

MINUTES OF A SPECIAL MEETING HELD TUESDAY, SEPT. 6, 2005

MINUTES OF A SPECIAL MEETING OF THE MAYOR AND COUNCIL HELD TUESDAY, SEPTEMBER 6, 2005

The meeting was called to order by Mayor McPherson at 7:05 p.m. with the following Councilmembers present:

Councilmember Frazier
Councilmember Fecanin
Councilmember Matthews
Councilmember Bartlett
Councilmember Keyes
Councilmember Reyes

Mayor McPherson asked those present to join her in a salute to the flag followed by a moment of silence in memory of the victims of hurricane Katrina and in thoughtfulness of the survivors.

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Councilmember Fecanin read the provisions of the Open Public Meetings Law.

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Mayor McPherson asked Bond Counsel Joe Baumann to give a presentation on the EnCap amendment.

Mr. Baumann gave a presentation of where the Meadowlands EnCap Rutherford Redevelopment project has come from and where we are today, keeping in mind that it was an ongoing process. He said this financial agreement with the Borough is just one of many public steps that have been taken by not only this governing body but the Meadowlands Commission, State Legislature, several Governors have been involved in this process, Assemblymen and State Senators so this is a process begun some time ago.

Mr. Baumann repeated what he stated at the August 23, 2005 Mayor and Council meeting and the following were his remarks: He said in 2000 the Meadowlands Commission first executed a development agreement with EnCap Golf Holdings LLC, which is the agreement that was the first document that set forth the requirements for the remediation of the landfill, how it was going to be paid for and what was going to be built. He said this was an agreement between the Commission and EnCap Golf. The redevelopment plan for the area was adopted in 2001 which is the overall master plan and the Commission keeping its role as the planning entity for the area. Mr. Baumann said that in 2002 the State Legislature became involved and one of the fundamental premises of the

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financial agreement that Rutherford entered into with EnCap was the utilization of a newly adopted law, at the time called The Redevelopment Area Financing Law, which was originally the Land Fill Reclamation Act that was expanded because there was a quirk in the statute as originally drafted that would allow every other municipality in the State but for those within the Meadowlands district to utilize this statute. He said we are in a unique situation where they do the planning for the area and we raise the taxes on the area - we were not able to use the redevelopment area bond financing law so the State Legislature and passed legislation that amended that statute in 2002. He said that 2003 the Commission and EnCap did another amendment to the development agreement, 2004 we executed for the first time our financial agreement that we are considering amending, introducing an ordinance to amend tonight. In 2005, the Meadowlands authorized the amendment and the plan was amended again that allowed for residential use in the northern node before that it was only going to be zoned for hotel and commercial space. In 2005 the amendment was allowed.

Mr. Baumann said that what the Council is being asked to consider today is yet another amendment to this financial agreement which would allow for in lieu of the current 600 luxury rental units, the construction of up to 600 for sale market rate units. He said it would allow for instead of the luxury rental units to be replaced on a one for one basis with for sale market rate units. He said the current project as considered is currently 200 age restricted housing units, 600 luxury rental units, no market rate units for a total of 800 residential units and still has portions of the golf course. Mr. Baumann said the proposed project is 200 age restricted housing units, 300 luxury rental, 300 market rate units although the agreement as drafted would allow possibly another 300 market rate units and zero luxury rentals. He said that in all cases, even the current project or the proposed project there would never be more than 800 residential units on the facility.

Mr. Baumann said the Listokin report is now on the web site for anyone to read. www.rutherford-nj.com

For **Ordinance on second reading**, Councilmember Keyes moved ORDINANCE OF THE BOROUGH OF RUTHERFORD, COUNTY OF BERGEN, STATE OF NEW JERSEY APPROVING AMENDMENT NUMBER 2 TO THE FINANCIAL AGREEMENT WITH ENCAP GOLF HOLDINGS be read by title only by the Clerk, seconded by Councilmember Frazier and unanimously approved on roll call.

The Clerk read the ordinance by title only.

Councilmember Keyes asked the Mayor to open the meeting for a public hearing on this ordinance.

Mayor McPherson opened the meeting for a public hearing on this ordinance.

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Margaret Schak, 78 Orient Way - Mrs. Schak said in regard to tonight's presentation Page 7 there is a bar chart that had costs of public services, municipal and school. She said that one figure was 3.4 which was the current and now it is 3.0 proposed. She asked if this took into consideration that we have a police department that is situated up in the main part of town and they have to service a good number of people in that section. She said that she can't fathom that this has reduced the expenses to 3.0. She said that on Page 11 regarding the tax sharing, the way the Listokin report compares it, originally the tax sharing was supposed to reduce the amount by 0.8 million now it is 1.3 million. She said on the chart they have plus, but that is the plus of the impact so that it really takes an extra .5 million out of our revenue. She said that at the very end, 11940 and on the next page with tax sharing that is reduced to 5740 - this is how badly tax sharing effected these number and will effect them for 37 years. Mrs. Schak said that when they voted this back in December they did not have a tax sharing report that was up to date .

Mayor McPherson said the tax sharing formula was absolutely considered and reviewed when they were going into negotiations. She said the formula was reviewed by our redevelopment counsel, the Listokin report came afterwards.

Mrs. Schak said that for months she tried to get that report to be completed and every time she asked for it (at least 4 times) at the NJ Meadowlands Commission, she didn't come to the Council because she knew that they were the ones responsible for getting the report out and it was put together and paid for by the EnCap company. She said she didn't object to as it is a very good report and Mr. Listokin has an excellent reputation in the field. She said that his report does not have anything about the change from PILOT's where we were getting a million dollars every year and now we are getting 2.25 million this year and next year it is going to be 2 million and so forth and that adds up to the 3 million which is the increase in what they now call impact fees. She said that she agreed with impact fees and the way of determining it because then it will not have to go into the tax sharing but as soon as it is called PILOTs it goes into the tax sharing unless someone changes the law. Mrs. Schak said as to the school, 5.5 million is called the supplemental PILOT and that will have to go through the tax sharing so we will lose that large percentage - we will only get 52 2% of our dollar in 2010.

Mrs. Schak made the following statement:

AThis ordinance that you will vote on tonight changes the ENCAP Proposal in at least three ways. First, ENCAP and the Borough of Rutherford wants to change the three hundred (300) of its proposed six hundred (600) rental units in the Northern Node to condominium units or Market Value units, and, if that happens, ENCAP promises to pay an extra \$3,000,000 to Rutherford over the period of time ending in 2009, for that privilege. These payments used to be called "Base PILOTS," the latter word being an acronym for "Payments-in-lieu-of - taxes," but in this ordinance they are referred to as "Impact Fees."

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This sounds wonderful for us - more money for us is always a good thing! Changing the title from "PILOT" to "IMPACT FEES" is a big plus, because they will not have to be included in the 14-town Tax-Sharing Plan's calculations.

My continuing and over-riding concern is--what happens then? The first big drop occurs in Year 2008 when annual impact fees change from \$950,000 to \$200,000 and again, \$200,000 in Year 2009. Then the Long-Term Tax Exemption of the Redevelopment Law takes over and changes to a different level after Year 2009.

In Year 2010, the Borough of Rutherford will receive only 52.2 % of the Collected Taxes on the Improvements on the land. Not the land itself. (On the land we receive 100%-although the dollar amount that was set by our Tax Assessor is already being appealed in the Tax Court.) Then, the 14 Town Tax-Sharing Plan will take a big bite out of our 52.2 %. Then, the drain on municipal resources will have an additional negative impact, and so will affordable housing. What protection does Rutherford have against an ENCAP-induced fiscal drain? Besides increasing property taxes?

May I suggest that the "IMPACT" payments be placed in an investment account so that we may use it to protect ourselves from bankruptcy somewhere during 2013? Or some later year? Such as Year 2037? Because we are tied to this project until the Year 2037. ENCAP will be almost out of the picture long before that, because any building that is done will be done by PULTE Homes who has already paid ENCAP \$155,000,000 for the right to build, according to several newspaper articles.

Or, another suggestion: Use the IMPACT FEES to buy down the Municipal Debt!! Please, Honorable Mayor and Council Members, don't fritter away the IMPACT PAYMENTS ON NON-ESSENTIAL PROJECTS!!

There are other changes that should be made in the Original Amendment and I question whether it would be wise to again request a postponement of this Amendment #2 in order to clarify exactly what the responsibility of the Rutherford Board of Education is in all this. One question is ENCAP'S 5.5 million-dollar lump sum payment to help in the construction of a school if it is necessary. That is the way it is worded in the Original Amendment on Page Two. On Pages 15 and 16, this is called the (and she quotes) "Liquidation School-Impact Fee to offset certain capital costs of the Borough in order to accommodate the additional school-age children expected to result from construction of Luxury Rental Units. The Liquidated School -Impact Fee will be paid over to the Borough for the use by the Borough and/or the Borough Board of Education for such capital expenditures as the Borough, in its sole discretion shall determine." It is also referred to as a Supplementary PILOT which would cause it to be put through the Tax-Sharing Plan.

In addition, ENCAP has promised to pay for the school children to be bussed from the Northern Node to the schools in the main part of Rutherford. For how many years? Would

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that open up the obligation of the Rutherford Board of Education to bus the children to private schools in the Borough, and even to private schools allover the County? I have been asked about this by a former member of the Board of Education and also a current Board of Education member.

These issues should be resolved and, in writing, so future Governing Bodies and Boards of Education will understand the situation clearly.@

Responding to Mrs. Schak, Mr Baumann said the financial agreement statutes between the Borough and the redeveloper, the school district is not a party to it, so it was the Borough's negotiation with EnCap for the liquidated school impact fee and the sole discretion language is between the Borough and EnCap. EnCap cannot tell the Borough how to spend the \$5.5 million so that language was not meant to suggest, although he thought it was true, that the BOE has no legal right or by statute can they as to how the money gets spent. He said he was certain it was the intention of the governing body that it would be used to offset anticipated school costs. Mr. Baumann said the sole discretion language was really meant to drive home that EnCap won't be in a position to tell us how to spend the \$5.5 million. He said the school impact fee like the other impact fees - what they tried to do this time was to try and make sure they used words that really were accurate. He said the money we are getting now, payments in lieu of taxes, are on improvements, there are no improvements yet so they are really impact fees, same thing with the school payment - so their view is that at the end of the day this money should be outside of the tax sharing formula because there are really not in lieu of taxes on improvements whereas while we could have called the PILOT's impact fees they really aren't.

Mr. Baumann said that one component of the formula provides for a credit and having the children located in the district is not necessarily a bad thing. He said that what the tax formula does is take the number of children that were in the district in 1970 and the number of children that are in the district at the time they do the calculation multiply that number by the average cost to educate a child – let's say is \$10,000, so in this example 100 children times \$10,000 becomes a credit to the Borough of Rutherford in terms of calculating the tax sharing formula so at some level having school children located in the district actually produces for the Borough a credit in terms of the overall calculation of the tax sharing formula.

John Hipp, 143 Highland Cross - Mr. Hipp said since he only has five minutes he would not be able to refute in detail the most recent proposed amendment and the presentation by Mr. Baumann so what he decided to do was have his own public hearing. He said that he would announce the location and the time in the local newspapers and will allow Margaret Schak more than 5 minutes as well as anyone else and everyone was invited. Mr. Hipp said they have all embarked on a course here which is going to adversely

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effect the local character of this community. He said people are raising families in this town, yet they are proposing to build housing on top of land fills, garbage dumps and he didn't think they had really seriously considered the impact that will have. He said that if this is built this community is going to live with it forever and unless more work and analysis is done on the adverse environmental effects that building housing on these garbage dumps is going to have, he didn't think they had done the independent analysis that they said they did, because he couldn't believe any of them would risk the lives of their children by either renting or buying a condo in this project.

Joseph Finneran, 189 Prospect Place - Mr. Finneran asked if going from 600 rental units to 300 condos and 300 rental units is such a good idea why not change the project and push through an amendment seeking 600 condos and no rental units.

Ron Harper, 96 Donaldson Ave. - Mr. Harper asked the Council to consider what happens to the Borough of Rutherford and our credit rating if EnCap defaults. He said that he is hearing a lot of estimates, some seem pretty close to the mark, some seem off the mark and asked what provisions are in place when the estimates are wildly wrong, are there any kind of safeguards built into this agreement? Mr. Harper said that it seems like a carrot and stick scenario that we are going into. He said that EnCap is almost to free in giving us millions and millions of dollars and he felt like we are being fattened up for slaughter because beginning 2010 the millions from EnCap impact payments stop and then the only revenue from this project our 52 2% of the improvement taxes, 100% of land taxes but then we have tax sharing then we have municipal drain. He felt it would be very prudent for us to take all or most of these impact fees, buy down our municipal debt, maybe start investing it because starting 2010 we will be in trouble.

Odalys Lezcano, 25 Monona Ave. - Ms. Lezcano said that this new amendment adds about 600 marketable units to the town. She said they also have decreased the amount of children being added into the school system to 87 when the average home now has 2.5 children. She asked how they came up with only 87 children. She asked what we were doing to prepare for the year 2010 when these children come in.

Mayor McPherson said the lower number was based on Dr. Listokin's report. She said with that style of development, it's estimated and has been studied, produces a fewer number of children than a regular single family home. She said that in terms of the 5.5 million in payment that is for the school costs and we need to anticipate and in negotiating that is exactly what they did to include the funding to anticipate the costs that may occur with the school children being added in this development, whether it be to address the schools over here (transportation costs will be paid by the developer) or to build the school on the other side of Rte. 17 and 3.

Ms. Lezcano said she still had a problem with the low estimate of children.

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Dorothy Clare, 140 Hackett Place - Ms. Clare said that from what she has read in the newspaper, having 50% condos as opposed to rental units there will be a reduction in services. She asked what the difference was such as affecting the Police.

Mayor McPherson said there is an increase in the value of the project where there is not an impact on the services.

Mrs. Clare said that if this was such a fine idea to have condos why don't we have 600 instead of 300.

The Mayor said that is what the agreement provides for and anticipates.

Mrs. Clare said that if this is what we are going to be forced to have why not maximize what is being done. She asked about advertisement for these meetings regarding EnCap.

The Mayor said that notices were sent out, press releases - covered in the newspapers - internet. She said this latest meeting was published in the public notices.

Bond Counsel, Joe Baumann said that he wanted everyone to understand that this will have no adverse effect on the Borough's credit rating, in fact the expectation is that it would improve because it would produce a surplus. He said the pilot bonds that are referenced in the agreement are non-recourse to the Borough of Rutherford.

Regarding school children, Mr. Baumann said Dr. Listokin's report uses the 2000 census and whether it is a one bedroom for sale or a three bedroom luxury rental and he uses those calculations to determine what the anticipated number of school children would be. He said the first Listokin report was prepared in connection with the redevelopment amendment by the Meadowlands Commission, the second at the request of the Borough in connection with this proposed amendment. He said that is not to say that the Borough had not done its own when they executed the original agreement with consultations with all department heads and the BOE. Mr. Baumann said the Listokin report validated through an independent source the information the Mayor and Council felt very strongly about being correct in terms of what should be the right development, mix of PILOT numbers and impact fee. He said that they have pushed and prodded to benefit the Borough of Rutherford. He said that if nothing ever gets built then there will be no additional services to pay for or PILOT money but we would have received impact fees, all but the \$5.5 million.

Mr. Baumann said that in his opinion he thought the schoolchildren number would be lower but they took the more conservative approach which Dr. Listokin projected. The analyses has taken into account what has happened in other towns and what has historically occurred.

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Margaret Schak, 78 Orient Way - Mrs. Schak said that she has been rebutted many times by the NJ Meadowlands Commission saying that the other towns will be putting money in and they will be developing but also with her calculations 18% of the 100% collected taxes went into the tax sharing pool so when the pool is going to pay for all these children that will come into Lyndhurst and Rutherford will drain part of the Tax sharing pool. She said that could we please say that the figure of \$186,400,000 over several years was a wrong statement because there is nothing in the charts that ever should this amount - she said it was really \$53 million even with compounded interest over all those years.

Responding, the Mayor said this was a revised presentation tonight and certainly based on their negotiations in Dec. that was the figure they were working with.

Mr. Baumann said that the \$186 million dollars is not a made up number, there are probably a dozen different ways this could be presented - that number was the anticipated financial benefit to the Borough and didn't include some of the offsetting expenses. He said that they heard the public and they wanted to see the numbers in a different view and analysis so they put the presentation tonight with that in mind. He said it is not that the \$186 million was not a real number that we have worked for in the past, hasn't always been a number that we talked about, we just as purpose of our presentation tried to present it in a way they thought the public would respond and wanted to hear because apparently the \$186 million wasn't resonating the way it should. Mr. Baumann said that number hasn't changed it has always been there.

As no citizen wished to speak, Mayor McPherson closed the public hearing.

Councilmember Fecanin said that he was kind of appalled that Mr. Hipp had to leave, every time he comes he says some personal attacks and he takes off. He said he was personally offended by what he said about our children. Councilmember Fecanin said they would do nothing or be involved with any project that would offend or do any damage to any child in the Borough of Rutherford. He said that his children, not the 24 children the Council has. He said that Mr. Hipp has no children and every time they come here and talk about our children, a personal attack on us - this is a great project for the town of Rutherford, children, elder people 55 and older, single family people and he personally felt that Mr. Hipp's comments are always against children and anybody else moving into this fine town of Rutherford. He said that with all the comments, it feels that they don't want nobody else in the town of Rutherford, he believes this town should be open to all people.

Councilmember Bartlett said he wanted to comment on what he perceived to be unnecessary and unfair criticism also by Mr. Hipp. He said that he has been sitting on the Council for eight years and the 5 minute request from the person sitting in the mayor's chair was here when he got here.

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Mayor McPherson said that they have done everything that the residents would have them do and have represented in the way in which they would have us represent them in the course of these negotiations. She said they have consulted the Department Heads, the Professionals, asked for input from our residents in reaching what we feel is the best deal possible for Rutherford. The Mayor said that the interest of our residents was always our goal. She said they recognized that the hotel and office market was soft and would not provide relief to our residents in the form of tax relief, they allowed for limited residential with the appropriate protections in place for impact on our services and schools plus additional impact fees. She said they further refined the residential components to limit rental units and allow for condos to bring a greater benefit to our residents, they have always considered the views of our residents and one thing they have heard was a concern over rental units. The Mayor said the reduction in rental units and inclusion of condo units will increase the value of this project as a whole in terms of tax revenue but will not increase our cost in services as the demonstration shows. She said that in addition we will gain \$3 million in revenue over the next three years on top of what has already been negotiated as impact fees. Our school costs are covered in the original agreement with the \$5.5 million guaranteed plus transportation costs, plus the costs that municipalities receive for tuition in the meadowlands district for the costs of school children residing within the districts borders. Mayor McPherson said the residents concerns about tax increases in the future are the governing body's concerns also and is why they have negotiated this agreement to begin with. She said they have consistently revisited and revised the agreement with EnCap to protect and provide for the best interest of our residents and the negotiations have protected them from the use of the EnCap site in Rutherford as a sludge processing plant, environmental hazard and liability in the form of a contaminated land fill has been removed as well as recurring brush fires impacting air quality and transportation. She said the negotiations have provided for an increase in revenue now plus tax ratables in the future that are well in excess of our municipal costs associated with the project. The Mayor said this is why we need to continue to allow our families and our seniors to live in Rutherford while providing the necessary services for them, this has been the goal. Mayor McPherson said this area is an asset that needs to be develop to benefit our residents.

Councilmember Keyes moved ORDINANCE OF THE BOROUGH OF RUTHERFORD, COUNTY OF BERGEN, STATE OF NEW JERSEY APPROVING AMENDMENT NUMBER 2 TO THE FINANCIAL AGREEMENT WITH ENCAP GOLF HOLDINGS be passed on second and final reading, seconded by Councilmember Fecanin and unanimously approved on roll call.

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Mayor McPherson opened the regular hearing of citizens. As no citizen wished to speak, the Mayor closed the hearing of citizens.

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Councilmember Fecanin moved that all the items on the Consent Agenda be passed, seconded by Councilmember Frazier and unanimously approved on roll call.

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FINANCE - Councilmember Keyes

Under the Consent Agenda, Councilmember Fecanin moved the following resolution, seconded by Councilmember Frazier and unanimously approved on roll call:

RESOLVED: That Current Account Bills in the amount of \$1,239,801.21, Trust Developer Escrow-Linque bills in the amount of \$3,999.85, Downtown Partnership interim payment in the amount of \$4,000, Trust Account Bills in the amount of \$46,086.53 and Public Assistance Trust Fund #1 bills in the amount of \$12.00 all as detailed on the attached sheets be passed for payment, warrants drawn and charged in the proper accounts. A complete list of these bills is on file with the Borough Clerk.

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Under the Consent Agenda, Councilmember Fecanin moved the following resolution, seconded by Councilmember Frazier and unanimously approved on roll call :

RESOLVED: That the following warrant be issued in the amount indicated for the purpose stated:

1. In the amount of \$3855.00 payable to Patricia Mierzwa as recreation refund.
2. In the amount of \$30.00 payable to Karen Kelly as recreation refund.
3. In the amount of \$510.00 payable to Bergen Performing Arts Center for show.

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Under the Consent Agenda, Councilmember Fecanin moved the following resolution, seconded by Councilmember Frazier and unanimously approved on roll call:

BE IT RESOLVED by the Mayor and Council of the Borough of Rutherford that the following Borough officials are hereby authorized to sign checks on the Rutherford Fund Payroll Account:

Borough Administrator Timothy F. Stafford
Payroll Supervisor Philip Sartori

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Borough Clerk Mary Kriston
CFO Edward Cortright

BE IT FURTHER RESOLVED that any 2 signatures of the above mentioned officials are required.

BE IT FURTHER RESOLVED signature card with the signatures of the person authorized to sign be forwarded to the Bank of America.

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Councilmember Keyes asked the Mayor to continue the open public hearing on the 2005 municipal budget amendment.

Mayor McPherson opened the hearing of citizens.

Margaret Schak, 78 Orient Way - Ms. Schak said she had some questions regarding the following:

-Questioned Alcoholic Beverage Licenses originally was \$120,000 now was \$600,000.

Councilmember Keyes said it was \$120,000 - two licenses at \$600,000 each.

-Questioned Court fines was 0.

Councilmember Keyes asked the CFO to address this, she thought this was a reduction in the anticipated court fines.

- Questioned the percent for Reserve for Uncollected Taxes?

Councilmember Keyes said the amount was \$910,000. She did not know the percent but would have the CFO address that.

CFO Cortright said the reserve for uncollected taxes was set at 98.1% in the 2005 budget. The actual percentage of collection for 2004 was about 98.8% one of the highest years we ever had.

-Questioned the police overtime and what it was last year.

The Mayor said there were reductions in overtime over the last three years.

Mrs. Schak said she gave the governing body credit for the grants as she has never seen so many in the budget and hoped that most of them were 100%.

The Mayor said there was a combination but certainly a good percentage are not ones that we have to match.

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Mrs. Schak said the debt service was \$438,000 which is pretty high and what are we up to in points. She also questioned the very small capital improvement fund.

Councilmember Keyes said they have been looking at the BCIA over the last couple of years to fund those capital improvements because the rate is very, very attractive.

Mrs. Schak said that almost all the surplus was used to support the budget. She said there should be some allowance for judgements.

The Mayor said that most of the costs they anticipate will be covered through the joint insurance fund by way of our agreement with the risk manager and as being members of the fund.

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

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Councilmember Keyes moved the following resolution to adopt the 2005 Municipal Budget, seconded by Councilmember Bartlett and unanimously approved on roll call:

BE IT RESOLVED, by the Borough Council of the Borough of Rutherford of the County of Bergen that the budget hereinbefore set forth is hereby adopted and shall constitute an appropriation for the purposes stated of the sums therein set forth as appropriations, and authorization of the amount of: \$13,599,892.00 for municipal purposes.

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For **POLICE** Councilmember Bartlett said that two of our officers volunteered to join the Bergen County Task Force leaving for New Orleans on Sept. 2. He said the State Police issued a request for law enforcement officers to assist with the hurricane relief in Louisiana and Mississippi. He said a number of our officers volunteer and Sgt. Russo and PO. Al Anderson were selected for deployment for two weeks. He said they have designated a police vehicle that will be transported to New Orleans by the State Police. He commended the volunteers.

Councilmember Reyes said the officers are an asset to this community and as a police officer he was proud that Rutherford was involved in helping people at a time when they need it the most. He thanked Police Chief Nienstedt. Councilmember Reyes said we can't forget that we are all Americans and if one of us needs our help it is our responsibility to do what we can.

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Under the consent agenda, Councilmember Fecanin moved approval to close the following streets for block parties, Hasbrouck Place on Sept. 4th, retroactive, Wheaton Place between Woodland and Marginal on Sept. 17th and Eastern Way between Highland and Summit Cross on October 1st, seconded by Councilmember Frazier and unanimously approved on roll call.

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For **FIRE**, and under the consent agenda, Councilmember Fecanin moved to authorize the Borough Clerk to advertise for bids for Fire Department equipment, seconded by Councilmember Frazier and unanimously approved on roll call.

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Councilmember Reyes commenting regarding EnCap, said that as a police officer who has spent his career protecting people and has dedicated his life to such, at no point does he want any resident of Rutherford to think that he would put anyone or anyone's children in any harm. He said that he has reviewed and is very conscious of what is going on and would never put anybody in harms way. His role is to protect and serve.

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As Liaison for the PLANNING BOARD, Councilmember Frazier advised of a notice to Property Owners regarding 86 Darwin Ave. - application to construct 3 story dwelling with six 2 bedroom units.

The Borough Attorney said with respect to 86 Darwin Avenue, this Council is considering a general growth share ordinance with respect to COAH obligations and that will be on our agenda probably in September and October. She said this particular application there are COAH impacts and that needs to be part of the hearing.

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For Human Resources, Councilmember Matthews said the Recreation Dept. will be hosting our first annual kickoff for Soccer which will be sponsored by the Metrostars Organization of the Meadowlands Hospital on Saturday, Sept. 17, 2005. The event will take place at the end of Darwin Ave. between Kid Spot and Diamonds 5 and 6 from 9am til 11am. He said there will be an appearance by the Metrostar's mascot, mobile with music, fun and give-a-ways. The Metrostar's will provide all the necessary equipment needed for this event.

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Mayor McPherson thanked everyone at the Borough who was responsible for making the Labor Day Street Fair such a wonderful success, the Administrator Timothy Stafford, Special Events Coordinator Cliff Whitmyer, JoAnne Mercklinghaus who served as Liaison on the Committee, the Rutherford Downtown Partnership, Department Heads, Police, Fire Chiefs, Fire Marshall and the DPW. She thanked all the departments that were involved in the planning of the Fair. She said they are in the process of compiling the revenue that was generated by the Fair. The Mayor said that in years past it was a vendor system in which we awarded a contract to an outside vendor to run the fair and this is the first year the Borough with the special events coordinator and the other people she mentioned undertook to run it ourselves and it was a tremendous success. She said it was widely covered in the newspapers today in both the NY Times, Star Ledger and on News 12. She said that she heard some wonderful comments during the course of the fair and again thanked everyone.

Mayor McPherson said that on Sept. 11 the Borough will be hosting a Memorial for our victims of 9 11. She said that she has been in contact with the families and have endeavored since last years' ground breaking to undertake construction of the Memorial. The Mayor said that we were fortunate to receive generous contributions from many of the families and the residents towards it. She said there was a delay in beginning construction due to the Borough's desire to complete the Memorial in an appropriate manner because our estimated costs exceed the threshold that municipalities are subject to we must formally undertake a bidding process. She said this process in construction must take place within certain months so that Lincoln Park may remain accessible. The Mayor reiterated the Borough's continued support to the families and all those whose lives have been forever effected by the tragic events of Sept. 11, 2001 and we will be hosting our Memorial Service at 2:00 pm in Lincoln Park.

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Borough Administrator Timothy F. Stafford regarding the Town Planner said they were mailed out in a bulk mailing last week. He said there would be some available at the Borough or on their web site www.townplanner.com. He thanked the department heads, the Mayor and Council and his Assistant Robin Esposito for spearheading this project for us. Mr. Stafford said that it turned out as well as Councilmember Fecanin had hoped and is a significant addition to the Borough.

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Mayor McPherson said that on the agenda tonight is a Resolution in support of the victims of Hurricane Katrina as well as our thoughts and prayers for the survivors which she asked the Council to consent to at this time. The Mayor said that their hearts are in this resolution and the thoughts and prayers are demonstrated as well by the actions of two of

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our officers volunteering for service to go down in harms way to New Orleans. She said that she has been contacted by Kathy Clare from Rutherford Shop-Rite and there will be a Katrina fund drive, food drop-off this Saturday, Sept. 10 from 10am to 5pm. In addition she said the Borough also sought contributions towards the Red Cross at the Labor Day Street Fair and those efforts will be continued.

Councilmember Fecanin moved the following Resolution in support of the victims of Hurricane Katrina, seconded by Councilmember Keyes and unanimously approved on roll call:

WHEREAS, Hurricane Katrina is estimated to be the worst natural disaster in the United States since the early 1900's, and swept through Louisiana, Mississippi, Alabama and Georgia leaving destruction and tragedy in each state; and

WHEREAS, hundreds of Americans have already been proclaimed dead, with a forecast of possibly thousands to mourn; and

WHEREAS, the City of New Orleans, after withstanding over 140 mph winds of Katrina flooded deeper into devastation as levees broke near Lake Ponchartrain. The Mayor announced the city to be uninhabitable, and the process of evacuation is nearly impossible as the flood waters cover nearly 80% of the city; and

WHEREAS, the devastation is morphing into chaos, as thousands remain trapped, and public health is tragically threatened. The federal government has declared the Gulf Coast region a public health emergency; and

WHEREAS, those who have survived face further tragedy and difficulties ahead; and

NOW, THEREFORE, BE IT RESOLVED, that the thoughts and prayers of the Mayor and Council of the Borough of Rutherford and the residents of Rutherford are with the victims, displaced citizens and all other individuals who have been affected by Hurricane Katrina; and

BE IT FURTHER RESOLVED, that the Mayor and Council encourages the resident of Rutherford to donate whatever they can to the relief efforts being organized in the wake of Hurricane Katrina.

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Mayor McPherson made the following appointments:

Eugene Macchia to the position of Building Maintenance Worker effective Sept. 5, 2005 in accordance with the NJ Dept. of Personnel Procedures. Confirmation moved by

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Councilmember Bartlett, seconded by Councilmember Keyes and unanimously approved on roll call.

To the positions of Recreation Instructors for the Fall Children and Adult Programs and the Exceptional Individual Programs:

Joyce Robbins, Head Instruction for Exceptional Individual Program
Maureen Murray, Asst. Instructor
Sandy Maslag, Asst. Instructor
Ruth Massett, Asst. Instructor

Confirmation moved by Councilmember Keyes, seconded by Councilmember Frazier and unanimously approved on roll call.

* * *

Councilmember Fecanin moved the following Resolution, seconded by Councilmember Frazier 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 Section 7B;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council will hold a closed meeting on Sept. 6, 2005 at 8:50 p.m. in Borough Hall Council Chambers to discuss personnel matters; and

BE IT FURTHER RESOLVED, that the outcome of this discussion will be disclosed to the public when there is no further need for confidentiality.

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Motion by Councilmember Bartlett to return to open session at 9:40 p.m., seconded by Councilmember Keyes and unanimously approved on roll call:

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As an added item to the agenda, Councilmember Frazier asked the Mayor to reassign Richard Minervini to the title of Fire Prevention Specialist/Fire Protection Inspector/Code Enforcement Officer. So ordered.

Mayor McPherson appointed Richard Minervini as Fire Prevention Specialist/Fire Protection Inspector/ Code Enforcement Officer, effective September 6, 2005, subject to

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NJDOP procedures and other pertinent Borough policies. Confirmation moved by Councilmember Frazier, seconded by Councilmember Keyes and unanimously approved on roll call.

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For **Ordinance on First Reading**, Councilmember Keyes moved AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE REGULATING THE EMPLOYMENT, TENURE AND DISCHARGE OF CERTAIN OFFICERS AND EMPLOYEES OF THE BOROUGH OF RUTHERFORD UNDER THE PROVISIONS OF THE CIVIL SERVICE ACT TITLE 11, NJ REV. STATUTES OF NJ #3078-05 ADOPTED MAY 24, 2005 be read by title only by the Clerk, seconded by Councilmember Bartlett with all members present voting aye. This would establish the 2005 salary of the Borough Administrator and to include a stipend for his role as Insurance Commissioner.

The Clerk read the ordinance by title only.

Councilmember Keyes moved AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE REGULATING THE EMPLOYMENT, TENURE AND DISCHARGE OF CERTAIN OFFICERS AND EMPLOYEES OF THE BOROUGH OF RUTHERFORD UNDER THE PROVISIONS OF THE CIVIL SERVICE ACT TITLE 11, NJ REV. STATUTES OF NJ #3078-05 ADOPTED MAY 24, 2005 be passed on first reading and advertised according to law, seconded by Councilmember Bartlett and unanimously approved on roll call.

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Councilmember Keyes moved approval for the Administrator, Mayor and Borough Clerk to sign the bargaining agreement with the Department Heads Union for a contract from 2004 - 2010, seconded by Councilmember Bartlett and unanimously approved on roll call.

For **Ordinance on First Reading**, Councilmember Keyes moved AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE REGULATING THE EMPLOYMENT, TENURE AND DISCHARGE OF CERTAIN OFFICERS AND EMPLOYEES OF THE BOROUGH OF RUTHERFORD UNDER THE PROVISIONS OF THE CIVIL SERVICE ACT TITLE 11, NJ REV. STATUTES OF NJ #3078-05 ADOPTED MAY 24, 2005 be read by title only by the Clerk, seconded by Councilmember Bartlett with all members present voting aye. This establishes salaries fro Department Heads from 2004 to 2010.

The Clerk read the ordinance by title only.

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Councilmember Keyes moved AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE REGULATING THE EMPLOYMENT, TENURE AND DISCHARGE OF CERTAIN OFFICERS AND EMPLOYEES OF THE BOROUGH OF RUTHERFORD UNDER THE PROVISIONS OF THE CIVIL SERVICE ACT TITLE 11, NJ REV. STATUTES OF NJ #3078-05 ADOPTED MAY 24, 2005 be passed on first reading and advertised according to law, seconded by Councilmember Bartlett and unanimously approved on roll call.

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Councilmember Bartlett moved to adjoin the meeting, seconded by Councilmember Keyes and unanimously approved on roll call. The meeting adjourned at 9:50 p.m.

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Borough Clerk