

June 15, 2011
Executive Session

Minutes of **Executive Session** of a Regular meeting of the Board of Commissioners of the Town of West New York, in the County of Hudson, State of New Jersey, held in the Court Chambers, Municipal Building, on Wednesday, June 15, 2011.

Present: Commissioners Frias, Rodriguez, Wiley, Vargas and Mayor Roque
Absent: None
Also Present: Town Attorney Julio Morejon, Asst. Town Attorney Joseph DeMarco, Town Administrator Joseph McConnell, Town Clerk Carmela Riccio and Jordan Friedman, Esq. (Chasan, Leyner, Lamparello)

Motion was made by Comm. Rodriguez, seconded by Comm. Frias, to go into executive session at 8:45 p.m., was carried by the following vote:

YEAS - Commissioners Frias, Rodriguez, Wiley, Vargas and Mayor Roque
NAYS - None
ABSENT - None

Asst. Town Attorney Joseph DeMarco explained that there are several lawsuits challenging the abatements at Jacobs Ferry and that there is a proposed settlement. He inquired as to whether the governing body members wish to approve the settlement. Jordan Friedman, Esq., attorney representing the Town of WNY in this matter, explained that the lawsuit initiated in 2009 with owners of 36 units, but that now there are 45 units involved. Mr. DeMarco advised that tax abatements could be settled with payment of cash and credits. Mr. Friedman explained that there would be refunds given for years 2009-2011 term and credits given for years 2012-2013. He further advised that in year 2014, owners of units would be able to re-initiate claims against the Town and would have the right to again challenge the abatements. Mr. DeMarco advised that the value on which they are paying taxes is wrong and that owners could argue to receive additional credits going forward. He reminded the governing body that under the PILOT agreement, the Town retains 95% of taxes paid, but if PILOT agreement was not in existence, the Town would only receive 50%. Mr. Friedman advised that under the proposed settlement, there would potentially be \$428,000 to be refunded. Mayor Roque inquired as to whether the Town could give three (3) years instead of two (2) as he does not want to raise taxes next year. Mr. Friedman advised that the governing body can reject the proposed settlement or alter agreement to three (3) years credits and two (2) years cash refunds. However, the attorney for plaintiffs, Mr. Ellis, would have to discuss it with his clients. Mr. Friedman inquired as to whether he could "candidly speak" with plaintiffs' attorney regarding Town's current budget issues which is compelling the Town to request changing terms of agreement, which he feels the attorney will understand. Comm. Frias inquired as to how many more units would be involved in the future, to which Mr. Friedman responded "There is the potential for all of the owners to challenge the abatements and file a lawsuit." He advised that there is a Statute wherein abated property owners do not have the right to bring a tax appeal. Mr. Friedman expressed concern that Mr. Ellis will recruit additional property owners to join litigation. Asst. Town Attorney DeMarco also commented that in three (3) years, they will do it again. Mayor Roque inquired as to Mr. DeMarco's recommendation. Mr. DeMarco advised that the money is budgeted to settle the case and that settlement will affect revenue received next year. The Town can also bond for three (3) years and spend it and pay over time, but that it is not an easy choice. He advised that he has spoken to Brian O'Reilly, that the Town would get less money if the owners leave the abatement program and that right now the "abatement is a drain on their property". Comm. Wiley inquired as to whether this settlement pertains to the units closest to River Road as the units closer to water are worth more and are bigger. Mr.

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DeMarco replied "They are on the same schedule". Mr. Friedman advised that five (5) years ago, the Town attempted to raise assessments on the waterfront properties but that the State directed the Town to "roll it back". He further explained Chapter 101 procedure wherein Tax Assessor can change assessments under certain circumstances but that ratio cannot be less than 75%. He commented that the ratio is very low in West New York. Comm. Frias inquired as to whether ratio can be changed in three (3) years, to which Mr. DeMarco advised that the Town would have to do a re-evaluation and that the Town has not done one in decades. The Town would have to hire a company to obtain new assessed value, which could be a "Pandora's box". Discussion ensued about amount of Town services used by waterfront inhabitants. Mr. DeMarco suggested restructuring settlement and paying cash up front. Comm. Rodriguez inquired as to what would happen if the Town takes no action at this time. Comm. Wiley inquired "Can you prohibit them from coming back in three (3) years?" Mr. DeMarco responded "No". Discussion ensued about cost to reject agreement now, amount of legal fees expended to date and to be expended in the future. Town Attorney Morejon inquired about time constraint of litigation. Mr. Friedman explained that he would ask for a Case Management hearing with Judge Gallipoli, and that a motion for Summary Judgment was filed and was pending. Mr. Friedman advised that the economy created this issue and that Town must be prepared for full litigation. He stated "If we win battle, we might not win the war". He further advised that the upside of litigation is that the court might agree with us and worst-case scenario is Judge agrees with their legal argument and exposure is another \$400,000 plus. Comm. Frias inquired "Does issue stop at that point?" Mr. Friedman explained that the case is in Superior Court to seek an interpretation of the agreement but if it is decided in their favor, they will go to the Tax Court. Mr. Friedman acknowledged that the settlement on the table is a lot of money, but he preferred same over what result could be if it is decided in court. Mayor and Commissioners requested additional time to review all that was presented this evening and requested Mr. Friedman to research whether this issue has been encountered elsewhere i.e. in another State. Comm. Rodriguez expressed that this governing body has been in place for one (1) month, this is a huge issue and that a forensic audit is currently in process. She advised that a decision cannot be made tonight or within the next couple of months. Mr. DeMarco advised that the funds are there to settle this matter. Town Attorney Morejon recommended this matter be re-visited and discussed at the June 29th Commission Meeting during an Executive Session. Mr. Morejon inquired "What are we authorizing Jordan to do?" The governing body wishes him to "try to negotiate a better deal". Discussion ensued about status of remaining years on PILOT agreement. Mr. Friedman advised that the agreement is in the 12th or 13th year. The Mayor Roque advised Mr. Friedman to notify Mr. Ellis that we need more time as the Town is financially hurting.

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Motion was made by Comm. Frias, seconded by Comm. Rodriguez, to close executive session at 9:35 p.m., was carried by the following vote:

YEAS - Commissioners Frias, Rodriguez, Wiley, Vargas and Mayor Roque
NAYS - None
ABSENT - None

Commissioner FiorD'Aliza Frias

Commissioner Caridad Rodriguez

Commissioner Ruben Vargas

Commissioner Count J. Wiley

Mayor Felix E. Roque
Board of Commissioners

Attest: _____
Carmela Riccie, RMC Town Clerk