

**MINUTES OF A SPECIAL MEETING OF THE
MAYOR & COUNCIL
HELD WEDNESDAY, MARCH 11, 2009**

The meeting was called to order by Mayor Hipp at 7:15 p.m. with the following Councilmembers present:

Councilman Genovesi
Councilwoman Inguanti
Councilman Sasso
Councilman DeSalvo
Councilwoman Birdsall – arrived 7:17 p.m.
Councilwoman Keyes – arrived 7:38 p.m.

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

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

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CFO Edward Cortright continued the review with the governing body of the proposed 2009 municipal budget. He updated the Council on the recent changes from the State on the budget proceedings. There was lengthy discussion on cost cutting measures that will need to be taken. Mr. Cortright presented several variations of options that the Council could consider for the introduction including layoffs, furloughs, service cuts, use of facilities by private institutions among other things.

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Mayor Hipp opened the hearing to the public.

Frank Wilson, 171 Montross Avenue said he was glad to hear the Council is working on the budget, they were at a meeting yesterday with the School Board and Councilman Sasso was in attendance and they were looking at 4% and weren't looking to go down from that for the school. Mr. Wilson said he disagreed with Mr. Cortright's math on the \$16,000 because the statement he made was that those people would be used to reduce overtime; if they had two two-men crews twice a week to take care of garbage, if they weren't doing garbage they were doing something else and that something else is overtime so he should factor in those hours as overtime hours. Mr. Wilson said if they do

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it that way it works out to approximately \$131,000 a year savings not \$16,000 that shows the numbers don't work out. He said the other part is that the \$730,000 on a deferral paying 8% so they are giving away \$60,000 which is crazy and whoever is still left on the board in 2012 will get hung so he wouldn't recommend that to anyone who was up there or anyone who would want to run for Council in 2012. Mr. Wilson said as far as Encap goes, he thinks they shouldn't consider it anymore and if they get it, it is a bonus, build a recreation center, pave streets but he doesn't think they are going to see it in the near future and he wouldn't count on it. He said the revenue stream they could tap into is having a traffic enforcement team where they start nailing people who speed through the streets and he spoke with the police and they seem to be in agreement they would get a cut which would be more revenue. Mr. Wilson said a hard topic such as furloughs or layoffs, he said it is a nasty subject and no one wants to touch but one way to look at it is they need a job breakdown analysis of every employee and then they could see who is over or under staffed, part-time versus laying off people but he doesn't think anyone knows of how many they need to run the departments.

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

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Councilwoman Keyes moved the following resolution for a closed session, seconded by Councilman Genovesi and unanimously approved on roll call:

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 Wednesday, March 11, 2009 at 8:25 p.m. in the Committee of the Whole Room to discuss the following matter:

- Attorney-Client discussion of DOP Regulations under NJAC 4a:8-1.1
- Process of Issuing "Rice" Notices
- Matters Involving Discussion with Various Bargaining Units

The meeting re-convened to open session 10:05 p.m.

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Council President Keyes made a motion to authorize the Borough Administrator to meet with Department Heads to review the operations of the personnel within the Departments, seconded by Councilman Sasso. The Borough Clerk read the following roll call: Councilwoman Keyes, Councilwoman Inguanti, Councilman Sasso, Councilwoman Birdsall, Councilman DeSalvo voting aye and Councilman Genovesi voting nay.

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Council President Keyes made a motion to authorize the Borough Attorney to review the Civil Service Regulations for the bumping down process, seconded by Councilman Sasso and unanimously approved on roll call.

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Council President Keyes made a motion for the Borough Attorney and Borough Administrator to meet with the Union Representatives to present the scenarios that the CFO will put together that were discussed in the closed session, seconded by Councilman Sasso and unanimously approved on roll call.

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The CFO said referring to the assumption on the worksheet and it was his recommendation to keep it as is showing a \$40,000 reduction in State aid. Mayor Hipp said so then it is an increase in the revenue item of \$160,000 which is Municipal Aid and for extraordinary aid they don't have to make an assumption as to the deduction but they need to discuss if they want to authorize the CFO to make an application for Extraordinary Aid by April 15; did they want to make that decision that night or hold off. Councilwoman Keyes said if they make that decision that night they are also saying that they are deferring pensions. Councilwoman Birdsall said to her it's what do they think they would be asking for and what do they think they might be getting which gives her the answer whether it is worth applying or not. Mayor Hipp said he believes they would ask for the 1.5 million.

Councilwoman Inguanti said they should figure it out to the penny of what Encap owes them. Councilwoman Birdsall asked if they do ask for that in extraordinary aid what happens with the \$400,000 from the Meadowlands Commission does that go away, even if they just ask for it. Mayor Hipp said asking for it doesn't mean anything, for budget purposes if they don't lose the \$400,000 even if they budget for the 1.5 million that is owed by Encap; the \$400,000 is by resolution available to the Borough and one option would be to amend the budget in order to include that but they don't have to address that issue immediately. The Mayor said the idea is that it would be a \$1.5 million application.

The CFO said the application is about 15 pages with statistical data comparing 2004 through 2009, when it comes to the pros they want to see what they are doing to get themselves off extraordinary aid and they had been very successful in the past about explaining how they share services. He said looking at what they received last year \$200,000 and assuming they get that it is really not \$200,000 less the 8.5% interest that they are paying on the pension deferral so if they take \$200,000 less \$60,000 the interest they would be paying for one year it becomes \$140,000. The CFO said the question they had to ask themselves is it worth the \$140,000. The Mayor reminded all that they don't know how much they are getting they are assumptions on top of assumptions and the one thing they could say for certain is they only reduce the amount available to extraordinary aid by \$500,000 in the Governor's introduced budget. Councilwoman Birdsall asked would it be that they are expecting more people to be applying for it. Mayor Hipp said he

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wasn't sure what the philosophy is behind it. Councilman DeSalvo said if they do give less than \$200,000 like \$140,000 it would be a wash with the interest they have to pay. Mayor Hipp said exactly that it is a question. Councilman DeSalvo said it was like they were pushing them into that decision to get their 8% on their money. Councilman Genovesi said if they don't do the deferral they are almost \$2 million out but he agrees the 8.5% is ridiculous and then they saddle someone else down the line with that obligation to pay that. Councilwoman Keyes said it happened to them already a couple of years back when they had to pay into the pension after not paying for so many years. Councilman DeSalvo said what happened to the taxes that year. The CFO said they had to remember they had four years of zero increase and after that the trend started to go up. Mayor Hipp said during a conversation with Assemblyman Schaer sponsor of the bill and the difficulty is that they don't have any other answers and going back to it seemed to have worked before in saving budgets, but the cost of saving budgets is incredibly high. The Mayor said it is only one year so they are paying full amount in 2010 and 2011 and in 2012 they will be hit with having to pay back the .5 million plus the \$180,000 in interest and that is not a solution anyone likes. Mayor Hipp said on the other hand, if it is that or tax increase 15%, he said that choice to him is give him time he was not going to go with 15% tax increase he couldn't justify that. The Mayor said it buys them time and that is the way he was looking at it.

Councilwoman Birdsall asked if there were any other areas that would be included in their application or would they strictly go for the 1.5 million for Encap for extraordinary. The CFO said they have to single themselves out from the rest, he couldn't put down that they lost \$200,000 in investment income for all municipalities lost it and he couldn't put down the fact that the pensions went up because everyone's did but the thing that makes them different from everyone else is that they have a unique situation with Encap and that is one of the reason they received it last year.

Councilman Sasso said if the decision was made to defer to 2012, could they add a line item that would be the interest and partial payment even though they weren't actually making the payment show. The CFO said his theory was to wait till the end of the year and when they had monies left over that don't need to be transferred and that money could be used for that purpose, not only for the interest but for part of the principal payment. Councilman Sasso said sometimes when people put money away they wind up spending it somewhere else later on. The CFO said they had to control themselves. Councilman Sasso asked yes or could they make the payments regardless even though it is not 2012, prepay? The CFO said that is the thing they are going to be looking at when they apply for extraordinary aid. The Borough Administrator asked when they were going to sell some notes in June. The CFO said the notes come May 1st and that is going to be a bond anticipation note in the amount of 9 million. Mayor Hipp said he thought they were going to do bonds. The CFO said yes bonds.

Mayor Hipp stated that they didn't have to call that one then he was just going down the list. Councilwoman Birdsall believed with the times they were in they had to apply for it. Councilman Genovesi said to be clear in version 4 assuming they are paying into the pension assumes they do not get extraordinary aid is so shouldn't it be minus on the page for extraordinary aid? Councilwoman Inguanti said the plus means it is

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increasing the tax levy by that amount. Councilman Genovesi asked what would happen if they chose not to defer, what is the exact increase. The CFO responded on the second page he showed what the 2009 tax levy would be versus the fifth scenario which was the one to the right of that. Councilman Genovesi said they are at \$2.1 million so if they were struggling now to get \$1 million how are they going to get 2 million. Mayor Hipp responded the last source is the taxpayer pockets and that is not where they want to look. The CFO said even that couldn't happen because the State wouldn't approve it. Councilman Genovesi stated that they really have no choice but to defer because if they can't meet 1 million there is no way they could meet 2 million. Mayor Hipp said budget introduction is not subject to the cap but the adoption is and that is what they did last year. The CFO responded yes but they fell within the cap limitations because there are certain exceptions to each of the cap laws, so when it was introduced they did bring it in within the cap. The Administrator stated that the exemptions they had from last year from the cap are not available to them now. The CFO said they pretty much are the same. The Administrator said okay. The CFO said it was the same for the current year as it was the previous; the only issue on the 3.5% cap is the \$652,000 on the deficit which LGS would probably allow them to go outside the cap.

Councilman Genovesi asked with the deferral did it mean the next payment is also deferred. The CFO said he didn't know for certain. Mayor Hipp said unfortunately the answer is they don't know, but he thinks what they are doing in Trenton is taking one step at a time so the current year which hadn't passed legislation as of yet, but assuming that takes place then everybody is going to be looking at what happens in 2010. The Mayor said currently they had to make a decision based on one fact they are only getting a one year deal, they have to pay in back in 2012 and it will cost \$185,000 for that privilege. Mayor Hipp asked them to remember that they are not adopting the budget; they are making some decisions so the CFO could go back and redo the budget in such a way so they know what they are looking at.

Councilwoman Keyes made a motion to make an application for extraordinary aid. Councilman Genovesi stated that assumes then that they are going to do the deferral. That was confirmed. Seconded by Councilwoman Birdsall. The Borough Clerk read the roll call: Councilwoman Keyes, Councilman Genovesi, Councilwoman Inguanti and Councilwoman Birdsall voted aye; Councilman Sasso and Councilman DeSalvo voted nay.

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The CFO said the next item was issue of Encap taxes and interest; he asked that the Mayor and Council decide if they would like to include the possibility of the those being paid as a revenue in 2009 or factor in zero and assume the taxes weren't going to be paid? Councilman Sasso asked if they are applying for extraordinary aid with the main case being the Encap issue, could they actually show that they are getting money from them. The CFO said as far as the application is concerned it would probably work to their advantage in showing that it is an item that is not going to be paid thereby creating a severe revenue problem for the Borough in 2009. Mayor Hipp said they also have to show they are making every effort to collect. Councilman Genovesi confirmed that if they don't include it in the budget they are saying that they are not following. Mayor Hipp said

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whether they include it in the budget or not, they had to make an effort to collect that money. The Mayor said with the bankruptcy being dismissed they have options, the tax counsel is making a motion to dismiss the tax appeals that Encap had brought challenging the assessments which by law if Encap fails to pay its taxes it loses its right to appeal. Mayor Hipp said it is highly unlikely Encap will try to keep its rights alive to challenge the assessed value of the land, one way of doing it is to pay the taxes.

Councilwoman Keyes asked what was in the best interest of the taxpayer, to include the Encap tax and interest in the budget or not to include it because they are looking at two very different numbers.

Councilman Genovesi moved not to include it. Councilwoman Keyes said that was her feeling also. Councilman DeSalvo agreed.

The CFO said it is best to show the Borough is in dire straits and it is not going to be collected. A discussion took place between the Council.

Mayor Hipp said they also have the option of instituting foreclosure proceedings probably in the June or July timeframe. The Mayor said following up on Councilwoman Keyes question regarding the taxpayer, if it is going to increase taxes by 8% or 9% and they can't get to where they need to go without it are the people in town going to say why aren't they doing everything they can to get it and put it in and don't just presume they are not going to get.

Councilman Genovesi said he thinks the confusion is are they saying by not including it that they are giving up; can't they just assume because they didn't get it last year assume they aren't going to get it in the current and if they do get it, it is an added bonus. He said if they say they are not going to assume it, does that mean they can't have it in the budget at all if the money came in. Mayor Hipp said no, if the money came in it is unanticipated revenue. The Mayor said they have to strike a tax rate based upon the assumption that they are not getting it and that rate is likely to be higher so the dilemma is if they get it and they didn't anticipate it, they collected the taxes and they struck the tax rate at a higher rate than they would have otherwise would have had to had they budgeted for it.

The Borough Attorney stated that they had a tax levy cap, how would that affect their ability to get under the cap. The CFO said in the sixth version, Council had to make up their minds that evening how they are going to make up the \$1,215,000; assuming that the Mayor and Council are happy with an increase in the municipal purpose tax of 7.33% and assuming that is based on Encap paying. He said if they assume Encap is not going to pay, in order to keep that 7.33% they were going to have to cut \$1.2 million and they need to determine how they are going to have to do that. Councilwoman Keyes asked if it was an additional 1.2 on top of the original. The CFO said yes.

Councilwoman Birdsall asked if their odds are better at getting Encap money or extraordinary aid from the State. The CFO responded that it would probably be better to assume they are not going to get the Encap money, the State will turn around and say

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when they are ready to adopt, to take that money out of there because they aren't going to allow them to put that as an anticipated revenue; adoption is probably mid to late September. Mayor Hipp said they should know probably in 90 days whether they are going to get the Encap. Councilwoman Birdsall stated that would be after the deadline that they would have to apply for extraordinary aid. Mayor Hipp said there were three groups; tax sale and there is a possibility now that the bankruptcy is over and if the economy improves and credit improves and that is something in 90 days it may be better. The Mayor said there may be people going into buy the lien, because it is 18% interest and in the economy it is golden and the lien is the best secured debt that they could have anywhere as it is on land and nobody is higher; they get paid first before banks, DEP, monies lost by Meadowlands Commission. Mayor Hipp said they have a debt which runs with the land and everyday it is not paid that interest accrues at 18% which is a lot of money, because the bankruptcy was dismissed that freed up their options to take action. The Mayor said idea of foreclosure is to basically force the sale, no one can challenge their priority or the amount of their debt so then everyone is below them and the entity beneath them is Wachovia and the consortium and they have about 300 million tied up in the property and if they foreclose on that land before they do, the Borough to sell it to whoever they want and they lose control. The Mayor said he doesn't think they would risk that kind of investment so that is one option to them, which is an aggressive approach because they would need a counsel and file foreclosure action which is not that complicated and the idea of litigation is not that great. Mayor Hipp said unlike a private lien a purchaser of a lien had to wait two years, they could do it within six months; he believes they have to aggressively pursue it and if they get it and struck a tax rate assuming they didn't get it, he thinks they've hurt the taxpayer; if they don't get it and they struck a tax rate on the basis that they would get it at much lower tax rate then they face a similar problem they are facing currently with a \$650,000 deficit. The Mayor said actually what they didn't get that \$650,000 for the most part is the taxes for 2008 that Encap didn't pay, not the 2007 lien, they are actually able to strike a tax rate and absorb the fact that they didn't get that money but what they were able to get was the actual taxes in the current year and that was the deficit. Mayor Hipp said \$400,000 of that comes from the Meadowlands so they actually turned out pretty well and from the taxpayer point of view they were able to strike a lower tax rate in 2008 than they otherwise would have if they assumed they weren't going to get any money. The Mayor said they face a similar risk in the current year, but the deficit could be higher, but there are things they could do and they've discussed some of them and they have to explore them. Mayor Hipp said they can sell assets to make up the difference if they don't get the money in 2009 but to him the most important part is the tax rate and if they assume they are not going to get the money that tax rate is going to be higher.

The CFO said in response to Councilwoman Birdsall's question they don't anticipate the money are they better off with extraordinary aid or not; he agrees with everything the Mayor had just said and his suggestion to them is to assume they are going to get the Encap however, what they would do is in the narrative of the extraordinary aid application they would be very clear to tell the DLGS it is based on the assumption that the Encap money would be paid. He said they could imagine the dire straits they would find themselves if the assumption does not materialize and then they would follow it up in September with an addendum to the extraordinary aid saying as a result of the most

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current situation they find themselves in Encap money not coming in, the amount to be raised by taxes is going to have to be increased accordingly. The CFO said for purposes of introduction, he assumes they could make the assumption they are going to receive the money he doesn't think it would interfere with the extraordinary aid.

Mayor Hipp said when they were before the Local Finance Board in November for the five year payout, they were very sympathetic to Rutherford's claim, there was a serious change in attitude from January to November. The Mayor said they know and were aware of the circumstances and he thinks they need to show good faith; he wishes he had the answer that they were going to get the money but if they show good faith and diligence he thinks they win either way. Mayor Hipp said if they get the money they won't need extraordinary as much but if they don't get the money that aid will be very important.

Mayor Hipp asked what they would like to do as there was a motion on the table not to include it.

Councilwoman Inguanti said if they were not to include it but were to include \$350,000 for selling the cellular lease she thinks it brings them to about a 10% increase also assuming taking out the holiday pickup and a \$7,000 reduction in donations to various agencies. She said there was about \$7,000 in the MAC grant that they didn't use that could probably offset that \$7,000 offset in those contributions like to the Kip Center.

Councilwoman Birdsall thinks they had to decrease the contributions though she didn't like it, it has to be decreased by something. Councilwoman Inguanti said if they did that and put back in the cellular lease of which they would have to decide fairly quickly based on what the company stated that gives them \$21,520,534; it brings them in at 12.45%. Councilman DeSalvo stated if they assume that and Encap tax and if neither one of them happen. Councilwoman Inguanti believed they could make the cellular lease happen in the current year. Councilman DeSalvo said he had another scenario that they might have to go into close but it is another \$200,000. Councilwoman Birdsall asked if they don't include it and they are not getting it and they see the tax percent increase and they do get it, they can't decrease the taxes but they can increase them. That was confirmed. Councilwoman Birdsall stated she thinks they have to assume that they are getting it and if they think they're realistically closer to getting it than they were last year. Mayor Hipp said he would tell them that they were within days of getting it last year because what was happening in the bankruptcy was that there were negotiations going on between the parties; AIG was actually on board with the Meadowlands Commission to sell and to come up with the money. The Mayor said the Trump Organization dropped out sometime in late October during those discussions; with Wachovia Bank they weren't getting periodic payments, they had to basically wait for the land to be cleaned up and developed before their liens remained faithful but the reason that Judge Winfield delayed it as long as she did because the parties reported substantial progress and at various times it was going to be Trump paying for it. Mayor Hipp said in fact he had a conversation with Mr. Trump about that and the Meadowlands Commission was going to pay for it because they were going to take over the land and everything fell apart December 30 when the bankruptcy judge indicated to Judge Winfield and said they hadn't

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gotten as far as they thought they would. The Mayor said Judge Winfield put off various motion dates and gave the parties another 30 days to come up with something and it got closer in February and that is where they are at. Mayor Hipp said they were getting faxes of inquiry by potential purchasers of the lien on one occasion at least right before, they thought there was going to be one buyer because of that fax. The Mayor said the economy hit the money wasn't available, but they were pretty close last year. Councilman DeSalvo stated that the economy is worse this year. Mayor Hipp said the economy is worse now and it could get worse over the year but Citibank showed a profit in the worse economy and they don't know but the key to it is stabilizing the banks and if that fails it doesn't make a difference what they do and it doesn't fail they might see equity coming back. Councilman DeSalvo said if they buy the taxes on the property and hold the tax lien after two years they have a chance of acquiring that property in the end if they hold the tax lien. Mayor Hipp said people who invest in them, they don't want the land they want the interest. Councilman DeSalvo agreed and what happens after two years if nobody buys it. Mayor Hipp answered they had the right to foreclose. Councilman DeSalvo said yes and who wants that property as it is contaminated, remediation needs to be down, the whole cleanup and if he was coming and buying that tax lien he might acquire that property that he doesn't want so the guy coming in might get stuck with the property in the long run. He said the other issue is whoever does acquire the property if it is a developer, they have more COAH issues and that could go on for years and years and the best thing that could happen is that the Borough gets the property back. Mayor Hipp asked if he wanted the Borough to own the property. Councilman DeSalvo said if someone else gets it then they have further problems that they may be having down the line with Highland Cross but getting back to the original point it's not a tax lien, he hopes it is that someone would like to buy but he thinks if someone wanted to buy it, it would have been bought. Mayor Hipp said the only thing he disagrees with is actually a good economy, the economy was really bad in late September and October and that was when it was going on. Councilman DeSalvo said his point is that they are worse off in the economy now than they were then and it doesn't seem to be getting better any time soon that they should assume the tax sale. Councilwoman Birdsall asked then he thinks they should assume they are not getting it in the budget. Councilman DeSalvo said he would assume they are not getting it in the budget to assume they are and maybe make an amendment later on but he would assume it is not going to be sold. Councilman Genovesi said the problem is if the tax rate is struck they would be in trouble if they do get the money because people have paid a lot more than they should have. Councilman DeSalvo said for the budget they should assume that they have to make up \$2 million. Councilwoman Inguanti said if the introduced tax rate is 12.45% they pay that in May. Mayor Hipp said no, because they will have to do estimated tax payments unless the Council didn't want to do that and that would be due August 1st so they would have to pay that on August 1st or some version of it but whatever the estimated tax rate is it will be based on that.

Councilman Genovesi asked if they could withdraw the motion until the following night and bring it back up so they could have some more time to think about it. Mayor Hipp said that would be fine if they think they would be in a better position the following night but make sure they would make a decision the following night.

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Councilman DeSalvo made a motion to adjourn the meeting at 11:00 p.m., seconded by Councilwoman Keyes and unanimously approved on roll call.

Borough Clerk