

**BOROUGH OF CALDWELL
COUNCIL BUSINESS/CONFERENCE MEETING
MINUTES – October 25, 2022**

The Council Business Meeting of the Borough Council of the Borough of Caldwell was called to order at 7:15 PM.

PRESENT: Mayor Kelley, Councilman Cole, Councilman Lace, Councilwoman DePalma-Iozzi, Councilwoman Buechner, and Council President Gates..

ALSO PRESENT: Deputy Clerk Kim Conlon, Deputy Clerk, Brittany Heun Borough Administrator Tom Banker, and Borough Attorney Mary Kate Serratelli

ABSENT: Councilman Alonso.

STATEMENT OF COMPLIANCE

Adequate notice of this Council Business/Conference Meeting was given on January 20, 2022. Notice was posted on the bulletin board of the first floor of Borough Hall, One Provost Square, Caldwell, New Jersey. Official newspapers of the Borough were notified of this meeting by mail. Notice was posted and all persons requesting notice were sent the same.

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

October 11, 2022

A motion to approve the minutes was made by Councilman Lace and seconded by Councilwoman Buechner. Upon a roll call vote, all members present voted in the affirmative. Minutes approved 10/25/2022.

EXECUTIVE SESSION

Closed Session

BE IT HEREBY RESOLVED in accordance with the provisions of N.J.S.A. 10:12 and 13, the public shall be excluded from the Executive Session of the Governing Body which is being held for the discussion of the following subject matters: 1. Pending or anticipated litigation or contract negotiation; 2. Personnel matters; 3. This Executive Session shall continue for an indefinite period of time and upon termination of the Executive Session, the Governing Body may choose to resume the public portion of the meeting. The discussion, which shall be conducted in closed session, shall be disclosed upon termination of litigation or contractual matter, upon resolution of the personnel matter with consent of said person or persons and as provided by N.J.S.A. 4-12 but in no case later than two (2) years from this date. These minutes shall be available as soon as the matter is resolved or not later than two years hence.

The Mayor reported to the public that the Governing Body would be going into Executive Session for a few minutes and would be returning to vote on legislation.

Councilwoman Buechner made a motion for the Governing Body to go into Executive Session, seconded by Council President Gates. Upon a voice vote, all Council Members voted in the affirmative. The Council left the Public Meeting and entered into Executive Session at 7:18pm.

A motion to close the executive portion and return to public session was made by Councilwoman Depalma-Iozzi and seconded by Councilman Cole. Upon a voice vote, all voted in the affirmative. The Public meeting resumed at 7:39pm.

REPORT OF BOROUGH ADMINISTRATOR

Thomas Banker

Mr. Banker gave an update on the projects listed below.

1. 24 Smull Avenue Adaptive Reuse for Health Department.
 - a. *Fully operational, including the Food Pantry.*
(Councilman Cole commented that the Borough Food Pantry will be hosting a Thanksgiving Turkey Drive on Saturday, November 19th).
2. Temporary Trailer Installation.
 - a. *Virtually Complete. Waiting for the installation of electric meters.*
3. 14 Park Ave Rehabilitation.
 - a. *Renovation process underway. The goal is for a move-in date in the first quarter of 2023.*
4. Community Center Reconstruction.
 - a. *Selective Interior Demo at this time but the remainder of the work will start when operations for Borough Hall are moved to the temporary trailers.*
5. Municipal Building Construction.
 - a. *Work will commence after operations for Borough Hall are moved to the temporary trailers.*
 - b. *The Library has successfully moved their collection of books to be provided in the temporary trailers. All other items will be placed in temporary storage.*
6. Water Distribution; Storm Sewer Collection and Road Projects.
 - a. *100% of all substandard water piping in town either has been replaced or will be by the end of 2023.*
(Councilman Cole inquired about the status of roadwork for Personette Street. Mr. Banker replied that the plans were just approved by the State offices. There may not be enough time to start the project this year before the asphalt plants close for the year, but the plan is to bid for the project so that everything is ready for 2023.

7. Stormwater Management Study.
 - a. *A presentation by John Dening of Mott MacDonald is planned for the November 1, 2022 Meeting.*
8. Wastewater Treatment Plant Projects.
 - a. *Still in litigation with West Caldwell and Roseland regarding sewer bills. Expecting a new Judge to oversee the legal proceedings.*
9. Property Acquisitions.
 - a. *Second Reading for the purchase of 22 Smull Avenue is scheduled for the November 1, 2022 Meeting.*
 - b. *A proposal was made for purchase of property located within the boundaries of Caldwell University.*
10. Public Parking Plan.
 - a. *An Enforcement Officer for Parking has been hired by the Borough.*
 - b. *Should be a presentation on the new parking plan at the November 15, 2022 Meeting.*
(Mr. Banker stated that there should also be a second presentation for the new Borough Hall Building at the November 15, 2022 Meeting as well).

A discussion ensued regarding the parking lot on Roseland Avenue. Mr. Banker reported that the Borough had done the preliminary work already and that a contractor had been commissioned to pave the lot. He assured the Governing Body that the public would be informed when parking spots would be available in the lot.

Councilman Lace inquired about a flooding issue on Cleveland Road and Hanlon Road that was brought up previously by a resident during a prior Council Meeting. Mr. Banker stated that the Borough Engineer, Glenn Beckmeyer, would be asked to attend the next meeting, scheduled for November 1, 2022, to address any questions on that issue.

Mayor Kelley made several announcements to the Public:

1. Mayor Kelley read excerpts from a Sewer Report Letter that he had provided, which had been mailed to Caldwell Residents. The letter is also posted on the Borough Website at Caldwell-nj.com and provided in the Borough of Caldwell Newsletter. **(see Attachment A to Minutes).**
2. Mayor Kelley read excerpts from the "Letter from Mayor Kelley" that was mailed to Caldwell Residents. The letter is also posted on the Borough Website at Caldwell-nj.com and provided in the Borough of Caldwell Newsletter. **(see Attachment B to Minutes).**
3. Mayor Kelley stated that once the new Borough Hall Building Project is completed, there will be 300 off-site parking spaces provided on Borough Property.
4. Mayor Kelley commented on the 2022 Budget that was passed at the October 11, 2022 Meeting. There were three items that mandated a increase in the tax levy for the Borough of Caldwell:
 - a. *There were no revenues from 2022 from the Caldwell Community Center. In 2021, there had been a revenue total of \$228,000.*
 - b. *In 2021, the State of New Jersey had allowed municipalities to spread some of their revenue shortfalls over five years, due to COVID, using a "Special Emergency Appropriation". Caldwell's shortfalls from COVID resulted in an annual payment of \$153,000 for years 2022-2026*
 - c. *Litigation issues over sewer payments with West Caldwell and Roseland resulted in the Borough not being able to strike their tax rate until November. Therefore, the Borough was unable to continue the use of an accelerated tax sale mechanism, which negatively impacted our budget, specifically the "reserve for uncollected taxes", for the year it is stopped, which amounted to a shortfall of \$96,000 in 2022.*

OPEN PUBLIC COMMENTS ON RESOLUTIONS OR ANY TOPIC

Stephen Modica, 153 Westville Avenue, commended the library staff for working diligently to relocate all their books and materials to the temporary trailers. With regard to the construction for the new Borough Hall, he asked the Governing Body to consider using graphic banners to block off the site instead of customary construction fencing so that it would be more aesthetically pleasing to the public.

Mayor Kelley stated that the dividers to be used during construction will provide images of the new building. Mr. Banker reported that the library has been 95% moved either into the temporary trailers or in the storage facility in Montville.

Matthew Fox, 6 Lockward Road, expressed his opinion that the public is not being included in the decision making on these large projects and that demolition of the current Borough Hall and Library will take place even with an upcoming election.

Nick Correale, 27 Westville Avenue, stated that the presentation on the Caldwell Community Center Plans that was provided at a previous Council Meeting did not include any information of consequence or any communication with regard to costs. He asked if there was any time in which the Caldwell Community Center was ever profitable? He also asked the Governing Body why they would be pursuing purchasing property from Caldwell University when there are many projects already going on in town?

Council President Gates and Mayor Kelley stated that the property at Caldwell University will provide an opportunity to remedy stormwater issues and will enhance the Borough of Caldwell.

Mayor Kelley reported that the Governing Body did not intend to make the Community Center a burden to the Caldwell Taxpayers and that it was self-sustaining for the first five years it was open, but not in subsequent years. He stated that two-thirds of the membership of the Community Center have been historically residents from outside of Caldwell and that the Community Center Task Force has been working on plans and ideas to make the Center self-sustaining.

Robert Sullivan, 6 Parkway West, inquired what the plans were for the Department of Public Works, if there was a proposal for a two-level parking deck where the current Borough Hall is located?

Mayor Kelley responded that the plan was to relocate the Department of Public Works but that no decisions had been made yet as to the new location.

Meryl King, 17 Birkendene Road, asked the Governing Body if the Stormwater Management Study would be investigating the Hilltop Area, the Pulte Homes Development Site in North Caldwell and how it may impact stormwater issues in Caldwell?

Mr. Banker responded that three years of discussions have taken place with the Borough of North Caldwell and that the North Caldwell Administration has admitted that the Pulte Home Developers did not initially provide the stormwater management that they were asked to do by the town. Mr. Banker stated that the Stormwater Study being conducted by Mott MacDonald extends beyond municipal lines. It is his expectation that the study results will include information on where stormwater issues may be originating.

Christine Gurriere, 26 Welshman Court, stated that in April, the Governing Body had talked about the importance of holding town hall meetings regarding the proposal to realign Bloomfield Avenue, which to her knowledge have not taken place. She referred to Mayor Kelley's robo-call in which he stated that the Borough of Caldwell is "on the cusp of transformational change", which in her opinion, should entitle the public to have input on vital decisions.

Council President Gates stated that presentations regarding the realignment of Borough Hall were given to small groups, but that the Governing Body had heard enough feedback from the Public through Council Meetings to make the decision not to pursue the proposal.

Ms. Gurriere expressed her opinion that presenting the information to only small groups of individuals was a disservice to the Caldwell residents because it does not represent public sentiment.

Sue Marinucci, 32 Ravine Avenue, commented that she was concerned that rescue trucks would not be able access the road along the back of the building on the 18 Lane Avenue Development Site.

Mayor Kelley stated that the plans were reviewed by the Mayor and Council, the Planning Board, and the Borough Engineer.

Council President Gates reported that during the developer's presentation before the Mayor and Council, he had asked Chief Pollara of the Fire Department if he had any concerns regarding the project and Chief Pollara had stated that he had no issues.

Councilwoman Buechner made a motion to approve leaving the first public portion of the Council Meeting, seconded by Councilwoman DePalma-Iozzi.

RESOLUTIONS – CONSENT AGENDA

All items listed on the Consent Agenda are considered to be routine and will be acted upon by a single motion. There will be no separate discussion of these items unless members of the Council request specific items to be removed for separate action.

Councilman Cole asked if any additional information needed to be presented regarding RESOLUTION 10-233 for a Redevelopment Proposal for the property located at 358 Bloomfield Avenue by the Developer known as 358 Bloomfield Avenue, LLC. Representatives for the Developer of 358 Bloomfield Avenue, LLC stated that they had no additional information to present and that they had provided documents prior to the meeting to be distributed to the Governing Body.

Mayor Kelley asked for RESOLUTION 10-227 to be pulled from the Consent Agenda since the Governing Body had held an Executive Session earlier in the Council Meeting.
RESOLUTION 10-227 was PULLED from the CONSENT AGENDA.

10-228	RESOLUTION AUTHORIZING PAYMENT OF THE BILLS AND THE ISSUANCE OF CHECKS
10-229	RESOLUTION EXTENDING THE GRACE PERIOD FOR THE NOVEMBER 2022 TAX QUARTER
10-230	RESOLUTION AUTHORIZING REFUNDS, OVERPAYMENTS OR CANCELLATION IN THE TAX OFFICE
10-231	RESOLUTION OF THE BOROUGH COUNCIL TO CANCEL TAXES ON BLOCK 9, LOT 6 FOR DISABLED VETERAN DECLARED 100% TOTALLY AND PERMANENTLY DISABLED BY THE TAX ASSESSOR

10-232	RESOLUTION AUTHORIZING THE PURCHASE OF A DYNA-VAC HOOK LIFT MOUNTED SEWER JET UNIT FROM TRI-STATE ENVIRONMENTAL SERVICES, LLC., 112 PHILLIPS ROAD, PO BOX 605, MILFORD, NJ 08848, FOR THE CALDWELL DEPT. OF PUBLIC WORKS UNDER THE EDUCATIONAL SERVICES COMMISSION OF NJ COOPERATIVE PRICING COMMISSION FOR AN AMOUNT OF \$93,744.48
10-233	RESOLUTION DESIGNATING 358 BLOOMFIELD AVENUE, LLC. AS REDEVELOPER FOR A REDEVELOPMENT PROJECT TO BE LOCATED ON LOT 25.01 IN BLOCK 52 IN THE BOROUGH OF CALDWELL, NJ AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BETWEEN 358 BLOOMFIELD AVENUE, LLC. AND THE BOROUGH REGARDING THAT PROJECT
10-234	RESOLUTION AUTHORIZING THE PAYMENT OF THE CALDWELL POLICE DEPARTMENT'S PORTION OF THE COST FOR MIGRATING THEIR COMPUTER-AIDED DISPATCH SYSTEM WITH THE NORTH CALDWELL POLICE DEPARTMENT FOR THE PURPOSE OF JOINT DISPATCHING
10-235	RESOLUTION AUTHORIZING REFUNDS, OVERPAYMENTS OR CANCELLATION IN THE TAX OFFICE

A motion to approve the consent agenda was made by Councilman Cole, and seconded by Councilwoman DePalma-Iozzi. Upon a roll call vote, all members voted in the affirmative. The Consent agenda passed 10/25/2022.

NEW BUSINESS

Mr Banker asked to defer discussion of the Best Practices Inventory until the November 15, 2022 Meeting.

COUNCIL COMMITTEE REPORTS

Borough Council Members

1. Councilwoman Buechner- Board of Health/ Senior Services
Council woman Buechner reported that the Health Department had held a Flu Clinic the week prior and that they are considering having a second Flu Clinic in a couple weeks.
2. Councilwoman DePalma-Iozzi -Grover Cleveland Birthplace Memorial Association
Councilwoman DePalma-Iozzi reported that she attended the Grover Cleveland Birthplace Bizarre Bloomfield Avenue Walk and found it to be a worthwhile experience.
3. Councilman Cole-Local Assistance Fund
Councilman Cole relayed to the public that flyers were available on the back table of the auditorium containing information on how to support the Local Assistance Fund, which relies on donations to help support community members in need. He stated that the Borough of Caldwell's Annual Turkey Drive was scheduled for Saturday, November 19th at the Food Pantry Site. Donations of fresh or frozen turkeys would be welcome and appreciated.
4. Councilman Lace-Public Safety
Councilman Lace reported that the Caldwell Public Safety Committee was in the process of scheduling a meeting with the West Caldwell Public Safety Committee and the Caldwell/West Caldwell Board of Education to discuss the possibility of having Resource Officers to improve safety in the schools. The hope is to meet sometime this month.

OPEN PUBLIC COMMENTS-Second Portion ON ANY RESOLUTIONS OR TOPICS

Rita Whetton, 17 Park Lane, inquired about the status of using T.V. Channel 35 as a resource and to provide recordings of the Council Meetings for the public. She also expressed her concerns regarding the lack of cleanliness on Bloomfield Avenue. She stated that she often sees litter scattered on Bloomfield Avenue and trash cans that are overflowing with trash.

Bryan George, IT Support Staff for the Borough, stated that recordings of each Council Meeting are uploaded onto Channel 35 and the recordings of each prior meeting run at 10:00am, 2:00pm, and 5:00pm.

Mr. Banker stated that NJ Law states that it is the responsibility of property owners to maintain their private property. Bloomfield Avenue is a County Road, however, the Borough Department of Public Works does do street sweeping occasionally. He stated that Code Enforcement does have jurisdiction on strictly to enforce property maintenance. He reported that in many municipalities, there are downtown management commissions that manage these tasks as a group and do have the power to impose fines.

Councilwoman Buechner stated that the Caldwell Merchant's Association had disbanded but that Project Main Street was still operating and that they may be a resource to address these concerns. She also stated that many of the merchants on Bloomfield Avenue do not own the buildings in which they operate their businesses.

REPORT OF THE MAYOR

John Kelley

No Report.

REPORT OF THE BOROUGH ATTORNEY

Mary Kate Serratelli

No report

ADJOURNMENT

There being no additional business to be conducted, a motion to adjourn the meeting was made by Councilman Lace and seconded by Councilwoman Buechner. Upon a voice vote, all members voted in the affirmative. Meeting adjourned at 8:49pm.

Prepared by:

Brittany Heun
Brittany Heun, Deputy Borough Clerk

10/28/2022
DATE



Borough of Caldwell Sewer Utility Understanding the Issues

Most people don't worry about what happens when they empty the bathtub or flush the toilet, but the reality is that there is a lot going on that the general public rarely sees. Whenever there is a problem with the waste stream, such as a backup or a moratorium however, and suddenly sewers are the talk of the town.

That has become the case in Caldwell over the last few years, as concerns about plant capacity and lawsuits between Caldwell and two of its neighboring towns have thrust the sanitary sewer system into the headlines and all over social media. This letter is presented in order to allow Caldwell residents to better understand exactly what is going on.

The Caldwell Sewer Utility

Caldwell and its neighboring towns have separate sewer systems for storm water and for sanitary waste. In general, storm water can be piped directly from the street into a river and from there into the ocean. In the United States, sanitary waste, which contains a variety of solid and liquid wastes, must be thoroughly treated before anything can flow into the rivers and oceans.

In the West Essex region, the sanitary waste from parts or all of six towns are treated at the Caldwell Waste Water Treatment Plant ("CWWTP"), which is located on Pine Tree Place in West Caldwell. The towns are Caldwell, Essex Fells, Fairfield, North Caldwell, Roseland and West Caldwell.

The CWWTP is owned by the Borough of Caldwell and is operated by the Caldwell Sewer Utility (the "CSU"). Unlike many sewer utilities elsewhere in NJ, the municipalities served by the CSU are not partners in the operation of the plant nor are they members of the CSU. They are simply customers who do business with the CSU by which they are allowed to send sanitary waste to the plant, for which they pay a fee. All of the management decisions regarding the CWWTP and the operation of the CSU are the responsibility of the Borough of Caldwell, with the Caldwell governing body serving as the decision making body for the CSU.

Municipal sewer utilities are governed by state statutes that are specifically for that purpose and are different than the laws that govern other types of regional service providers. The main law governing municipal sewer utilities is the "Municipal and County Sewerage Act" (N.J.S.A.40A:26-1 et seq.), which shall be referred to hereafter as the "Sewer Act". This is different than the laws that govern the operation of regional sewer authorities, such as the Passaic Valley Sewer Commission or the Essex Union Joint Meeting Sewer Authority, to which many municipalities send their sewerage. In those organizations, governance is by a separate board of directors or commissioners, which are drawn from the many municipalities that are members of the regional group. In those cases, all of the users participate in the governance of the sewer operations. In cases like the Caldwell Sewer Utility, the users do not participate in the governance.

Utility Finances

Organizations like the CSU are expected to be self-sufficient, with the fees charged to the users expected to cover the entire costs of providing the service. The Sewer Act requires that the rates charged be "uniform and equitable for the same types and classes of use and service", which means that you must charge all users on the exact same basis. Consistent with that, all of the municipalities served by the CSU, including Caldwell, must be charged on the same basis.

Under the Sewer Act, the rates established should “allow... the local unit to: Recover all the costs of acquisition, construction or operation, including the costs of raw materials, administration, real or personal property, maintenance, taxes, debt service charges, fees and an amount equal to any operating budget deficit occurring in the immediately preceding fiscal year;”. In other words, the rates charged should cover 100% of the costs of running the utility.

The Sewer Act is also very clear on who has the authority to set rates. It says that “the local unit... may prescribe and, from time to time, alter rates or rentals to be charged to users of sewerage services.” And in setting those rates, the “Rates and rentals...may be based on any factors which the governing body...of that local unit...shall deem proper and equitable within the region served.” In other words, the Mayor and Council of the Borough of Caldwell is the only entity that is empowered to set the rate to be charged by the CSU and that may do so on the basis of whatever factors that they deem proper and equitable.

The Capacity Issue

All sewer treatment facilities are regulated by the state of NJ, through the Department of Environmental Protection (“NJDEP”). Those regulations set standards for how clean the effluent from the plant must be before it can be released into a river or ocean and they set limits on how much sewerage a plant is permitted to process. While those standards are complex, they can be generally understood that the effluent must be very clean and that the capacity of a plant can be represented by the maximum amount of sewerage that it can accept on a dry day. For the CSU, that capacity is currently 4,500,000 gallons a day, often stated as “4.5 mgd”.

During the last calendar year, the CSU has experienced readings that indicate a flow that is equal to about 99% of that limit. To put that number in perspective, at that rate, the remaining capacity at the CSU is only enough to service about 600 additional people, which is equal to about 250 average homes. The towns that use the CSU all have plans for more development, most of which could not occur unless more sewer capacity is created.

While virtually any form of new development would require more sewer capacity, there is one type of development that receives special attention from the state. That special category is called “affordable housing” (“AH”), which every municipality is required by law to provide. Each town has a minimum amount of AH that it must provide, which is set by the state through a complicated set of formulas. In order to assure that towns meet their obligations, they are required to file a plan with the Superior Court, which determines whether the plan will reasonably work to meet the obligation. Towns that don’t file an acceptable plan, or which simply try to ignore the requirements, are subject to penalties, the most common of which is referred to as “the builder’s remedy”.

In a builder’s remedy situation, a developer goes to court saying that Town A has not followed the rules for AH and that the developer is prepared to build in that town with AH as part of the project, if the court will order the town to allow the project. As an inducement to file such suits, the courts typically not only agree to let the project go forward, they often grant the developer greater density than normally allowed by the town. For example, if the town said that you could only build 1 unit on each 50 by 100 foot lot, the court might authorize the builder to build 4 units on each such parcel, provided that at least 20% of the units built meet the AH requirements.

All of the municipalities served by the CSU have an AH obligation. Because of the capacity limits however, most of the projects included in their plans will not be built unless additional sewer capacity is created. Additional capacity is also required for other kinds of development, like new houses or businesses, but the courts are primarily interested in the Caldwell sewer capacity issue because of its effect on affordable housing development. That interest is so great that the court has decided to give itself the sole right to determine what new projects can be connected to the CSU.

The Problems

While the capacity issue is at the heart of all discussions about the CSU, the Borough also discovered other issues when the current administration took office in 2019. Those problems included a lack of proper repair and maintenance at the plant, expired contracts with all of its customers, a billing system that did not meet the statutory requirements, collection systems in every municipality that allowed excessive amounts of clean water to enter the plant during rainy weather and a lack of knowledge about the condition of its underground infrastructure. Those issues, coupled with the capacity issue, resulted in NJDEP increasing its oversight of the CSU.

The Borough has attempted to address all of those concerns. More than \$2.14 million has been spent to fix the plant, doing things like replacing the backup generator, repairing most of the sand filters and replacing significant parts of the ultraviolet disinfection equipment. New contracts have been presented to all of the municipal customers, with 3 of the 5 having agreed to the new terms. Those contracts include a billing methodology that fully conforms to the governing law. In order to fully understand the condition of the system and why there was so much extra water entering the plant, a two-phase study was commissioned to provide real data on what was going on underground. NJDEP has appreciated the actions taken and has refrained from imposing any regulatory restrictions on the plant at this point (although the Superior Court has imposed its own standards).

Ultimately however, the long-term solution requires that the capacity be increased and that can only happen if the Borough is assured that the costs of capacity expansion will be equitably shared by all of the customers using the CSU. That means that all 5 municipalities need to be subject to the terms of the new contracts, which make it clear that those costs will be borne by everyone in the system, in the "uniform and equitable" manner required by the Sewer Act.

The Vision

The knowledge gained from the two-phase study has allowed Caldwell to develop a very straightforward plan for what it should do with the CSU. That plan has only 3 parts, as follows:

- 1.) Eliminate as much of the extraneous water entering the system as possible, referred to in the industry as "infiltration and inflow" or "I & I". This requires every town to consciously address problems with broken pipes in its sewer lines and illegal connections to their sanitary sewer lines, to force property owners to disconnect sump pumps from the sanitary system and to close the places where rainwater is directly entering the sanitary sewers; and
- 2.) Take the actions required to permit NJDEP to rerate the existing plant to allow it to operate at an increased level of capacity. This will require upgrading the technology at the plant and some changes in treatment chemistry, but will have a lower capital cost than the physical expansion described below. This could increase capacity by 15 to 20%; and
- 3.) Expand the physical facilities at the existing plant. This will consume all of the land available at the current site of the plant, but it would increase the capacity by 50%, which should be enough to allow all of the development projected by the customer municipalities over the next few decades.

The Lawsuits

In the course of all of the steps taken regarding the CSU, the Borough has enjoyed good cooperation with 3 of the customer municipalities, Essex Fells, Fairfield and North Caldwell. Those municipalities have understood the issues and have agreed to both the new contract terms and the vision for the future of the utility. On the other hand, both Roseland and West Caldwell have been both uncooperative and openly resistant to what Caldwell has recommended for the future of the CSU

Roseland's objections have been centered on the idea that they should be billed on the basis of a completely different factor than all of the other customers. Unlike the other towns, the vast majority of Roseland's sewerage reaches the plant through a single pipeline. Roseland installed a meter on that line and was charged on the basis of the flow measured by that meter for several years. All of the other towns are billed on the basis of a formula that involves the amount of metered water consumption. Caldwell analyzed the difference in the billing bases and determined that the Roseland system was not equitable and allowed Roseland to be billed for significantly less cost than would be the case if the same method used on all other towns was used for Roseland. When Roseland was billed on the same basis as used for everyone else, they refused to pay, which forced Caldwell to go to court to compel payment. The court required Roseland to pay all undisputed amounts, but has not yet considered the larger issue.

In the case of West Caldwell, that town has taken the position that they are entitled to refunds due to Roseland being under billed (which the court has yet to determine) and that Caldwell's budgets for the CSU were inappropriate, even though West Caldwell never commented on any of those budgets at the time that they were adopted. Under the Local Budget Law (N.J.S.A. 40A:4-1 et seq.) when a municipality adopts its annual budget, anyone objecting to any aspect of the budget must bring an action within 45 days after the date on which notice of the adopted budget was published. If no objection is filed, everyone is "estopped" from bringing an action thereafter. Despite that restriction, West Caldwell has not only brought suit, but also has deducted the alleged "credits" that they maintain are due to them. Between the two towns, the CSU has been unable to collect more than \$1,000,000 in sewer charges in 2021.

Caldwell's Position

The Borough's position in this matter is straightforward. Since 2019 the Borough has done everything necessary to both allow the plant to function properly and to plan for the necessary expansion of its capacity. Caldwell has set the stage for the West Essex region to be able to meet its statutory requirements for affordable housing and to proceed in an orderly and predictable way to attract and build new ratables in accordance with their locally approved plans.

In order for those plans to be implemented however, whether in the form of the re-rating discussed above or the actual plant expansion, Caldwell needs to be assured that it has the legal authority to recover the costs associated with those actions, in a uniform and equitable manner, from all of the municipalities that will benefit. This means that we need every customer municipality to execute the new contracts and for the current lawsuits to be resolved in a way that is fair to the citizens of Caldwell.

Sincerely,

John T. Kelley, Mayor



An Open Letter to the Citizens of Caldwell

From: Mayor John T. Kelley

During the 3 plus years that I have served as Mayor, I have often been asked what the borough is doing and I have tried to provide answers to every question that has been posed. Recently I realized that, while we have been communicating frequently about actions that we are taking, we have not done a good job explaining why we are taking those actions or what the goals are that we are trying to achieve. This letter is my effort to remedy that situation.

My vision for Caldwell, which we have only been able to pursue because it has been shared by a majority of the 10 people who have served as Councilpersons during my time in office, is as follows:

Municipalities are businesses that are all competing with each other for customers. To be successful, a municipality needs to increase the demand for what it is offering, in terms of housing opportunities, employment opportunities, recreational opportunities and business opportunities. When a municipality can increase the demand for its offerings, the value of those offerings increase. Houses command higher prices, businesses have more customers and more people want to live, work, play and shop in your town. In so far as a municipality succeeds in increasing demand, everyone in the municipality benefits. Homeowners have more equity, retail stores are more successful and more people want to come to our town.

For me, those goals can best be achieved if we all embrace the following ideas about the Borough:

Caldwell should be a safe and interesting community that celebrates its semi-urban character, enjoys a walkable Downtown with thriving shops and restaurants, ample recreational opportunities and a range of housing choices to allow a broad range of people who can afford to live, work and play in the Borough. We owe it to all of our citizens to keep our public facilities in a "State of Good Repair", to be environmentally responsible, to meet all of our obligations under the laws governing municipalities in New Jersey, and to do what is necessary to attract visitors from throughout the region so we maintain our role as the Downtown for all of West Essex. If we do all these things well, the result will be increased patronage for our business community, expanded choices for leisure activities and, perhaps most importantly, increased property values for our homeowners.

Related to this vision is a commitment to a consistent concept as to how all of the Borough's efforts should be funded. That concept is very simple; to the extent that any municipal service can be priced like a business would do, the Borough should fund those services by charging fees for that service directly to those who use the service and not by supporting those services from the general property tax. Said even more simply, the cost of parking should be borne by those who are parking; the cost of water should be borne by those using water; the cost of sanitary sewer treatment should be borne by those who are contributing sewerage to the system and the cost of operating the Community Center should be borne by the patrons of the Community Center. Only those costs that cannot be attributed to a particular set of users, such police protection, should be borne by the general taxpayers.

In the paragraphs that follow, I will try to detail how the strategies we are pursuing are all aimed at making that vision become a reality.

A. Securing the Borough's Role in the Region

Since its earliest days, Caldwell has been a gathering place, the place where those from a broader region came together to trade, to worship and to relax. While the specifics of those activities have evolved over time, today's Caldwell still aspires to serve the same role as it did 100 or even 200 years ago.

What sets the Borough apart from its neighbors is that Caldwell is a central place, a place for people to come together, rather than a place for people to exist in isolation from one another. Particularly in light of how American society has been changing over the last decade, with the increased emphasis on a return to urban places, Caldwell's historic role should be seen as a huge competitive advantage that should be honed and promoted. For the many people who want the safety and comfort of a suburban place, but with the convenience and walkability of a city, (what I like to call the "Caldwell Combination"), the Borough is a uniquely favorable choice. Promoted correctly, this special character will make the demand to be part of Caldwell grow, which is where growth in property values come from.

The last few years have given us an unexpected preview as to this aspect of Caldwell's appeal. After more than 30 years with virtually no growth in population, the last few years of the decade saw a jump of about 15%, while our more suburban neighbors saw almost no growth. Caldwell has qualities that are attractive to many; by capitalizing on that potential we can improve the quality of life for those already here and for those who seek to join us.

"Promoted correctly" means that we need to do the things that will appeal to those who want the Caldwell Combination. That means doing as much of the following as possible:

- Increasing the amount of housing available within walking distance of Downtown
- Making that housing include a wide range of sizes, types and prices so as to maximize the audience that will be attracted
- Improving the physical appeal of the Downtown, which means a nicer streetscape, better storefront facades, and a more pedestrian friendly environment
- Improving the amount of parking available and managing it in a way that maximizes its use
- Attracting businesses that can serve as magnets to draw people to Caldwell, after which they are likely to patronize other businesses to the benefit of the entire community
- Attracting new landlords who will properly maintain their properties as well as our sidewalks along the Bloomfield Avenue corridor
- Supporting organizations that sponsor events that bring new patrons to our businesses, beautify our community and provide opportunities to bring our community together

In order to try to make those things happen, we have adopted a redevelopment plan that encourages mixed use development in the Downtown, which will both increase housing opportunities and improve the quality of the business offerings at street level. We have also obtained professional advice as to how to improve both the vehicular and pedestrian experience in the Bloomfield avenue corridor. We have acquired land and are negotiating for additional land that will expand our parking capacity. And we have studied new technologies that will allow us to increase the efficiency of parking management dramatically, by allowing all of the public and private parking resources to be managed in a coordinated fashion, which will result in more parking that is more convenient to utilize. This approach has already been successfully rolled out in Madison, NJ.

B. Improving the Leisure Time Experience

Despite its long history, Caldwell cannot boast of having preserved great recreational opportunities for its citizens. There are virtually no important public spaces in the Borough, with the notable exception of Grover Cleveland Park, which is a county, not municipal facility. To remedy this situation, we have been exploring, without publicity, the acquisition of some of the largest remaining tracts of open space within Borough and the idea of creating a new public space at the western end of Downtown. While these projects are not fully baked, they both are ideas intended to increase the opportunities for better use of open spaces and leisure time in Caldwell.

A related effort is our commitment to the rehabilitation of the Caldwell Community Center to make it available as a place where athletic, fitness, recreational and social activities can happen at a reasonable cost. Our goal is not different from the original idea for the CCC. The only, but important, difference is that we believe that it should be designed and operated to be able to pay for itself and not require subsidies from the taxpayers.

C. Providing Housing Opportunities

Caldwell has been economically diverse for a very long time. Two and three family houses have been a part of our landscape for more than a hundred years and multi-family apartments for at least 75 years. That diversity is an important part of our social obligations to the region, but also an important part of our ability to succeed as a central place. The folks that are needed to make a restaurant successful probably cannot afford to live in the Cedars in the early parts of their career, but they need to live somewhere close by to make the economic equation for both employer and employee acceptable. Growing our community also requires attracting (or retaining) young college graduates from CU or elsewhere, who will be the future homeowners on Wakefield or Gould or Forest. To do that, the housing stock also needs to be economically diverse, so that the newly minted professional can start off in a place in Caldwell that doesn't break the bank, so that when they reach the front office, they can buy in the single family neighborhoods.

To quantify this economic diversity, please understand that the Census Bureau tells us that more than a quarter of our households have a household income of less than \$50,000 a year and another 15% have a household income that is between \$50,000 and \$75,000. While our median household income is about \$97,000, many of our neighbors in Caldwell subsist with far less than that amount.

Our approach has been to use our affordable housing obligations (more on that later) as a carrot to attract investors who are willing to bear that burden while increasing our overall housing stock to allow the broader objective to be achieved. 20% of the units being built due to our affordable housing obligation will be available to families whose average household income is about \$50,000 a year. The other 80% of those units being built will be available to families that can pay the market rate, which will attract the young professionals that are essential to the future success of the Borough.

D. Managing the Municipal Government

Government exists to do the things that no one will do on their own. We all need good roads, but no one will build them, since once they're built everyone will be able to use them for free. We all want to be safe, but no one volunteers to pay for a personal police department, since their success in providing safety for the payer also gives everyone else safety for free.

Because of this essential problem, government always has to worry about what services it should provide and how it will be able to pay for them. It is easy to understand that the demand for government services is always high (everyone wants better roads, more parks, more police, etc.) but the willingness to pay for them is always low (someone else should pay while I get it for free).

The other problem is that the real cost of governmental services doesn't need to be paid exactly at the time that the service is used. For example, if the government should be spending \$2 million a year to maintain its sewers, but chooses not to make any repairs for 10 years, it avoided asking taxpayers for \$20 million during that time, making it seem like it could operate at a lower cost. Unfortunately, the failure to fix the sewers will ultimately cause a crisis, at which point it will cost more than \$20 million to correct.

For any large organization with these kinds of responsibilities, such as railroads, highways, water treatment plants, etc., the goal is to balance these pressures by achieving what is called a "State of Good Repair" ("SOGR"). This term means that the government entity is able to say that the facilities for which they are responsible are in a condition where they can be expected to perform their intended function for the foreseeable future. This means that they don't have reason to believe that the dam will collapse, that the bridge will fall down; or that the water will not be drinkable. Most of the time, those who are the users of such services are unaware of whether their providers are meeting this standard. That awareness only happens when the providers don't meet the standard and the system fails. We have all seen those failures, but probably not experienced them. Some examples would be the collapse of the interstate highway bridge in Minnesota, the problems with lead contamination in water systems in Flint, Michigan or, more locally, the inability to put out a fire on Orchard Square in Caldwell.

When I became Mayor, I immediately became aware of the fact that Caldwell was very far removed from a SOGR. The following is a partial list of the issues:

- The Caldwell Waste Water Treatment Plant under NJDEP scrutiny because of faulty facilities and operations
- Borough Hall deteriorating from water intrusion from leaky roofs and leaky walls
- Municipal court moved out of Caldwell due to lack of ADA accessibility and the deteriorated condition of the chambers.
- Caldwell Community Center handicapped by leaking roof, leaking walls, a broken dehumidification system and failing air conditioning
- The Community Center Parking Deck deemed structurally unsound (due to improper maintenance) by independent engineers (ultimately leading to a need to demolish most of the deck, even though it was only 20 years old).
- The former Health Department site at 14 Park Avenue in total disrepair, with the Federal government seeking reimbursement in 2018 for the original grant due to the Borough's failure to meet its obligations under the agreement by which the facility was acquired for Borough use.
- The water system unable to provide adequate water pressure to fight fires in more than one-third of our community
- The lack of adequate equipment for our Public Works personnel, forcing the Borough to abandon street cleaning and contend with snow removal with trucks that should have been scrapped years ago.
- Leaking roofs, sewer back-ups and repeated flood events in the library
- The lack of a stormwater management strategy, despite having suffered catastrophic damage as a result of the "microburst" storm in August 2018

In the face of these challenges, our approach has been to stop pretending that everything in Caldwell is in good shape and working well. We have examined every one of our responsibilities and determined whether we were doing our job. To the extent that we were not doing those jobs well, we asked what was needed and hired experts in specific fields to allow us to do them correctly.

The results of that process are not answers that politicians like to announce. To correct the problems with the water system, lots of pipes need to be replaced. To provide adequate capacity for sewer users, we need to replace major broken parts and probably make a major investment in the expansion of the plant. To properly administer the government (and to provide quality library services), we need to house our operations in buildings that don't leak, are not likely to flood and can safely house all of our resources and records. To restore the Community Center to a condition where it can provide quality services to the citizens and hope to be self-sufficient, we need to make major renovations. To make sure that our neighborhoods are clean, safe and attractive, we need to provide the necessary tools and equipment for our police, fire and public works operations.

Those are many of the things that we need to do on the municipal side of the situation. To achieve the rest of the goals that I discussed above, we need other governments and the private sector to pitch in by improving the Bloomfield Avenue corridor, by replacing obsolete buildings with updated structures that provide for the retail and housing needs that will bring people to Caldwell and, by cooperating with the Borough on subjects of common interest, such as management of our parking resources, the maintenance of a clean and attractive streetscape and the promotion of events and attractions that will draw visitors, customers and potential owners and renters to our town.

E. What We Are Doing

The preceding paragraphs contain many important ideas and concepts, but achieving actual progress requires that we adopt specific objectives, make hard decisions and take real actions. During my time in office, I have worked with all of the other members of the governing body to do exactly that. The following is a list of the most significant of the steps that we are taking or have previously taken from 2019 to the present.

1. Adoption and Implementation of an Infrastructure Plan for Water, Sewer and Roadway Systems

- **The Borough has implemented a water main replacement program for installation of new pipes in 22 streets, which constitutes 100% of the pipes found to be seriously deficient in the 2017 study by the Borough's consulting water system engineers. (See Appendix A)**
- **The Borough has undertaken comprehensive studies of the capacity available at our sewer treatment plant, the impact of infiltration and inflow on our sanitary sewer system and the condition of our entire stormwater management system. Those studies have provided a clear picture of what needs to be done to each part of our infrastructure so as to reach a SOGR and to provide sufficient infrastructure capacity to support the new investment that we are seeking for our Downtown and our housing stock.**
- **Based on the sanitary sewer studies, the Borough has proposed a 3-part plan to address the needs of the West Essex region for sanitary sewer services. The plan calls for (1) a reduction in the amount of extraneous water entering the system (referred to by engineers as "infiltration and inflow" or "I & I"), (2) use of improved technologies to allow greater capacity from the existing facilities through a new approval from NJDEP (referred to as "re-rating" the plant) and (3) construction of a third treatment process train at the present sewer plant location.**
- **Because Caldwell is the sole owner of the sewer treatment facility that serves 5 other municipalities, it needs assurances from the other customers of the plant that they will share equitably in the costs associated with implementing the plan. To that end, the Borough has proposed new contracts with all of the customers that would allow the expense to be allocated fairly, in a manner authorized by NJ statutes governing this type of sewer operation.**
- **After the Borough's second inundation in 3 years courtesy of Hurricane Ida, the Borough not only commissioned the first-ever comprehensive stormwater management study, it actively sought locations that could be used to mitigate future problems. As of now, that includes 3 locations that are expected to contribute to a reduced risk of the kind of damage witnessed in both 2018 and again in 2021. The 3 sites are: a.) the land in front of Caldwell University, which has the potential of both serving as additional public open space, but also may provide a substantial amount of stormwater detention during periods of intense rain, such as occurred in the last two events; b.) The land under the Smull parking facility (including the new lots), may include underground detention systems beneath the parking lot, which will allow excess flows from the Forest Avenue stream to be captured before it floods the adjacent properties; and c.) the Borough campus, which may also be able to have underground detention installed as part of the redevelopment of the old Borough Hall, DPW and parking garage sites. Discussions have begun with FEMA over the possibility of Federal funding for some of these facilities, in order to minimize the likelihood of another event like Hurricane Ida.**
- **The Borough has milled and repaved (in whole or part) 24 streets, which is approximately 29% of all of the streets in town. (See Appendix B). Where required, this work included the installation of Belgian block curbing and spot repair of concrete sidewalks. 67 new trees have been planted, with an additional 76 trees schedule for installation by spring. An additional 15 streets are scheduled for paving work in 2023, which would mean that about 50% of all streets in the Borough will have received attention during the five year period.**

2. Expand and Improve Our Housing Stock and Increase Our Tax Base

- **The Borough has adopted a Redevelopment Plan that promotes increased investment in our community while allowing us to meet our affordable housing obligations and to attract new and vibrant business to downtown. With this plan, the Borough controls development, protecting our neighborhoods from Builder's Remedy lawsuits which override our zoning restrictions.**
- **4 projects have been approved that will bring about 172 new dwelling units to Caldwell, of which 34 are for affordable housing and 138 are market rate units. These actions originated from Builder's Remedy settlements. Another 100+ units are under consideration, with the same 80/20 mix of market rate and affordable units, all under the strict rules and limitations set forth in our Redevelopment Plan.**

- The Borough adopted a program by which it can grant 5-year tax abatements to both new investors and existing property owners to encourage upgrades and improvements to our homes and businesses.
- The ultimate goal of the Redevelopment program is to increase our property tax base by more than \$100,000,000 over the next 5 years, which would be approximately a 10% increase in the total value of our real estate.

3. Expand and Improve the Management of Our Public Parking Resources

- The Borough has purchased 2 properties on Smull Avenue and is negotiating for a third lot, all of which will be used to expand the amount of public parking available in the heart of our town. The 3 lots together constitutes about 33,000 square feet, which will ultimately add about 100 parking spaces to our inventory.
- The Borough has studied recently developed technologies that will let us manage all of our parking resources in a coordinated fashion, with electronic assistance enabling us to collect revenues, enforce violations and guide patrons to available spaces with up to the minute electronic signage. These new systems are flexible enough to allow the Borough to manage all of its own spaces on a 24/7/365 basis and to allow the Borough to manage as many of the privately owned spaces as wish to participate and share in the benefits of a coordinated Borough-wide program. At the core of this system is the use of license plate reader technology, which will allow the Borough to handle parking transactions as easily as EZ Pass handles toll roads.
- Plans for renovation of the Borough Hall complex include the concept of building parking in the location of the old Borough Hall and the DPW garage, with a second level above that area to be accessed from Calandra's. This will provide significant parking to service the renovated Community Center, the new Municipal/Library complex and support events at the Kiwanis Oval.
- The Borough also intends to work with private parking owners, such as St Aloysius Parish, Ace Hardware and others to arrange for shared use of their parking resources when not required for their primary users.

4. Develop Sound Facilities for Use in Delivering Municipal Services

- The Borough has developed detailed plans for the renovation or replacement of most of its major public buildings. This includes the replacement of Borough Hall, the Caldwell Police Headquarters and the Public Library with a single new structure to be located on Bloomfield Avenue close to the current site of the library. Plans are expected to be out to bid shortly, with construction to start this year. The plans were developed in conjunction with the staff who will work in the facilities, with active participation by members of the governing body and the advice of experienced professional architects and engineers.
- The Borough is now in construction of a completely renovated facility to house our Health Department and all of our Senior Citizen Services. Located at 14 Park Avenue, the building will include the senior center, the Food Pantry and all of the offices providing health and social services to our residents. It will also release us from any obligation to repay the Federal government for the violations cited against the Borough in 2018.
- After a lengthy process that included a Task Force of local residents and industry professionals, the Borough decided to renovate the Caldwell Community Center and to re-open the facility as a regional resource, with the obligation to be self-sustaining. Preliminary designs have been reviewed by an Advisory Board of local citizens and have been shared with the governing body and the public. Construction documents are under development, with selective demolition to start shortly and renovations to follow immediately thereafter. The renovated facility will have a larger upper level than previously, with all CCC services to be provided in that area, with the lower level targeted to be used in support of activities conducted on the Oval.

5. Maintain Sound Financial Management Practices

- The Borough conducted a complete review of all municipal operations and took steps to optimize the staffing of the government. As a result, the Borough has fewer employees on the payroll and fewer people receiving health and pension benefits than when I took office. The Borough also re-cast the way it allocated costs, so that each fund accurately represents the costs of the activities which it is required to finance.
- The Borough also recognized the unique opportunity provided by historically low capital market conditions and funded the necessary capital improvements discussed above with monies borrowed at incredibly low rates (An average interest rate of 2.46% over 30 years) to minimize the impact on taxpayers and to spread the amortization of those investments over the period when local citizens will be receiving the benefits of those investments

- As discussed above, the Borough has committed to a financial plan in which all services that can be funded fairly by user fees will be funded completely through those mechanisms. This approach is already in place for water and sewer services and will be in place soon for all public parking operations and for the operation of the renovated community center. This minimizes the burden on the local taxpayers and ensures that the burden of those services is borne by those who benefit from them.

F. Conclusion

As you can see, we have been very busy during my time in office, with much more work still to do, but we feel that we have identified most of the problems affecting our town, have studied them carefully with the help of qualified professionals and have embarked on a program that we believe will make Caldwell a better town, one that will have more people seeking to come here to live, shop, work and play, which will in turn make Caldwell a better place for all that are already here.

This is a lot of information, and I hope it sheds light on the work we have been doing to improve life and secure our future in this town we all love. It represents almost four years of non-stop work at Borough Hall. Questions or comments to this letter can be sent to openletter@caldwell-nj.com

John T. Kelley
Mayor

**Caldwell
Water Main Projects**

**Appendix A
2019 to Present**

Substantially Complete

Birkendene Road
Bower Road
Central Avenue
Crane Street
Ella Road
Forest Avenue
Hatfield Street
Highview Road

Leaycraft Lane
Lockward Road
Park Avenue
Prospect Street
Thomas Street
Welshman Court
Westville Avenue

Scheduled for 2023

Chestnut Street
Oak Grove Road
Ravine Avenue
Roseland Avenue

Seymour Street
Westover Avenue
Whitebirch Terrace

**Caldwell
Roadway Projects**

**Appendix B
2019 to Present**

Substantially Complete

Ashland Street
Birkendene Road
Bowers Road
Central Place
Crane Street
Espy Road
Forest Avenue
Francis Place
Gould Place
Gould Place
Harrison Street
Hillside Avenue

Kirkwood Place
Leaycraft Lane
Lockwood Road
Miller Street
Prospect Street
Ravine Avenue
Ryerson Avenue
Seymour Street
Thomas Street
Wakefield Place
Ward Place
Welshman Court

NOTE: Work included replacement of 492 linear feet of sanitary sewer pipe

Scheduled for 2023

Bowers Road
Caton Terrace
Chestnut Street
Ella Road
Espy Road
Grover Lane
Hillcrest Road
Oak Grove Road

Orchard Square
Park Avenue
Park Lane
Personette Street
Seymour Street
Westover Avenue
Whitebirch Terrace

NOTE: Damaged Piping will be replaced prior to paving