

MINUTES
BOROUGH OF NEW MILFORD
7:00 PM WORK SESSION
OPEN SESSION immediately following
7:45 PM PUBLIC MEETING
Monday, August 20, 2012



WORK SESSION:

Mayor Subrizi read the Open Public Meeting and Mission Statements.

Councilwoman Randi Duffie	Present
Councilman Austin Ashley	Absent (Excused - Vacation)
Councilman Diego Robalino	Present
Councilman Dominic Colucci	Present
Councilwoman Hedy Grant	Present
Council President Howard Berner	Present
Mayor Ann Subrizi	Present

Also Present: Mark Madaio, Borough Attorney (7:20 PM); Avis Bishop-Thompson; Christine Demiris, Administrator/ Clerk

Council President Berner made a motion to go into closed session. Councilman Robalino seconded the motion. All present in favor, none opposed.

CLOSED SESSION:

1. Collective Bargaining – PBA Memorandum of Agreement
2. Collective Bargaining Status – DPW, White Collar

At the conclusion of the closed session the meeting was reopened on a motion from Councilwoman Grant, seconded by Councilwoman Duffie. All present in favor, none opposed.

OPEN SESSION:

1. Crossing Guard Uniforms – Chief's Memo dated 7/27/12

The current uniforms are no longer compliant with the American National Institute Standards. Councilman Robalino suggested money received from the JIF Safety award could be used toward this expense. He was advised that it could. Councilwoman Grant asked when the standards had changed and what would happen if we did not comply. Councilwoman Duffie asked how much is left in the Safety award and questioned there not being any money in the Police Department budget that could be used. The Administrator said the Chief had requested money for this purpose in his budget but it was denied. It was suggested the matter be tabled until further information could be obtained.

Councilman Colucci stated this is a perfect use of the Safety award; the protection of Borough employees and children. He made a motion to utilize whatever is left in the grant for this purpose. Council President Berner seconded the motion. The motion passed on a roll call vote as follows:

For the motion: Duffie, Robalino, Colucci, Berner
Against the motion: Grant
Abstain: None

In casting her vote Councilwoman Grant said she would have liked to have had additional information prior to voting; with the additional information she would have probably voted yes.

2. Sr. Van Coordinator Memo

The Mayor reviewed the memo from the Senior Van Coordinator requesting a raise for the Sr. Van drivers who are currently compensated at a rate of \$12.08 per hour. He asked the Council to consider that school crossing guards are paid \$14.20 per hour. The Mayor said as the budget has been finalized for the year but perhaps a raise could be considered as of January 1st. Councilwoman Duffie said given the current budget and the continued discussions with the bargaining units a decision will need to wait. Councilman Colucci agreed. Council President Berner asked for an analysis of the cost impact should the rate be increased to \$14.20 per hour. Councilman Robalino said bus drivers for the BOE make \$14.60 for Step 1 and \$15.70 for Step 2. The Mayor said she would urge the finance committee to remember this conversation when discussing the budget for 2013. Councilwoman Duffie said she would like to put a word in for them for what they do and noted it would be far more expensive if we had to replace the Rent Leveling/Sr. Transportation Coordinator. She asked that the matter be revisited before January.

3. Eagle Scout Request

An Eagle Scout Candidate has proposed an improvement for the VFW Memorial. He is looking for permission. The Mayor confirmed he has permission from the VFW. The Council expressed unanimous support for the project. All local permit fees will be waived. The Administrator will notify the Building Department.

4. NMHS – Student Crossing Recommendation/Estimate

The Administrator reported that an estimate of \$8,280 has been obtained to complete the Borough's portion of the County recommendation. The County will remove the trees upon request of the Mayor and Council. Councilman Robalino said he believes it is a step in the right direction. Mayor Subrizi asked if it would qualify for Community Development funding. The Administrator responded it would not. Councilwoman Grant asked why the crossing is required if a police officer is there directing traffic. She was advised that the officer is only there in the morning. Council President Berner suggested there should be a crossing guard at the proposed crossing in addition to the police officer at the circle because people make illegal left turns into the school lot. Councilwoman Duffie questioned if we have exhausted every avenue and requested a traffic study from the Borough traffic officer. It was questioned as to whether or not the trees would fall under the Borough Shade Tree Ordinance. Michael Putrino, a member of the Shade Tree Commission, said they would not as they are County trees and thereby exempt from the ordinance. The Administrator will request review by the traffic officer.

5. Property Maintenance – Ordinance 12-1.1 – Proposed Amendment

Mr. Madaio recapped; tickets were issued, citing debris. The property owner was found guilty, appealed the decision to the County and the decision was overturned. The ordinance needs to be clarified as to the definition of debris. Mr. Madaio will review the existing property maintenance ordinance with regard to that definition, in addition to reviewing the remainder of the ordinance. Mayor Subrizi suggested a committee to work on the ordinance. Mr. Madaio will circulate a first draft for the Council to review. The September 10th meeting was set as the tentative date for the draft; if a committee is required it can be discussed at that time.

6. LOSAP Surrender Fees – Request for Reimbursement

The Administrator briefed the Council. At the time the LOSAP funds were transferred from VALIC to Lincoln Financial, some of the members were charged surrender fees. The fees varied between members and some were not charged at all. The Fire Department asked to have the surrender fees reimbursed to them by the Borough. The entire reimbursement request totals just over \$2,000. Angelo DeCarlo, representing the Fire Department, said they could find nothing in the Borough's agreement with VALIC to support the fees; the only explanation they could come up with was that it had to do with how the funds were invested. Council President Berner said some mutual funds have upfront fees, others have them behind. The Administrator will continue to pursue it with VALIC for an explanation.

7. Fire Co. #2 – Firehouse Committee

Councilman Colucci commented the Committee would be for both Firehouse #1 and #2 as expansions of both firehouses will be necessary. Councilman Colucci suggested Councilwoman Duffie as a member due to her longevity on the Council. The preference is not to include anyone up for reelection as the discussion will continue on into next year. The Committee will consist of two Council members, two Fire Department members and possibly someone from the public if the Borough Attorney confirms that will be acceptable. Councilman Colucci said he knows of a member of the public who is very interested in serving. Councilwoman Duffie said the member of the public should not be handpicked; it should be open to everyone. Mayor Subrizi said anyone interested in serving should send in a letter of interest. Mr. Madaio said the nature of the Committee is advisory; it is not a voting committee, therefore anyone can serve on it including a member of the public. Mayor Subrizi said the goals of the Committee should be defined. Mr. DeCarlo said having a member of the public will give credibility to the recommendation. He said the Committee will be advisory, like a steering committee, to present the needs of the Fire Department and the community to the Mayor and Council. The Council agreed the Committee should include two members of the public. Mr. DeCarlo will draft a mission statement which will be posted on the website to recruit volunteers.

The Mayor said item eight, the Rezoning Study, will be discussed downstairs. She said it will be discussed following the Bergen County Open Space Hearing and the meeting will then be opened to the public for comments on the study.

She noted resolution 2012:238 has been added to the agenda to ratify the PBA Memorandum of Understanding.

Council President Berner mentioned the receipt of an invitation from the Teaneck Creek Conservancy for a dinner on September 27th honoring Kathy Donovan among others. The invitation came from a member of the Historic New Bridge Landing Park Commission. Council President Berner asked if the Mayor and Council would be interested in becoming a patron to the Conservancy. There was no interest.

Councilwoman Duffie made a motion to reconvene in the Council Chambers. Councilman Robalino seconded the motion. All present in favor, none opposed.

PUBLIC SESSION: (Actual Start: 8:46 PM)

Mayor Subrizi called the meeting to order, asked for a moment of silent prayer and/or reflection, and led the flag salute. Mayor Subrizi read the Open Public Meeting Law and Mission Statements and pointed out the fire exits in the Council Chambers.

ROLL CALL:

Councilwoman Randi Duffie	Present
Councilman Austin Ashley	Absent (Excused - Vacation)
Councilman Diego Robalino	Present
Councilman Dominic Colucci	Present
Councilwoman Hedy Grant	Present
Council President Howard Berner	Present
Mayor Ann Subrizi	Present

Also Present: Mark Madaio, Borough Attorney; Christine Demiris, Administrator/ Clerk

Councilman Robalino made a motion to approve the March 19, 2012 and April 2, 2012 Special Session minutes, the March 26, 2012 Work/Public Session minutes, and the April 9, 2012 Work Session minutes. Councilman Colucci seconded the motion. All present in favor, none opposed.

**PUBLIC HEARING: BERGEN COUNTY OPEN SPACE – MULTI-PARK PROJECT
BABE RUTH REHAB & KENNEDY FIELD REHAB – FINAL PHASE**

Councilwoman Grant made a motion to open to the public for comment on this application. Council President Berner seconded the motion. All present in favor, none opposed.

The record reflects no member of the public wished to comment on the application.

Council President Berner made a motion to close the meeting to the public. Councilwoman Grant seconded the motion. All present in favor, none opposed.

OLD BUSINESS:

ADOPT ORDINANCE 2012:13

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 10-7 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF NEW MILFORD ENTITLED "CERTIFICATE OF OCCUPANCY FOR RESALE OF HOMES" TO ENSURE PROPERTY DOES NOT HAVE ILLEGAL SUMP PUMPS OR ILLEGAL CONNECTIONS TO THE SANITARY SEWER SYSTEM

Councilwoman Duffie made a motion to open to the public for comment on the adoption of this ordinance. Councilman Colucci seconded the motion. All present in favor, none opposed.

John Polbos, 633 Fernery Drive. Mr. Polbos asked why residents can't put the stormwater into the street. Mayor Subrizi explained stormwater management rules prohibit this practice. Mr. Polbos stated the sump pump was connected to the sanitary sewer when he bought his home.

Terry Limaxes, 584 Columbia Street. Ms. Limaxes said her sump pump was connected to the sanitary sewer when she bought her home. She asked if existing connections would be "grandfathered". Mayor Subrizi said it has always been illegal; the BCUA has mandated that it be corrected and no one will be "grandfathered".

Mr. Polbos asked how much the town would save if the water is not treated. He was advised that it would not be possible to put a figure on it without knowing how much water is being treated currently that should not be.

Angelo DeCarlo, 783 Princeton Street. Mr. DeCarlo noted that some municipalities have dual systems – storm and sewer – and asked if they are being penalized or if additional fees are being imposed on those municipalities by the BCUA. He asked if New Milford has challenged the BCUA on this point. The Mayor said this was the first she had heard of municipalities with dual systems. The Administrator will follow-up with the BCUA.

Nick D'Amelio, 349 Trench Drive. Mr. D'Amelio asked if residents could connect to a storm drain if they exist within the vicinity of the property. He was advised that this is the preferred way to remedy an illegal hook-up.

Jerry McClane, 162 Lenox Avenue. Mr. McClane referenced the amnesty period and asked what will happen after December 31st. He was advised that after December 31st homeowner's with a connection to the sanitary sewer will no longer be in compliance and that an inspection will take place prior to the sale of the home and a certificate of occupancy will not be issued. Mr. McClane asked where the date of December 31st came from and asked if it would be extended. He was advised the date was set by the BCUA.

John Rutledge, 335 River Road. Mr. Rutledge asked if the town had an estimate of how many homes do not currently comply. He was advised the town does not have an estimate. He asked if there is no immediate follow-up by the town or the county what incentive is there for homeowners to comply. The Mayor said the BCUA is requiring a 30% reduction and if that is achieved it would be an approximate savings of \$375,000 to the town.

Mr. D'Amelio asked how the BCUA can differentiate between the additional inflow from residents and the infiltration of the fifty year old sanitary sewer lines. It was acknowledged that these two cannot be quantified separately but the mandate for homeowners to comply has been set.

Joanne Prisendorf, 317 River Road. Ms. Prisendorf referenced the ongoing reassessment and asked if it would be possible for these inspectors to inspect for compliance. She was advised that it would not be possible as an inside inspection is not a requirement of the reassessment.

Mr. Polbos commented he would like the town to pass an ordinance that if a \$375,000 savings is realized the savings would be passed down through a reduction in taxes. He was assured that any savings would reduce the amount to be raised by taxation.

As there was no further comment, Councilman Colucci made a motion to close to the public. Council President Berner seconded the motion. The motion passed on a roll call vote. All present in favor, none opposed.

Councilwoman Grant made a motion to adopt this ordinance on its second and final reading. Councilman Robalino seconded the motion. The motion passed on a roll call vote. All present in favor, none opposed.

NEW BUSINESS:

INTRODUCE ORDINANCE 2012:14

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 10-1 OF THE REVISED GENERAL CODE OF BOROUGH OF NEW MILFORD ENTITLED "UNIFORM CONSTRUCTION CODE" TO PROVIDE FOR A REVIEW FEE FOR APPLICATIONS

Councilman Colucci made a motion to introduce and approve this ordinance on its first reading. Council President Berner seconded the motion. The motion passed on a roll call vote. All present in favor, none opposed.

The ordinance will be published in the Record and a public hearing will be held on September 24, 2012 at 7:45 PM.

OPEN SESSION: (continued from Work Session)

8. Rezoning Study – Next Steps

Council President Berner stepped down from the dais as he had recused himself from discussion of the water company property.

The Mayor said she is aware that some people believe the Council is going to vote to rezone the property tonight. She said in order to make a decision on what should take place the Council needs to have the study in hand. She said the application before the Zoning Board proposes housing with a COAH component, a supermarket, a bank, etc. The property is zoned Residential A, which allows for single-family housing. She said if a decision was made not to rezone it would not guarantee that something other than single-family housing will not be built in that location. She said the applicant filed an application with the Building Department which was rejected by the Zoning Officer and sent the Zoning Board of Adjustment. The Mayor and Council do not have to rezone the property, but there is an option to do so. She said this is not a political decision; her only interest is to guide the governing body to the best decision for all of New Milford and COAH is a piece of that. She said she feels there is a lot of misinformation. She acknowledged the group SOD and said she applauds their efforts. She said they are civically remarkable and she hopes they continue to exhibit zeal but that everyone must understand the Borough is bound by municipal land use law and Superior Court rules on COAH. She then asked for the Council's thoughts on the study.

Councilwoman Grant said she thought Mr. Grygiel did an excellent job but there would be only two reasons to consider rezoning: one, if an agreement could be reached with the developer that everyone could agree on and the applicant withdrew their application or two, to have something in place should the application be denied by the Zoning Board of Adjustment.

Councilman Colucci said there would first need to be a decision as to where the COAH obligation could be relocated.

Councilman Robalino referenced Councilwoman Grant's comment and asked where there may be room for movement on the applicant's part.

The Mayor said she contacted the Governor's office regarding the status of COAH; it is in flux there are currently no clear guidelines.

Councilwoman Grant said she was in no way suggesting a negotiation with Hekemian. She said when a public utility wants to sell land they have an obligation to offer it to the municipality. She asked when that happened and stated it is the law.

Mayor Subrizi said it was a conversation over years during the period of remediation.

Councilman Robalino said he thinks rezoning is viable otherwise the Borough could end up with a monstrosity that is out of the Borough's control.

Councilwoman Grant said if the Zoning Board approves the application the objectors may file an appeal with the Mayor and Council. If they deny the application then the applicant will file an appeal in Superior Court. The Judge is not going to say put more apartments.

Mr. Madaio said the Judge will only consider the application that was before the Board of Adjustment. In the event of a Board of Adjustment denial and an appeal to the Superior Court, the Judge would merely consider the application that was just presented, not something in addition to that. Mr. Madaio continued, the question before the Council is if there is a will or desire to rezone to accomplish some purpose or is the decision not to rezone.

Councilwoman Duffie asked if the Mayor and Council can move the COAH obligation to another location. Mr. Madaio said they could. She asked if the Mayor and Council address the COAH issue and the zoning application continues would the applicant have to comply with the new COAH requirements. Mr. Madaio said it works the other way, if you choose to rezone that inevitably brings up whether it impacts the Borough's COAH location and obligation. Then the question is do we rezone in a manner that leaves it there, do we put it somewhere else and if we do, where and how will we create that realistic opportunity. He said this would be the planner's work. Councilwoman Duffie said Mr. Madaio is saying they have to be looked at together; she is asking if the Mayor and Council couldn't just work on the COAH issue independently. Mr. Madaio said they could if they choose to. Councilwoman Duffie asked if the Council could ask the Planning Board to review this now. He said they could but he did not see the reason to do so unless there was a decision to rezone that would make it impossible to keep the COAH obligation here.

Mr. Madaio additionally addressed the "time of decision rule". He said whether or not this rule applies to Master Plans and Housing Elements is a much different question than the absolute fact that it applies to Zoning Ordinances. He is not sure it has ever been addressed with regard to its applicability to Master Plans.

Mr. Madaio said if the Council chooses to rezone than they must consider the COAH obligations now. If they do not choose to rezone there is no need to do anything with COAH; there is no immediate benefit to move it if you do not rezone. He said the fundamental threshold question for the Council is do you want to rezone. Do you rezone in order to make a zoning ordinance that might be more desirable to the applicant to switch to something else? Do you rezone in order to secure some better zoning for down the road or ultimately because you think there should be a better or different zoning?

Councilwoman Duffie asked what would happen if funding to purchase the property became available. Mr. Madaio said the Borough could attempt to purchase the property. She asked how a rezone and a reassignment of the COAH affect that. Mr. Madaio said if the Council was interested in discussing that in a meaningful way he would suggest they do with the COAH expert present, Mr. Grygiel. But his sense of it is the Borough would have to effectuate a purchase in a way that does not interfere with the parties contractually.

Councilwoman Duffie asked if a decision was made to rezone and the applicant decides they are interested, would that be a motivation to rezone, to hope that the developer would change their mind. Mr. Madaio said the applicant may reason that they have an application before the Board which is for a lot, it may be better to take the option for a permitted use with just an application to the Planning Board for site plan approval.

Councilwoman Duffie said she asked repeatedly the previous year when the Council would discuss the property and the Borough Attorney kept responding that the Mayor and Council could not discuss the property because it was under contract. Mr. Madaio said the Mayor and Council could not talk about interfering with the existing contracts; the Council always had the right to talk about zoning. Councilwoman Duffie asked how this would not be interfering. Mr. Madaio said because the Council is not divesting the applicant of any rights they currently have.

Mr. Madaio said again, the fundamental question is if there is a desire on the part of the Mayor and Council to rezone.

Councilwoman Grant said she feels as though the Council is approaching it backwards. The fundamental question is what the Mayor and Council wants and if we need to rezone to achieve it. The rezoning is the means to the end; the Council needs to decide what the end is and then figure out how to get to that end.

Mr. Madaio said it is already zoned residential; it would be impossible to rezone it for a less intense use than residential so the question is if there a will to rezone it for a more intense use. He said the Council could certainly approach it from a position of what the Council wants. Councilwoman Grant said she does not have a specific view but she is concerned about overdevelopment; she would like to see something far less intrusive that would fit with the neighborhood. She said she would like for the Borough to purchase the property if possible and she would like to review if there is a possibility to do that. She said if there is something that

was not done properly at the time of sale that could be undone, perhaps the Borough could purchase the property and then figure out what the Council wants.

Mr. Madaio asked if there is anyone on the Council that would like to advance the discussion of rezoning at this time or is the issue closed.

The Mayor clarified, does the Council wish to continue to consider rezoning or is the discussion off the table.

Councilwoman Grant said in light of the recusal of Council President Berner and Councilman Ashley it leaves an enormous decision to four members. She suggested the discussion should be held until January. Mayor Subrizi said if January comes and both of them remain on the Council the problem has not been solved. She asked if there was any legal issue in allowing it to be decided by four rather than six. Mr. Madaio said there is no legal issue; it does not require a super majority. Councilwoman Grant said while there is no legal issue there may be an ethical or moral problem.

Councilwoman Duffie said she would like to hear from the Planner again on COAH. She would need to know, before even considering to rezone, why she is doing it. Is it to park the COAH somewhere else? Is it to make a big, ugly application smaller? She said she would like to hear from the public.

The Mayor said she the Council needs more information on COAH before there could ever be a vote to rezone.

Councilman Robalino said we need to know to where the COAH obligation can be relocated if it is moved from this location.

Mr. Madaio said that only becomes relevant if you choose to rezone.

COMMENTS FROM THE PUBLIC

Councilwoman Grant made a motion to open the meeting to the public on any and all matters. Councilman Colucci seconded the motion. All present in favor, none opposed.

Bonnie Lazarus, 218 Cedar Road. Ms. Lazarus asked if either the Brookchester or Dorchester apartments would qualify for the COAH obligation. She was advised that they would not. No construction prior to 1988 would qualify.

Lori Barton, 399 Roslyn Avenue. Ms. Barton said asked if pre-existing construction could be remediated. She was advised that it could be with the approval of the owner. Ms. Barton asked if the Environmental Commission has been consulted on the rezoning study. Councilwoman Grant advised the Environmental Commission has filed a position paper with the Zoning Board of Adjustment with regard to the proposed development. They are not involved with the rezoning. Ms. Barton read from an environmental article which touted open space as a good investment. Ms. Barton said she does not believe compromise with the developer is an option; the property must be kept as open space.

Kenneth Kahn, 639 Princeton and Colleen Ryan, 568 Princeton came forward to address the Council. They distributed photos taken of 636 Princeton and said the property looks like a chop shop or car repair facility. They complained about issues with the driveway, the fence, yard sales, and acetylene tanks in the garage. Councilman Colucci indicated an awareness of the situation and said the owners of 636 Princeton have permits for the fence and driveway. The Police Department has run the license plates and the cars are registered. He acknowledged that if they were running a business there would be an issue but the Zoning Officer has made multiple visits both announced and unannounced and has been unable to substantiate that claim. Council President Berner said the series of pictures seems to indicate someone is writing a check. He asked if the Police Department could run the plate, locate the owner and ask if they paid for the work. The Administrator will confirm the fence was inspected and approved and will coordinate with all involved departments to pursue the matter.

John DeSantis, 190 Powell Drive. Mr. DeSantis said Mr. Madaio had said the water company property could not be zoned for a less intense use. Mr. Madaio said no less intense use exists. Mr. DeSantis said a park would be less intense. Mr. Madaio said that would be the equivalent of inverse condemnation; single family residential is the least intense use. Councilwoman Grant asked if rezoning would not have an effect on the pending application why can't it be rezoned to open space. Mr. Madaio said you still can't render private property useless. Mr. DeSantis asked if the Council chooses to rezones and rezones for mixed use would that not allow for a developer to just come in and do what they want without public input. He was advised that any application would still go to the Planning Board for site plan review and Planning Board meetings are open to the public. Mr. DeSantis asked if the Mayor had reached out to Mr. Brunetti directly or if she had gone through the rental office. Mayor Subrizi responded she has left messages with Mr. Brunetti's office requesting a meeting which would include discussions on rehabbing some units for COAH. Mr. DeSantis said there had been a bill before the Senate requesting that older apartments be allowed. He asked if anyone on the Council was familiar with this or similar bills and could they lobby to have them reintroduced. Mayor Subrizi said she would attempt to find the bill Mr. DeSantis referenced. Mr. DeSantis said the Council as a group needs to come to consensus on that they would like to see on the property to have a goal to work toward; right now the public does not know where the governing body stands. Mayor Subrizi said that since the process began she has endeavored to make sure the process has been open to the public. Mr. DeSantis said the public does not know what the Mayor and Council want to see on that property. Mr. DeSantis said people at SWAN have the means and knowledge to raise funds if the Council comes to a decision on what they want; SWAN will work to help the town if the desire is to preserve it as open space. Councilman Robalino said what Mr. DeSantis is saying is technically hearsay; the Council would need to hear it from these organizations. Mr. DeSantis asked if he would be authorized to organize a meeting. Councilman Robalino said, unless anyone objects, he would welcome the conversation.

Michael Putrino, 494 James. Mr. Putrino said he thought it was interesting that the Mayor had said COAH is not political. Mayor Subrizi said the issue of what happens at the property is not political. Mr. Putrino said he has heard the former Council blamed for parking the COAH obligation on this property. Mayor Subrizi said comments in the Patch may or may not reflect what has been said; the articles are factual. Mayor Subrizi said she is not assessing blame. Mr. Putrino said he wanted to address the first right of refusal. He said the January 30th Mayor's message said a decision was made not to pursue the purchase of the property to not burden the taxpayers. Mr. Putrino said that would mean that somewhere between January 5th, the reorganization, and January 30th a decision was made not to purchase the property. The Mayor said she did not have the timeline readily available but there were many discussions about whether or not the Borough should purchase the

property, when it was officially decided she was not sure but the Council discussed it many times during which they attempted to estimate the cost to the taxpayers and there was a point in time where the Council said we cannot afford this. Mayor Subrizi said there was a right of first refusal that was given and unless the Borough said they wished to buy it; there was a timeline – she said she does not recall when it was given to the Council or when it expired. Mr. Putrino said that is what bothers him about this; it might be United Water's error that may be in the Borough's favor that we do not have some documented record of them coming to the Council and the Council actually making a decision. He asked if the Council voted on it. The Mayor said the timeline will be researched for more clarity.

Sally Verdao, 21 South William Street, Bergenfield. Ms. Verdao asked about eminent domain. Mr. Madaio explained, to file a complaint for eminent domain and immediately possess the property the Borough would have to obtain an appraisal and post money, in the amount of the appraised value, in court. In the alternative, the Borough could file the complaint and wait for the Commissioners to set a value, but they could set it any number and the Borough would then be obligated to pay it. He said the Council discussed the possibility of working with an expert to pursue this avenue but that there would be significant financial impact to the Borough. Ms. Verdao asked what amount of money New Milford has deposited in the fund the Governor wants to take. She was advised there is a zero balance because there has been no new construction since the fee ordinance became law. Ms. Verdao referenced property previously purchased by the Borough and asked if it could be used to satisfy the COAH obligation. She was advised that any property purchased by the Borough with Open Space Trust money must remain passive. Ms. Verdao asked if the application before the Zoning Board will proceed regardless, why would the Council discuss rezoning.

Darlene Minko, 477 Marion Avenue. Ms. Minko said the Public Events Committee discussed the desire to have the 9/11 plaque lit. The Buildings and Grounds Supervisor obtained a quote for \$650 but it still has not been accomplished. Ms. Minko expressed concern it would not be completed by 9/11 and noted she found a solar light online for much less but she was advised it could be tripping hazard. Councilman Colucci will work with Ms. Minko to get it accomplished on time.

John D'Ambrosio, 482 Luhmann Drive. Mr. D'Ambrosio said the issue with the proposed development is flooding. He said the developer is using a 1985 flood map; the latest map is from 2005. Mr. D'Ambrosio sent a request to FEMA to inquire as to what map the developer should be using and the answer was the map from 2005. Mayor Subrizi said she has been working with the DEP and FEMA and has not heard of a 2005 map; she said she would discuss this with the Borough Engineer when the Planning Board next meets. Mr. D'Ambrosio stated the water after the 2007 storm was over the roof at the gauging station in New Milford. Mr. D'Ambrosio said the water level would cover $\frac{3}{4}$ of the site in question during a 100 year storm.

Terrence McMackin, Madison Avenue. Mr. McMackin asked if the Mayor and Council had not passed an ordinance prohibiting working on cars in driveways. He was advised that it was discussed but no ordinance was passed. Mr. McMackin said the home at 391 Madison was demolished while he was out of town – he said he has contacted the Building Department; trees have been removed and fill has been dumped, he is concerned there is encroachment on wetlands behind this property. The Administrator will follow up with the Building Department. Mr. McMackin commented on a problem with parking in front of D&R Autos – there is a trailer and a pick-up parked side by side; he questioned whether this would interfere with line of site. Mayor Subrizi said she has looked into this previously with the Chief. The Administrator will forward it to the Police Department for review. Mr. McMackin asked about Jay's Car Care and asked if nothing

can be done about it. Vehicles he complained about five and ten years ago are still parked there. Councilwoman Duffie thanked Mr. McMackin for raising the issue again; she said this is something she would like to see back on the Mayor and Council agenda.

Anna Leone, 505 Boulevard. Ms. Leone said she believed Councilwoman Grant stated it is a public law that a utility has to offer the Borough the option to purchase. Councilwoman Grant said it was her understanding but she has not actually seen it. Ms. Leone said there has to be some legal document from United Water to the town making that offer and if not, they went against the law and therefore the sale could be tossed out. She said there must also be something in writing from the town saying they are not interested. She said someone should go to United Water and ask them to produce the document that was sent to New Milford. Council President Berner said the attorney needs to review this statute if it exists. Ms. Leone said it is important for the Council to decide what they want prior to deciding on the rezoning. She said she does not think anyone, at this point in time, should try to contact Hekemian to make it more amenable because that could work against the town. She said rezoning the property sends a bad message to Hekemian.

John Rutledge, 335 River Road. Mr. Rutledge said Hekemian has a right to try to make a living but what has incensed the people of this town is the way he is going about it; using COAH to advance his cause when in reality COAH can be unhinged. He said there has been no comment from any of the experts on the negative impact to the town. Mr. Rutledge revisited comments made previously about the River keeper and SWAN speaking to the Mayor and Council President Berner and asked for definite commitment, with an open mind, to have this discussion.

Tony Bell, 305 River Road. Mr. Bell said he had heard others urging the Council to say what they would want for this property. He wants them to consider what they do not want it to be, primarily a flood exacerbator. Mr. Bell said he does not flood but lives around people who are not as fortunate. He said he hopes the Council will keep these people in mind.

Councilwoman Grant made motion to close the meeting to the public. Council President Berner seconded the motion. All present in favor, none opposed.

The Mayor said resolution 2012:238, ratifying the Memorandum of Agreement with the PBA, has been added to the consent agenda.

RESOLUTIONS:

- 2012:225 Closed Session
- 2012:226 Payment of Bills and Vouchers
- 2012:227 Approve sharing percentage with Borough of River Edge for fourth year of a five year agreement for the Complete Solid Waste Collection Service from 1-4 Family Residences
- 2012:228 Resolution Supporting the Historic New Bridge Landing Park Commission, in the Planning, Administration and Operation of the Steuben House and Revolutionary War Battleground at New Bridge Landing Borough of New Milford
- 2012:229 Approve Social Affairs Permit – Hovnanian School – September 23, 2012
- 2012:230 Approve Social Affairs Permit – Hovnanian School – December 31, 2012
- 2012:231 Approve Renewal of Membership in the Bergen County Municipal Joint Insurance Fund
- 2012:232 Authorize Escrow Refund – Denora – 473 Luhmann Drive in the amount of \$260.50
- 2012:233 Approve and Adopt Purchasing Procedures
- 2012:234 Authorize Emergency Appropriation in Accordance with N.J.S.A. 40A:4-46 – Legal

- 2012:235 Approve Social Affairs Permit – New Milford- Teaneck Lodge #2290 B.P.O.E. Elks – October 12, 2012
- 2012:236 Approve Raffle License 2012:17 - New Milford- Teaneck Lodge #2290 B.P.O.E. Elks
- 2012:237 Authorize Grant Agreement with NJDOT for Boulevard (Section 6) and Monmouth (Section 3)
- 2012:238 Approve Ratification of Agreement dated August 8, 2012 between the Borough of New Milford and PBA Local 83 regarding IA-2012-008

VOTE ON RESOLUTIONS

Councilman Robalino made a motion to approve the consent agenda, Resolutions 2012:225 through 2012:238. Councilman Colucci seconded the motion. All present in favor, none opposed.

ADMINISTRATOR:

The Administrator referenced a request from the Multiple Sclerosis Society to display a sign for the Great New Jersey Bike Ride. The Council agreed to allow the sign to be placed at the Borough Hall at the parking entrance.

The Administrator referenced a request from the Elks to waive the permit fee to repair the stucco exterior of their building. It was noted that permit fees are usually waived for non-profit organizations. The Council had no objection to waiving the fees.

The Administrator reported on the status of the FEMA acquisitions. The Borough is still waiting on the Project Agreement from Green Acres. Green Acres has requested revisions to the appraisals which have since been supplied.

The Administrator asked who among the Council would like a badge for the League of Municipalities Conference. Councilwoman Duffie opted out, all others requested badges.

COUNCIL COMMITTEE REPORTS:

Due to the late hour, Council Committee Reports were held for the next meeting.

Councilwoman Duffie reported she had received seven applications from people interested in serving on the Beautification Committee. She read the names and made a motion to approve the appointments: Steve Perrone, Roberta Whitley Gomez, Joyce DiBlasio, Jeffrey Brown, Iris Brown, Gerard Rasulo, and Thea Sirocchi. Councilwoman Grant seconded the motion. All present in favor, none opposed. Councilwoman Duffie will advise the Administrator of the date for the first meeting and appointment letters will be sent to the members.

ADJOURNMENT

Council President Berner made a motion to adjourn. Councilman Robalino seconded the motion. All present in favor, none opposed. Time 11:47 PM.

Respectfully submitted,
Christine Demiris, RMC
Borough Clerk

