

**MINUTES OF A SPECIAL MEETING OF THE  
MAYOR & COUNCIL  
HELD FRIDAY, FEBRUARY 27, 2009**

---

The meeting was called to order by Mayor Hipp at 6:40 p.m. with the following Councilmembers present:

Councilwoman Keyes  
Councilman Genovesi  
Councilwoman Inguanti  
Councilman Sasso  
Councilwoman Birdsall  
Councilman DeSalvo

\*

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

\*

The Borough Clerk read the provisions of the Open Public Meetings Law and confirmed that proper notice of the Special Meeting was posted.

\*

Mayor Hipp asked the Borough Clerk to read the following Resolution:

**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 session meeting on Friday, February 27, 2009 at 6:42 pm in the Committee of the Whole Room to discuss the following matter:

- Interview of the Borough Attorney

Councilwoman Keyes made a motion, seconded by Councilman DeSalvo and unanimously approved on roll call.

\*

Meeting reconvened at 7:30 pm to open session.

## MINUTES OF SPECIAL MEETING HELD FEBRUARY 27, 2009

---

Councilman Genovesi made a motion to suspend the agenda for a five minute recess for the purpose of deliberation, seconded by Councilwoman Keyes and unanimously approved on roll call.

\*

Meeting reconvened at 7:50 pm.

Mayor Hipp opened the floor to nominations and he asked the Attorney Committee for their recommendations.

Councilwoman Birdsall said the Committee wanted to thank all the applicants for their time, their interest and their experience; they had multiple qualified applicants who would all serve the Borough well and it is a critical appointment which they want to make with no further barriers or delays and they ask for everyone's support. She continued to say the Committee took very seriously the process throughout the interview, the application as well as the deliberation and a recommendation is based on an applicant with vast experience and range who is vested in the Borough and has displayed to the Committee the qualifications necessary to be successful in its position.

Councilwoman Birdsall made a nomination on behalf of the Committee for the firm of McCarthy and Jennerich, seconded Councilman Sasso. Mayor Hipp opened the floor for any other nominations.

Councilman Genovesi made a nomination for William Smith the reason was specific to his line of questioning and his apparent experience in dealing with COAH, the manner in which he was able to restrict the number of units and his 29 years of experience in municipal law, plus his binding arbitration, seconded by Councilwoman Inguanti. Mayor Hipp opened the floor for any other nominations.

Councilwoman Keyes made a motion to close nominations, seconded by Councilwoman Birdsall and unanimously approved on roll call.

\*

Mayor Hipp opened for discussion and deliberation for the two candidates.

Councilwoman Keyes stated that she was comfortable with the recommendation by the Committee and though she wasn't present for the interview with McCarthy and Jennerich she knows them and the principles of their firm. She said Mr. Porro gave a very good presentation that night but she was comfortable with going with the recommendation of the Committee.

Councilman Genovesi said in having to choose one of the four he supports Mr. Smith based on what seems to be an extraordinary amount of experience in dealing with COAH and COAH obligations. He said he was enthusiastic about the way he was able to describe what happened in Franklin Lakes and he carries a great amount of experience

## MINUTES OF SPECIAL MEETING HELD FEBRUARY 27, 2009

---

with 29 years in municipal law and he thinks out of the individuals they saw he seems to be the most experienced.

Councilwoman Inguanti said all of the candidates had things to recommend them, she felt that Mr. Smith was undeniably the most experienced in the Borough law, she also thinks that it was preferable to have an individual who has an arms-length of separation from the town in terms of a lot of the people who go before them are residents of the town and Mr. McCarthy did express a concern that could present a challenge for him. She said her other concern was that the McCarthy/Jennerich firm was not identifying exactly who would be at the table with them on a week-to-week basis and she felt there was some disparity within their partnership of experience. Councilwoman Inguanti said in Mr. Smith that was not the case at all and she felt he would be the one to best serve the Borough especially with COAH being a difficult problem. She said they have all sat on the Council long enough even the new members and they don't know from day-to-day what comes before them at a particular meeting and she thinks having someone who has a working knowledge and experience of Borough law is vital and very important to the Council as they move forward on issues. Councilwoman Inguanti said they will need clarity on the things they deal with and someone who will be fair and unbiased; she thinks all of the candidates could do that and would be capable of that but she believes Mr. Smith would be able to do that with the greatest of ease with the law.

Councilman DeSalvo said although he always feels to be lenient towards someone in the Borough and he knows that McCarthy and Jennerich do have a vested interest in town, he thinks the experience of Mr. Smith definitely out weighs anything that McCarthy and Jennerich could give to the Borough.

Councilwoman Birdsall said of course the experience with Mr. Smith is definitely an asset and she also agrees that it was a difficult deliberation because they had very strong candidates, there were pros and cons with each of them. She said there is a sincere lack of knowledge about the local issues in Mr. Smith's interview, he really wasn't up to speed on issues that were currently going on in the Borough so that was a concern. Councilwoman Birdsall said she does think that they cannot negate the importance of being vested in a community and in the future of the community and she thinks all the candidates would be fair and unbiased, they are attorneys and professionals, they need to operate as such and she had faith that they would all do that. Councilwoman Birdsall said COAH will not be the only issue that they are going to face although it is a very important one it will not be the only issue and a firm such as the three individuals, which may be looked at as a con as far as one face but it would be a firm representing the Governing Body with a strong working knowledge of the law but also of the community. She said it is a very critical appointment so she had confidence that whatever the decision made they will be able to move forward but she wanted to raise those concerns, they need to have someone who is aware of the law but also aware of the issues that they were going to face so she asked the Council to take that into consideration with their decision.

Councilman Sasso said it was not an easy decision for all the people there but when they vote they should vote with their heart and what they believe in. He said all four candidates are qualified, they're all good people, they all have things on either side of the

## MINUTES OF SPECIAL MEETING HELD FEBRUARY 27, 2009

---

fence that puts one more in a category of positive and something's a debit on the other side, it is never an easy decision. Councilman Sasso said his advice is to do what they believe in.

Councilman Genovesi said he appreciates Councilman Sasso's comments and one more further thing in his support for his nomination of Mr. Smith was in looking towards the future many residents have expressed a desire to have things such as programs offered to the employees altered or re-examined. He said that takes someone with arbitration experience to do that and Mr. Smith relayed a lot of arbitration experience and he believes that during arbitration in the years he had handled, he did 99% of the work himself and that stuck out in his mind. Councilman Genovesi said that is just a ton of experience, ton of municipal knowledge, ton of overall finance knowledge and he wanted to further that.

Councilwoman Birdsall said she agrees that Mr. Smith was very impressive and she believed that all the candidates were; the firm of McCarthy and Jennerich did have, although not to the same extent, they did have interest arbitration experience, although it was not on behalf of a public entity but they do have experience in that realm. She said she really doesn't have a question to as to the experience of any of the candidates, she believes they would all serve the Borough well, they do need to have a fair and unbiased candidate appointed to that position so they could have direction as a governing body and they could get back to the business of the Borough and move things forward efficiently and in a good direction. She reiterated the Committees support for their nomination with McCarthy and Jennerich with all things weighed and measured and they did get to meet the candidates on several occasions, she emphasized the Committees support of McCarthy and Jennerich.

The Borough Administrator said he worked with several Borough Attorneys over his career, the last being a small firm of two people and he wanted to tell them that when the prime attorney did not show up for a meeting and his alternative member came in that there was a lack of continuity, lack of bringing them up-to-date with what the Council was dealing with. He said the short time in Rutherford he has grown to appreciate and enjoy the small charm of the Borough which he had very little knowledge about at that time he was appointed. The Administrator said he learns more and more each day and he had respect for each of their comments and their working relationship but the one thing that he learned is that experience couldn't be taught. He said he mentioned that to someone the other day and experience of 29 years, representing at least two major municipalities in the State; Franklin Lakes is about the size of Rutherford in population not in area; Emerson is a major northern Borough. The Administrator said having worked with the person he worked with in Allendale for example, when he wasn't there at a particular meeting they really missed that continuity, they don't know if the person replacing him may not know everything and they didn't know what was going to come up at a meeting. He said they could be sitting at the table and in left field and issue would be raised to the Council and the attorney representing them all the years had a rapport with the Council and knows how to respond to those issues. The Administrator said of the two consultations that the Counsel retained to assist in getting on with the business of the Borough, he worked with the attorney and the engineer the most, so it is important to

MINUTES OF SPECIAL MEETING HELD FEBRUARY 27, 2009

---

him to have someone with experience and the wherewithal to get the job done and to be there when he is needed. He said the thought that if they were lucky enough to get the caliber of someone like Bill Smith it would be a good thing for the Borough of Rutherford; you can't teach experience.

Councilwoman Birdsall said she goes back to some of the things the Mayor had said prior to his support for his attorney appointment with things such as someone vested in the community that lives here as a taxpayer, is dedicated to the community as with McCarthy and Jennerich they have three taxpaying citizens who also have a business in the Borough. She said they need a dynamic firm in that time period that was going to go the distance and do the right thing for the Borough and one can't learn that either and not to discredit Mr. Smith in any way shape or form, she thinks Franklin Lakes and Emerson are both huge municipalities that have a lot of issues but Rutherford is a very different place than those and she doesn't want the Council to discredit a nomination based solely on years of experience. Councilwoman Birdsall said if they combine the years of experience with the three partners in the firm who have a vested interest in the success of the community and their personal business, they are partners they will communicate, it is completely different from having one person who is an underling to someone else. She said firmly and passionately that they need a dynamic firm that was going to go the distance for the Borough in a time when they have major decisions to look at and to please consider that in their vote.

Mayor Hipp said it is the Council's appointment, the Mayor only votes to break a tie but given the choice of the two nominees if it were to go to him he believes that Mr. Smith is far more experienced than McCarthy and Jennerich combined. The Mayor said he questioned Mr. McCarthy with experience with interest arbitration and the answer he got was not the kind of answer that Mr. Smith gave and he does believe they face difficult times and to have someone with the caliber of experience of Mr. Smith for a flat fee of \$95,000 is a stroke of luck and he thinks they would be remiss if they passed up the opportunity to hire him. Mayor Hipp said he believes local connections play a role but he reminded the Council that Mr. Biviano was not a Borough Attorney because he was a local resident, he had substantial experience as a Borough Attorney and he also had experience as a Borough Administrator prior to becoming a lawyer. He said a lot of that area that he had experience in was in labor negotiations and he believes that may have lead to his downfall but as they know salaries and benefits are the largest part of the budget and while they are negotiating with the unions with someone who had experience with that will be far more helpful. The Mayor said notwithstanding the experience of the other candidates none of them have ever served as a Borough Attorney in the State of New Jersey and that inexperience may prove daunting. Mayor Hipp said in case he had to vote he wanted the Council to know his position.

Discussion was closed and the Mayor instructed the Clerk to read the roll call for their candidate.

Councilwoman Keyes  
Councilman Genovesi  
Councilwoman Inguanti

McCarthy and Jennerich  
Mr. Smith  
Mr. Smith

## MINUTES OF SPECIAL MEETING HELD FEBRUARY 27, 2009

---

Councilman Sasso	McCarthy and Jennerich
Councilwoman Birdsall	McCarthy and Jennerich
Councilman DeSalvo	Mr. Smith
Mayor Hipp	Mr. Smith

Mr. William Smith was approved by a 4-3 vote.

\*

Mayor Hipp said that there was an emergency in the Police Dept. late that afternoon and he asked the Council to let Councilman Genovesi discuss the circumstances surrounding HVAC units at the Police Dept. The Council consented unanimously.

Councilman Genovesi said during inspection, four of the five heat exchanges on top of the building are not functioning. Councilman Genovesi said it is not an intelligent move to leave a public building without heat, especially where employees operate in 24 hours a day. He asked they consider it as an expenditure, there were two quotes submitted however he didn't recommend replacing the entire just make the repairs and if they wanted to replace the unit they should make that part of the capital ordinance with the Police Dept. renovations to which they may have to go over that ordinance and take something out so they don't go over the amount they had budgeted.

The Administrator said they had two contractors look at the area and they both concluded the same and gave prices just replacing just the heat exchanger part of the unit. He said there are many different units and they think they could get by for the weekend without having to call someone in on overtime and they aren't sure they could locate four heat exchangers in such a short period of time but they put out feelers for someone to come in on Monday to start the process. The Administrator said they are replacing something that is almost 25 years old, the life of a roof top unit is 15-18 years and to have all four go at the same time is not unusual if they were all put in at the same time. Councilman Genovesi said they could have been going one at a time but when the inspector came all four were out. The Administrator said he didn't have much information as he just found out about it a few hours earlier.

Councilman Genovesi stated that since they were meeting on Monday night did anyone object to revisit it then?

Mayor Hipp said it was an FYI for the Council and he didn't think that action needed to be taken by them at that time.

The Administrator said he would like to begin to replace two on Monday and look around to see if the two worse units needed to be replaced, he would get prices to bring to the Council and that way they could stagger them.

\*

**MINUTES OF SPECIAL MEETING HELD FEBRUARY 27, 2009**

---

Mayor Hipp opened the hearing to the citizens, as no one wished to speak the hearing was closed.

\*

Councilman Sasso made a motion to adjourn the meeting at 8:00 pm, seconded by Councilman DeSalvo and unanimously approved on roll call.

---

Borough Clerk