

June 29, 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 29, 2011.

Present: Commissioners Frias, Rodriguez, Vargas and Mayor Roque
Absent: Commissioner Wiley
Also Present: Town Attorney Julio Morejon, Asst. Town Attorney Joseph DeMarco (arrived at 9:10 p.m.), Town Administrator Joseph McConnell, Town Clerk Carmela Riccio, Jordan Friedman, Esq. (Chasan, Leyner, Lamparello) and Brian O'Reilly

Motion was made by Comm. Rodriguez, seconded by Comm. Vargas, to go into executive session at 8:36 p.m., was carried by the following vote:

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

Jordan Friedman, Esq. advised that he did additional research, which he previously conveyed to Town Attorney and Asst. Town Attorney. He advised governing body that he wished Mr. O'Reilly to make a presentation regarding scenarios which different impacts, as he is an abatement specialist.

Mr. O'Reilly advised that he is a licensed Tax Assessor since 1992, having been the Assessor in Jersey City for 4 years, Business Administrator for 6 years and then retiring last year. Mr. O'Reilly advised that he completed an overview of how the proposed settlement would affect the Town, showing a site plan chart, etc. He advised that there are 77 Albany style units in Jacobs Ferry complex. (Mr. O'Reilly presented a handout to all governing body members and Town Clerk Riccio, a copy of which is attached hereto and made a part of these Minutes.) Mr. O'Reilly explained in detail the contents of said handout. Mr. O'Reilly further explained that during the negotiation process, the Assessor valued all units the same, which he assessed at 100% of true value, no matter the location i.e. near water or near roadway. For example, the "Delaware units" which are 3 bedrooms 2 ½ bath duplexes pay the same amount of taxes as the Albany units, which are smaller in size. He advised that the owners of the Delaware units are paying close attention to the outcome of the Albany units' litigation. He further advised that there is 18 years remaining under the PILOT agreement and that the Town's share of taxes would be only 58% if PILOT agreement is terminated. He further advised that this is the first time he has ever been involved in this type issue, and recommended that the Town "fight at all costs to not cut assessments". Comm. Rodriguez requested a further explanation regarding revenue discount. Mr. O'Reilly explained that there are various ways to finance the settlement i.e. tax refunds, short term notes, etc. Comm. Frias inquired "Why not change to conventional base?" Mr. O'Reilly explained that there is too much to lose, that even though the taxpayers can opt out of PILOT agreement, the Town cannot. Mayor Roque commented that the Town would be in a better position if the real estate market improves. Mr. O'Reilly agreed. Mayor Roque inquired as to how he could prevent this situation from happening again. Mr. O'Reilly explained that sales price of future projects should be at 100% of value and other modifications should be made. Mr. O'Reilly indicated that the Town has addressed accelerated payments schedule in agreement and that if market had not changed, there would not have been a problem. Comm. Rodriguez inquired "What if real estate goes up? Then What?" Mr. O'Reilly responded "It wouldn't change anything as it is still based on original assessment of \$283,800." Town Administrator McConnell endorsed the settlement. Mayor requested Mr. O'Reilly's recommendation. Mr. O'Reilly advised that there is no easy way out of this and recommended offering to settle at the figures he explained previously and then attempting

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to make other changes in the agreement. Comm. Rodriguez inquired as to how long the Town had to make a decision. Jordan Friedman, Esq. advised that he has spoken to plaintiffs' attorney and that the idea of reducing the settlement amount was not acceptable. He further indicated that the attorney expects the Town to bond the settlement monies and pay first refund later this year. Mr. O'Reilly added that the only obligation the Town has at this time is for the years 2009 and 2010. Comm. Frias inquired as to what will happen in 2013. Mr. Friedman explained that it will not stop because assessment stays the same for all units and that another lawsuit will be filed for the same type of relief. He then explained the re-evaluation process. (Asst. Town Attorney DeMarco appeared at 9:10 p.m.) Mr. O'Reilly commented that the Commissioners have to feel comfortable with whatever decision they make. The Mayor expressed his concern about additional unit owners doing the same thing in the future. Mr. Friedman explained that the plaintiffs' attorney has indicated to him that if the Town does not settle, he would seek a class action status including additional owners. Discussion ensued between the Mayor and Commissioners about the Town's current financial problems and possibility of a State takeover. Town Administrator McConnell explained that the Town had been previously under State control. Mr. O'Reilly explained that if the Town is under State supervision, it cannot enter into new PILOT agreements. Mayor commented "This will never end". Asst. Town Attorney DeMarco advised that it will end after 17 years when the PILOT agreement ends, and that the Town is buying time by paying settlement. Mayor Roque expressed his desire to litigate the matter and not settle and inquired as to time frame. Mr. Friedman advised that trial would take place by end of this year. Comm. Rodriguez commented that the problem is that the owners cannot sell their units for the price they want. Mr. Friedman advised that the vast majority are original owners. Town Attorney Morejon commented that the law states that they do not have the right to file a tax appeal and their Plan B is to pull out of the PILOT agreement. Mr. O'Reilly advised that if they win the case, they will revert to conventional taxation. Mr. Friedman advised that by the end of this year, the Town must be ready to proceed to trial, that there will be an appeal filed by the unsuccessful party. Mayor Roque advised that there will be new things happening in West New York very soon and that the prior Administration left the present governing body in financial difficulty. Town Administrator McConnell advised that the Town has the cash portion to pay the settlement. Mr. DeMarco raised the issue that the plaintiffs' attorney works on a contingency basis and that if an appeal is required, the plaintiffs will have to contribute more money to pay his fee. Mr. Friedman inquired "Am I being instructed to litigate this matter?" Everyone agreed to litigation. Mr. Morejon inquired "Did the prior Administration offer anything?" Mr. O'Reilly responded "Yes, the same numbers." Mr. Morejon inquired "Who made up the offer?" Mr. Friedman advised that he did not attend any meetings, but former Town Attorney Horgan and Mr. O'Reilly did. He further advised that approximately December 2010, there was an understanding with the Administration that no matter the outcome of the Municipal Election in May 2011, this would not be an issue until after the election. Mr. O'Reilly advised that he and Mr. Horgan participated in the settlement negotiations. Mr. Friedman advised that plaintiffs' attorney attempted to take legal position that a settlement exists inasmuch as a draft settlement agreement had been prepared, but Mr. Friedman disagreed in that any settlement would require governing body approval. Discussion ensued regarding possibility of revising the terms of the agreement. Mr. O'Reilly said he would look into it but Mr. Friedman commented that he did not think that would make a difference. All Commissioners agreed that at this time, there is no possibility of settling this matter.

In the matter of Helio Construction vs. Town of WNY, Asst. Town Attorney DeMarco inquired about status of the Resolution regarding this matter. Mr. Morejon advised that it was tabled until the July 20, 2011 Commission Meeting. Mr. DeMarco advised that this project had been bid and that the Town had awarded a bid that it should not have awarded. Mr. Morejon advised that the Commissioners are leaning toward re-bidding this project. Mr. DeMarco advised that \$120,000 may be due Picerno Construction for equipment and materials even if the Town decides to re-bid. Mr. Morejon commented

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that if Picerno had not submitted an improper bid that would not have occurred. Mr. DeMarco explained the Judge's decision i.e. Picerno bid is out and the Town can award to the next lowest bidder, cancel project or re-bid project.

In the matter of John's Main Towing vs. Town of West New York, Town Attorney Morejon explained that the case was dismissed and that the Police Department will restructure the towing procedures for the future.

Motion was made by Comm. Rodriguez, seconded by Comm. Frias, to close executive session at 9:55 p.m., was carried by the following vote:

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

Commissioner FiorD'Aliza Frias

Commissioner Caridad Rodriguez

Commissioner Ruben Vargas

ABSENT

Commissioner Count J. Wiley

Mayor Felix E. Roque
Board of Commissioners

Attest: _____
Carmela Riccio, RMC Town Clerk