago in the State of NJ there was a statute that decriminalizes that because at that point and time there was a lot of knowledge that it was more of a medical condition than a criminal condition. Councilman Sommer said there is a situation where someone was arrested and filed a class action suit

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hitting 74 municipalities, 53 of them are insured by JIF, the final point being there are two towns that have ordinances that specifically state that if they are found in public areas of town and are intoxicated it is a criminal offense. He said they need to and were advised by the insurance fund attorney to remove that ordinance and bring it up to date with all the other municipalities or risk some complications with a law suit.

For **Ordinance on First Reading**, Councilman Sommer asked the Clerk to read by title only the ordinance.

The Clerk read the ordinance by title only as follows: **AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF RUTHERFORD, CHAPTER 68, ENTITLED, PEACE AND GOOD ORDER.**

Councilman Sommer moved this ordinance be passed on first reading and advertised according to law, seconded by Councilwoman Inguanti.

Mayor Hipp opened the Ordinance for Council discussion.

Councilwoman Inguanti stated that they have been out of compliance for thirty years. Mayor Hipp responded there is a law suit and they are about to be named a defendant. Councilwoman Inguanti said she had a letter from a recent case in the township of Maple Shade, someone was arrested and charged with public intoxication pursuant to a local ordinance and this person was acquitted based on what Councilman Sommer was talking about, thirty years ago the legislature decriminalized public intoxication. She said she feels like their backs are against the wall, because they are going to get sued but this is a quality of life issue that she is not happy with and she was concerned with how this would be handled.

Councilman Sommer said it is decriminalizing the act, it has no reflection or impact on a police officer's ability to act in a proper forceful adequate manner in a situation where somebody or some people are out of their senses from intoxication and subdue them and bring them to police headquarters. Councilman Sommer said as with mental illnesses, it was discovered that alcoholism is a disease. He said he appreciates her reaction and feels that the police will be able to handle the situations, there is no difference, it is just that the State has decriminalized it. Councilman Sommer said right now they have an unlawful ordinance on their books which they can suffer from.

Mayor Hipp said not only did the legislation decriminalize it thirty years ago, they already repealed everybody's ordinance. So its worse, they are going around enforcing an ordinance that was repealed by the legislature thirty years ago. The Mayor said what they are trying to do is provide guidance to the law enforcement officers so that down the road they don't make the mistake the Maple Shade Officers made in enforcing what they thought was a legitimate ordinance, a disorderly persons offense and then they end up not only being able to get the conviction but now the town of Maple Shade and other communities are subject to an entire class action suit. Mayor Hipp said anyone who has been convicted in Rutherford for public intoxication since this went into affect would have a claim and they are not out of the woods but this would prevent it from getting any

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worse as the letter from the attorney makes clear. The Mayor said Rutherford and Carlstadt are the only two left in Bergen County that have it.

Councilwoman Inguanti said what she is frustrated about is that drinking and driving is illegal even if they are an alcoholic because they are considered to be putting other people at risk and she would argue that someone stumbling around the streets maybe stumbling into the streets and someone swerves to avoid that person could be just as at risk as if they were hit by a car. She said she rejects what was done thirty years ago, she thinks that public drunkenness is a crime but she is out of step with Trenton on that and she thinks it is unfortunate that they have no choice in the matter.

Councilman Genovesi said that is the key thing that they have no choice like COAH, this issue they don't have a choice, what the municipality should be able to decide for themselves. He said the key thing in the paragraph says "no person should be intoxicated or under the influence of drugs on any street, highway or thoroughfare or public place within the limits of the Borough or in any hotel, store, restaurant or other cause a public place". Councilman Genovesi said that he understands because they may say they don't need the ordinance because the guy walking down the street, minding his own business but had one too many drinks, the cops don't have the right to stop him. He said the ordinance doesn't say that, it finishes with "to the annoyance of any person"; that says to him that an intoxicated person who is being a public nuisances or disturbing the public, if they don't have the ordinance on the books they are basically hand stringing the police department because the individual could be screaming, throwing rocks, threatening people, a person underage and quite honestly he has seen youth on Park Avenue who do appear to be inebriated and they are screaming at customers who try to go in and out of stores. Councilman Genovesi said if they take away this tool that the PD has to approach somebody who is being an annoyance to anyone in public, it is his opinion that they are hand-stringing them and how are they supposed to do their job if one of their tools are taken away. He said he agrees with Councilwoman Inguanti on that issue. Councilman Genovesi continued saying Councilman Sommer touched on the annoyance for the courts, he is not in there for the expediency of courts in Trenton, he thinks he has to look out for his town first and his town happens to be a dry town and he thinks the Police do a fantastic job at keeping alcohol related incidents to a minimum. He said this section of the ordinance helps prevent things from getting worse, the individual that comes up Park Avenue from a bar in another town, they went to dinner, they had too much to drink, they come out and they may not be disturbing anyone while they are walking down the street but they are going to walk into a vehicle and put their keys into the car. Councilman Genovesi said so what if a police officer observes that individual prior stumbling and dropping things on their way to the vehicle, now they are not allowing the officer to stop that individual and check if they are intoxicated; he said he was elaborating one thing Councilman Sommer said about the courts, he didn't say that, he was just taking what the Councilman said and expanding on it.

Councilman Sommer said he doesn't want to speak for the Police Director, but it is his clear understanding that any of the acts Councilman Genovesi described, which he finds troublesome, such as a police officer saw someone stumbling – there are plenty of existing laws on the books that the police can go over approach, stop the individual and

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take the appropriate action with that individual today without criminalizing it. He said he believes they are hand-strung because he believes the Police Director could say that without this or with this the police are not without any power that they had ten years ago and will have after ten years and while they say they live in a dry town, he suffers with that greatly knowing that there are many liquor stores, restaurants that have liquor stores within them and he has seen and sat next to so many people who been coming out of those restaurants and shouldn't be driving and are, even though they are a dry town. Councilman Sommer said he is very pleased that their police are able and do control so well what goes on in town and he believes the daily reports of the DWI in Rutherford that it is proof that the activities are under control without criminal sanctions, which would be putting them in prisons.

Councilman Sommer, Councilwoman Inguanti and Mayor Hipp voted aye; Councilman Genovesi voted nay; Councilman Sasso abstained.

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Mayor Hipp opened the second hearing of citizens.

Dennis Letsche – 228 Prospect Place said he realizes that the governing body has a very difficult job. Mr. Letsche said he has a question on Mr. Maraziti's contract and asked if it was on a per hour basis or a project basis and if either, does it affect others that might have initially put a bid in for that position that might have a more realistic approach or number for handling that? He said at the meeting when he was appointed and he was appointed because of his costs and expertise; he believes it is pretty safe to say from \$17,500 to \$75,000 is a lot to turn around and say it is because of all the things going on with Encap or Highland Cross is unfair. Mr. Letsche said Encap didn't come up yesterday it has been around for quite some time, as has Highland Cross.

Mr. Letsche questioned the status of the Borough Administrator position and in regards to the Highland Cross Project he asked what the Mayor and Council's position is on that; what recourse do the citizens have; what has to be done to change that and get it approved. He said he knows it is down to 800 properties and that is going to create COAH responsibilities. They mentioned that Mr. Maraziti is also involved in that which is also not new so he would have expected that when he put his bid in he would have known these issues and would have included it.

Mr. Letsche asked what was the original bid and completion of the HVAC project? He asked what the final cost is and projected finish date.

Mr. Letsche said as an insurance broker he may be able to resolve some of their questions and Councilman Sommer is correct. He said they are not losing anything, it comes up in their world all the time; all they are saying is it is a matter of schematics; they can not turn around and put someone in jail because legally have had too much to drink and are walking down the street. Mr. Letsche said however it does not stop them

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from being arrested for disorderly conduct, disturbing the peace or a multitude of other things; so the reality behind that is that the courts have been beat by somebody saying they can have a drink and not be a public nuisance and there is no law that says they can not do that. Mr. Letsche continued saying the insurance companies have been beat on it; attorneys and courts as well; all that has happened is that they can still do all the things they need to do as Councilman Sommer said they have to be careful in how they do it. He said they have to make the arrest in the proper way, if they are causing a public nuisance or doing something like that.

As no further citizens wished to be heard, Mayor Hipp closed the hearing of citizens.

Councilwoman Inguanti asked about Mr. Maraziti's initial appointment. The Borough Attorney said it wasn't necessary to have an RFQ that states whether or not the individuals or firms had contributed \$300 or more to the political campaigns, that wasn't the case. He continued saying the Maraziti's firm was hired because they were specialists in a very limited field and he doesn't know if anyone could have foreseen which was in all of the newspapers, the drama with Donald Trump, the law suits, and the threat of law suits. He said the next step is, as Mr. Letsche pointed out, Highland Cross which is now back on the front burner. He said they need legal guidance and advice in this specialty and as Councilwoman Inguanti has already pointed out the charges have gone approximately \$50,000 so there is not much more. He said but there are some issues to address.

Councilwoman Inguanti added that initially it was a confusing period for all of them because they weren't exactly sure of the standing that Mr. Trump had with the development and she believes that Mr. Maraziti was initially trying to help the Borough ascertain what role Mr. Trump had and how he intended to resolve some of the issues they had with Encap's failure to adhere to the contract. She said at that point had Mr. Trump been made the developer, her understanding was he would have had to pay money into an escrow account for legal fees intended to the Encap development as Encap had done with the previous Borough's redevelopment Counsel. Councilwoman Inguanti said if that had gone forward and all that had happened (and that is one of her disagreements with the State) these development fees would be available for attorneys, engineers and specialists that the Borough would need to employ to advise them on large scale developments like Encap or Highland Cross. She said typically there is an escrow account that must be provided for by the developer, there is no reason for the taxpayers to have to pay for those experts when it is the developer that is going to be reaping the profits from the development.

Councilwoman Inguanti said she suspects that as Highland Cross advances, that will have to be addressed with that developer in the establishment of an escrow account to pay for the attorneys. The problem here was Encap went in the course of two months from maybe going to be worked out to declaring it in default and into bankruptcy. She said she does believe that Encap now at least this chapter of the saga, is winding down and she doesn't anticipate significant fees from Mr. Maraziti, it will probably be a bankruptcy issue now. Councilwoman Inguanti said the fees to Mr. Maraziti's firm with Highland Cross will actually be fairly minimal at this point and that will be from an escrow

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account not from the taxpayers but that is hard to say because there is going to be so much public discussion needed in terms of changing the landscape of Highland Cross from what it was a few years ago to what it is now and the statutes that are being crafted and challenged.

Councilwoman Inguanti said in regards to the criminality issue, she just sees it as what is to stop someone from a law suit saying they couldn't charge them with public nuisance or harassment because they were drunk and they are an alcoholic so they have a medical release from their actions when they are intoxicated because it is a disease and they can't help themselves. She said it is a slippery slope that started thirty years ago but there is really some unfortunate behavior on the part of people who suffer from mental illnesses that certain jurisdictions really have difficulty dealing with and it is a quality of life issue that is very unpleasant for those residents that live in those situations. Councilwoman Inguanti said she does understand the criminality exception.

Councilman Genovesi said to answer Mr. Letsche's question which they discussed in the work session regarding the Borough Administrator, they had a group of individuals they were interested in and they took the next step at the advice of the Borough Attorney to hold the meeting at which the Council, Mayor, Borough Attorney and Borough Clerk invited the individual and prior to that meeting they received notification from the individual that he was no longer interested in the position. He said the main reason was for the distance of commuting and time spent away from the family; he wished to thank everyone he had come in contact from Rutherford so the search continues. Councilman Genovesi said he asked the Council what they wished to do and the consensus among the Council was to move on to the next group of individuals they were considering from the original resumes that they received. He said they gave themselves a cut off date which would be the general meeting in September, so they hope to hire someone at that meeting.

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Councilman Genovesi moved the following Resolution to close the meeting, seconded by Councilman Sommer with all members present voting aye:

WHEREAS, the Open Public Meetings Act requires that a public body adopt a resolution at an open meeting before going into closed session to discuss a matter which excludes the public as permitted under the Act:

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Rutherford will hold a closed meeting on Tuesday, July 22, 2008 at 10:30 p.m. in the Committee of the Whole Room to discuss the following matter:

- Borough Auditor Report
- Borough Administrator Position
- Litigation Concerning Encap

The meeting re-convened at 11:01 p.m.

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The Borough Attorney asked to be authorized to issue notice to Ferraioli and Company that they are terminating their services for the Borough Audit. Councilman Genovesi made a motion to authorize the Borough Attorney for same, seconded by Councilman Sommer with all members present voting aye.

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The Borough Attorney said the second is to authorize Garbarini and Company the current auditors to conduct the 2007 Audit. Councilman Genovesi made a motion for same, seconded by Councilman Sasso with all members present voting aye.

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Councilwoman Inguanti then moved that the meeting be adjourned, seconded by Councilman Sasso with all members present voting aye. The meeting adjourned at 11:03 pm.

Borough Clerk