

June 23, 2008

**MINUTES**  
**BOROUGH OF NEW MILFORD**  
**7:00 PM OPEN SESSION**  
**CLOSED WORK SESSION immediately following**  
**Monday, April 14, 2008**

Councilman Arthur Zeilner	Present
Councilman Keith Bachmann	Present
Councilman Joseph Murray	Present (arrived 7:22)
Council President Tina DeLucia	Present
Councilwoman Ann Subrizi	Present
Councilman Michael Putrino	Present
Mayor Frank DeBari	Present

Also present: Mark Polito, CFO; Steven Wielkocz, Borough Auditor

Mayor DeBari read the Open Public Meeting and Mission Statements.

**Open Session:**

**Borough Auditor**

Borough Auditor, Steve Weilkocz explained his letter to the Mayor and Council dated March 26, 2008. Mr. Weilkocz stated the Council cannot have a second hearing on the cap rate ordinance they defeated at their last public meeting; the ordinance cannot be resurrected by law. He stated that the Borough is now in violation of the appropriation cap law. Mr. Weilkocz explained that the State is now aware and the Council must cut the budget by \$115,272 in order for the budget to be in compliance with the appropriation cap law.

He further stated that not passing the ordinance is going to create real fiscal problems this year and will have a domino effect in years to come. Mr. Weilkocz stated that if the Borough was faced with a shortfall and was forced to approve an emergency appropriation, as was necessary during the previous year, the state would be well within their rights to approve the emergency within the cap rather than outside the cap.

The Mayor asked when we would need to make this cut. Mr. Weilkocz responded that no changes can be made until after the public hearing on the introduced budget on May 28, 2008. At that time a resolution must be approved to amend and reduce said budget.

Councilwoman Subrizi asked, hypothetically, if the Borough had the ability to cut a \$230,000 buyout in half and pay the balance next year, would that put the budget inside the cap. Mr. Wielkocz responded that it would only result in pushing the problem off to next year.

Mr. Weilkocz stated this was his first experience where an index rate ordinance was introduced and wasn't approved. The Borough of New Milford has had difficulty for years getting the budget under the appropriation cap due to police retirements and buyouts. Mr. Weilkocz stated that the Borough has adopted the cap rate ordinance for the past 8-9 years, since the law went into effect.

Council President DeLucia asked what else, such as the cap bank, may be affected. Mr. Weilkotz responded that the Borough has no cap ban and that now the cap base rate for next year will be \$115,000 less than what it would have been had the ordinance been adopted.

Council President DeLucia asked the Auditor how this will affect the Borough's ability to get State Aid. Mr. Weilkotz stated he cannot speak for the State but it will certainly be part of the thought process.

Councilman Bachmann commented that it is rare that a matter would require four affirmative votes. Mr. Weilkotz stated that any financial matter would require four affirmative votes. Councilman Bachmann asked whose responsibility it was to inform the Council how important the fourth vote was. Mr. Weilkotz stated that he was present on the night the ordinance was introduced affirmatively with a 6-0 vote and that it is not his responsibility to tell anyone how to vote. Councilman Bachmann asked who we (the Borough) pay to tell us the answer to that question. Mr. Weilkotz responded that it was certainly not him. The Borough Clerk stated that the responsibility would probably fall to her and that had the question been asked, she would have confirmed the required vote, however the question was never asked.

Councilman Zeilner and Council President DeLucia stated the Council was advised and the responsibility does not fall on anyone but the members of the Council.

Councilman Bachmann stated that had he known the number of votes required he would have considered it when voting. He also stated that the Council had agreed to keep the introduced budget to actual expenditures for the previous year.

Mr. Weilkotz stated there was paperwork handed out at a previous budget meeting. Other than mandated or contractual obligations, all expenses the Council controls were \$44,000 less than last year's budget. Mr. Weilkotz stated the budget must be amended on May 28, 2008 to reduce by \$115,000 or more; he advised that based upon the amount of the cuts the Council may need another public hearing.

Councilwoman Subrizi asked if Governor Corzine were to restore the \$199,000 in State Aid, would that help. Mr. Weilkotz stated it does not affect the problem. He said that over expending the budget or willfully underfunding the budget is a crime. Councilwoman Subrizi questioned if the Borough's medical insurance budget was under funded is that a criminal act. Mr. Weilkotz stated if the Council knows it is under funded, it should be fixed prior to adopting the budget. The Administrator stated she pointed this out to the CFO, and he concurred.

The Administrator asked if the CFO could confirm if the sick-time bonus, under the police salaries, was included in the introduced budget. The CFO stated that he believed that the amount from the previous year's budget had been included but that he could not confirm it at this time.

Councilman Bachmann asked the CFO if he was aware of the 4 votes needed for the cap ordinance. Mr. Polito stated no; but it was partially his responsibility to inform the Council but he was not at the meeting. However, he did not feel it necessary because in past years the Council has always voted affirmatively for the ordinance. He asked, knowing the financial difficulties of the State why would the Council vote against the ordinance?

## **2008 Grant Opportunities, Capital Alternatives**

Marlene Casey, Capital Alternatives stated the State is currently taking back unused grants awarded in the last two years. The Borough has a grant from DOT, and if it isn't already out to bid, the Borough must do it quickly; if last year's award is not under contract by June 27, 2008 for Section 4 (Boulevard between Webster and Fulton), the State computer will cancel it and a new application for this year cannot be submitted. Ms. Casey requested she be copied on all correspondence to the Borough or its engineer regarding grants.

The Administrator stated Boswell sent a letter to the DOT stating the Borough has already completed the part already approved and asked them to change the scope. The Administrator will provide Ms. Casey with a copy of the letter.

Ms. Casey stated the two ways to revise is by changing the specifications and doing a change order before going out to bid or, ask to submit a revised application. Ms. Casey stated the Boulevard would be a hard sell this year and suggested that the Borough Consider the Boulevard with an intersecting street. She further stated that the competition for this money is going to be intense. The Council suggested Cedar or Hoffman. Ms. Casey explained that the DOT had more than one category and that the Borough can do more than one application. The Council discussed options for other DOT applications, suggesting Holland Avenue for the Discretionary category. Ms. Casey suggested the Safe Roads to Transit category for a park-and-ride at the end of Henley Avenue.

Ms. Casey suggested the Borough apply for additional funding from Bergen County Open Space for the outstanding balance on the farms and Carlton Place. Ms. Casey requested firm numbers on the shortfalls of the farms and Carlton Place because the Borough can only request 50% of the shortfall.

Councilwoman Subrizi stated, according to her notes the Borough has used \$62,000 from Open Space.

Ms. Casey discussed with the Council, town wide recreation improvements such as tennis courts at Sutton Place Park and a T-ball field at Warren Street Park; as one application to BCOS. All present in favor, none opposed. Ms. Casey will provide the Borough with resolutions for DOT and BCOS for the April 28, 2008 meeting.

### **COAH – Michael Kauker**

Michael Kauker updated the Council on the pending COAH application submitted in 2006. COAH took approximately one year to begin addressing 400-500 applications which were combined Round II and Round III applications. The Round II application included the Borough's prior obligation of 23 units at Gramercy and the redevelopment of United Water property. This housing plan submission was completed after litigation of the Carlton Place settlement, builder's remedy suit. The Borough's pending COAH applications protect it from any lawsuits. Mr. Kauker stated in January 2007 the appellate division of Superior Court called into question many of COAH's third round regulations. Mr. Kauker stated COAH took all of 2007 to respond. COAH revised third round regulations, completed on December 17, 2007; published as of January 22, 2008. In the interim, COAH kept all applications active and pending. COAH received from different municipalities varying degrees of additional information to keep applications up to date.

Mr. Kauker stated it is necessary to redo Round II and III applications in order to comply with the new regulations scheduled to be adopted June 2, 2008. He stated the new regulations, based upon growth share, only become a real obligation when growth occurs. Mr. Kauker stated municipalities are required to provide low income housing commensurate with residential and industrial growth.

Councilman Bachmann asked if new housing units are built, does that obligate the Borough to build more low or moderate housing units. Mr. Kauker stated for every five new housing units, there must be one low to moderate housing unit built. Councilman Bachmann stated that the Borough's COAH obligation has increased by eight on site units under the new regulations due to Gramercy.

Mr. Kauker stated the State wants to see on site units, no more RCA and no more money in lieu.

Councilman Bachmann asked how much the Borough spent on the last COAH application. Mr. Kauker stated approximately \$12,000 - \$15,000. Councilman Bachmann asked how much it will cost to revise; Mr. Kauker stated \$25,000, conservatively could be \$15,000. Councilman Bachmann asked what happens if the regulations are revised again through appeal, Mr. Kauker stated there is no guarantee. Councilman Bachmann stated every municipality fears it will be forced to have low income housing in an area it does not want because a builder sues the Borough for builder's remedy.

Mr. Kauker stated the builder can sue, if by October 1 the Borough does not have an updated COAH plan.

Mayor DeBari stated the Borough is protected at this time, the current application protects us.

Councilwoman Subrizi asked if Mr. Kauker will have time to do all the revisions necessary for the municipalities he represents. Mr. Kauker stated yes, there are only 6 he needs to revise, including New Milford. He stated the revision must go to the Planning Board for public review because it becomes part of the Master Plan.

Mr. Kauker will submit a draft of the Developer Fee Ordinance to the Council prior to June.

Mayor DeBari stated the Council needs to add \$25,000 to the budget to cover the revisions. Mr. Kauker stated due to the Master Plan element, it can be financed outside of the cap, over 3 years.

The Council discussed COAH obligations.

The Council instructed the Administrator to prepare a resolution to authorize Mr. Kauker to make revisions to the COAH obligations, for further discussion at the April 28<sup>th</sup> meeting.

### **Planning Board Recommendation on Height Ordinance**

The Administrator referenced a recommendation passed by the Planning Board and drafted by the Planner revising the height ordinance. The Administrator confirmed the Council received the draft from the Planner and asked if there were any objections to her putting it on the April 28 agenda for introduction.

Councilman Zeilner asked if the Borough could require the applicant/developer to reimburse the Borough for the Borough Engineer to certify building height.

The Administrator stated the Council must change the fee ordinance.

Council President DeLucia stated the Borough should move forward with requiring applicants/developers to pay an additional fee to have the Borough Engineer certify the building height at framing.

Councilman Zeilner stated builders/developers are using the electric/water of neighboring homes and homes across the street. Councilman Zeilner stated it is a safety issue and builders should be required through ordinance to have temporary electric through PSE&G.

### **Building Department Appointments**

The Administrator recommended Maria Sapuppo for the position of Zoning Officer. The Administrator recommended James Taormina for the position of part-time Construction Official. Councilman Bachmann asked if Ms. Sapuppo has a certificate; the Administrator stated yes.

### **Administrator**

The Administrator discussed the Tort Claim form, provided by the JIF, with the Council. The Council decided to authorize the Borough Attorney to review and revise the Tort Claim form.

The Administrator stated the VFW has requested August 20-August 23 for their annual carnival.

The Administrator stated the Scouts are going to clean up Warren Park, and stated that she has permission slips and hold-harmless agreements from all participants.

The Administrator stated she reviewed the Medical Insurance based upon Councilwoman Subrizi's comments and advised the CFO that the budgeted amount was not adequate.

The Administrator referenced a memo from her to the Police Chief; she gave the Council each a copy at the meeting. The memo stated that officers with comp time hours in excess of 480 hours, will be paid in a timely manner and will no longer be able to accumulate comp time; they must be paid overtime.

The Administrator referenced the Tax Anticipation Note, stating the Borough had contractual obligations to make significant payments, which could not be made because we have not collected enough taxes to date. Councilwoman Subrizi commented that the note is larger than usual and is being passed much earlier in the year.

The Administrator stated the website is ready to go live. Councilman Putrino and the Administrator stated numerous attempts have been made to contact the boards, committees and commissions with little to no response; to provide us with information for the website.

Mayor DeBari asked if the Borough will continue to fund websites of the boards, committees and commissions or will they be required to disband their current sites and join the Borough site. Councilman Putrino stated they would have to account for their website money in their budgets if they do not wish to join the Borough site.

## **Borough Attorney**

Mr. Moscaritolo stated that the Mansoldo deeds have been filed.

## **Council**

Council President DeLucia stated that the Girl Scout Awards and the Borough's Budget Hearing are both scheduled for Wednesday, May 28, 2008. Mayor DeBari suggested that the Mayor and Council meeting be changed to Thursday, May 29, 2008; no objections from Council. The Administrator stated that she will confirm the Auditor's availability. Council President DeLucia stated certificates from the Mayor and Council should be presented to the Girl Scouts, as they were last year. Councilman Putrino stated Kathy Carter, Borough Photographer, received a Bergen County commendation for the Historic Peetsburg project she completed for her Girl Scout Gold Award.

Councilman Zeilner had no further comments.

Councilman Bachmann had no further comments.

Councilwoman Subrizi requested a report on the fleet of Borough vehicles and the gas that is used. The Administrator stated each vehicle has a separate gas key, so the Borough may track the usage.

Councilwoman Subrizi questioned the difference between a tax board appeal and a tax court appeal. Mr. Moscaritolo explained if the property is over 1 million dollars, the owner can go directly to tax court, bypassing the tax board.

Councilman Murray had no comment.

Councilman Putrino stated he ordered signs for farm access at no cost to the Borough. Councilman Putrino stated the Fire Department applied for an equipment grant and a grant to redo the training area. He stated the capital budget still needs \$15,000 for SCBA bottles, pants and coats.

Council President DeLucia questioned if there was a grant to make the property at the end of Henley Avenue commuter parking. Mayor DeBari stated the Borough can lift the ban to allow parking on both sides of Henley Avenue. Mr. Moscaritolo stated if the parking ban is lifted, it should be parking by permit only for New Milford residents. On this same grant, Councilwoman Subrizi stated Harvard Street, Columbia Street and River Edge Avenue could be improved with sidewalks and curbs to allow commuters to walk to parking. She added that this would then fall within the parameters of the grant that Ms. Casey spoke about earlier.

Mayor DeBari had two meetings with the Board of Education and Mr. Bigger, Recreation Director, to discuss putting artificial turf at either Williams Field or the Middle School field. The first meeting was just discussion; the second was to have Boswell come in with two preliminary field layouts. The Borough would apply for the grants, either Bergen County Open Space or Green Acres, and would enter into an interlocal agreement with the Board of Education. The interlocal agreement would consist of Board of Education paying 25%, the Borough paying 25% and the balance would be from either Bergen County Open Space or Green Acres. Mayor DeBari stated Boswell would charge the Borough \$82,000 for the plans, construction detail and specifications. Boswell determined the Middle School would be best suited for the project. Mayor DeBari stated that there are two plans; the first option is \$1.8 million and \$2.2 million with lighting, the second

option is \$1.4 million and \$1.7 million without lighting. If the Borough and Board of Education agree to proceed, the project would begin in 2009.

Councilwoman Subrizi questioned if High School football would be played at the Middle School. Mayor DeBari responded that it would.

### COMMENTS FROM THE PUBLIC

Councilman Putrino made a motion to open the meeting to the public for discussion. Council President DeLucia seconded the motion. All present in favor, none opposed.

As there were no comments from the public, the meeting was closed on a motion from Councilman Zeilner. Council President DeLucia seconded the motion. All present in favor, none opposed.

### RESOLUTIONS:

2008:104 Closed Session

2008:105 Payment of Bills and Vouchers

**2008:106 Adopt Official Notice of Claim Form \*\*\*TABLED\*\*\***

2008:107 Approve Raffle License for Knights of Columbus Off-Premise 50/50

2008:108 Oppose S-770 and A-1645 Mandating the Appointment of a Qualified Purchasing Agent

2008:109 Appoint P/T Construction Official – James Taormina

2008:110 Appoint Zoning Officer – Maria Sapuppo

2008:112 Return Resolution – refund Limousine License fee to George Letsios

### VOTE ON RESOLUTIONS

Council President DeLucia made a motion to approve resolutions #2008:104, #2008:105, #2008:107 through #2008:110 and #2008:112. Councilman Bachmann seconded the motion. All present in favor, none opposed.

Resolution #2008:111 was pulled from the consent agenda for a separate vote. Council President DeLucia made a motion to approve resolution #2008:111. Councilman Murray seconded the motion. The motion passed on a roll call vote as follows:

For the motion: Zeilner, Bachmann, Murray, DeLucia, Putrino

Against the motion: Subrizi

### ADJOURNMENT

Councilwoman Subrizi made a motion to adjourn. Councilman Bachmann seconded the motion. All present in favor, none opposed. Time 10:55 PM

Respectfully submitted,



Colleen Naumov  
Deputy Borough Clerk