

## WORK SESSION OF FEBRUARY 20, 2007

Mayor Weinstein called the meeting to order at 7:30 p.m.

**PRESENT:** Mayor Weinstein, Deputy Mayors Etler and Tedeschi, Councilmembers Baratta

**ABSENT:** Councilmember Trawinski.

**ALSO PRESENT:** Manager Metzler, Municipal Clerk Joanne Kwasniewski and Attorney Rosenberg

### **Review of Tentative Agenda (2/27/07):**

Municipal Clerk Kwasniewski indicated she would like to add two items to the Consent Agenda: approval of a raffle license for Lyncrest School PTO and Fair Lawn High School PTA and approval of a massage license renewal. She spoke with Richard Lustgarten regarding the Clariant Ordinance. If the ordinance was going to be adopted on March 6, notices would need to be sent out by Friday. Attorney Lustgarten's suggested adjourning that hearing until April 10 as he had not heard back from COAH and did not see the point of sending out the notices and adopting that ordinance on March 6. There was a unanimous consensus of the Council to adjourn that hearing.

Mayor Weinstein asked Attorney Rosenberg if the meeting with the DEP had been arranged. Attorney Rosenberg had spoken with the Commissioner's assistant who was aware of the urgency. He expected to hear from them this week with tentative dates.

### **Report of Council Liaisons:**

Garden Committee - Councilmember Baratta stated they are looking for new projects and she advised them that the Community Center was looking for a group to do a planting. The Garden Committee would be willing to do this and would use their funding to pay for all the plant material, but hard scape items such as planters would come from the Community Center 501(c)3. She mentioned this to John Cosgrove and he would be willing to get them the supplies that were needed.

Environmental Commission - Councilmember Baratta stated they were concerned about the piles of uncovered contaminated soil on the Hayward site. The Commission wants this covered by a tarp. They asked about planting evergreens around the site so it is not such an eyesore. Attorney Rosenberg stated the Borough had the authority to require the property owner to take steps to prevent the dirt from blowing around the neighborhood.

The Commission felt the Naugle House was also a hazard. Although the owner had been fined, she questioned whether the Borough could take further steps such as putting up a fence at the owner's expense as it was dangerous and deteriorating.

She also reported that Lyncrest PTO paid for a new playground and contaminated fill was used at the site, forcing the area to be off limits and fenced off. The Board of Education is aware of the problem.

The Commission asked if the Borough had applied for a grant from Rivers and Trails in the amount of \$25,000 for signs for the new river walk. Manager Metzler asked her to find out if it was done through the Passaic Valley River Coalition.

Councilmember Baratta reported that the Passaic River Coalition had asked if Fair Lawn could be the launch site for their kayak team. Mayor Weinstein felt they should approve the use of the launch and Councilmember Baratta agreed that it would be good for Fair Lawn. The launch was part of the new upgrade on the River Walk by Memorial Pool and the Fire Department was putting up lighting in that area as well. Mayor Weinstein suggested that Wendy Dabney come in and talk to Council about this issue.

Members of the Commission had attended a seminar entitled Geese Peace for Communities. They take the eggs and float them in water. If they float, they are not developed yet and the eggs are coated in oil and given back. If they sink, they are developed and ready to hatch in about a week and are put back. If eggs are removed and destroyed, the geese just continue to lay more eggs. This way the geese sit on eggs that will not hatch. This program is most successful when other towns in the area participate as well. Ridgewood is interested and Councilmember Baratta felt this might be something for shared services.

Fire Board - Deputy Mayor Etlar reported that the Fire Board meeting was cancelled and was rescheduled for Wednesday. He was not sure if he could attend.

Traffic Committee - Mayor Weinstein attended the meeting that morning with the Police Chief, Traffic Safety Officer, Engineer and Manager. They discussed the status of the cones which were taken down for the winter. They will be moving forward with the bump out at the Post Office on River Road and the costs will be covered by a \$25,000 grant that was received. They will discuss prioritizing the location of the cones at a March Work Session and will give recommendations for improvements for areas such as Abbot Road and Fair Lawn Avenue, Morlot Avenue and Phillip Street, Lyncrest School area and Radburn Road and Fair Lawn Avenue. They will ask Council if there is a consensus to continue the program again this year so that cones can be in place sometime in early April.

Mayor Weinstein reported they are going to start a Crosswalk Program focusing on drivers who do not stop for pedestrian.

Discussion on the traffic cones was scheduled for the meeting of March 20.

### **EDC Presentation on Route 208 Corridor Study:**

Mayor Weinstein stated the EDC had gone to the various property owners and businesses to get their input and met with them for months. The study was paid for by a Smart Growth Grant as well as the EDC and Glen Rock. Stu Herrmann, President of the EDC, Bob Landzettel, Chair of the Study Committee and Don Smart, EDC Administrator were present.

Don Smart reported that they had a public/private partnership with the Council and Glen Rock Council. They undertook a review of Route 208 to

assess its current condition and anticipate what its future market conditions might be. The study began in June 2006. They have completed the Page Three

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findings element and the market analysis. Since the Council will be asked to consider the future of the Kodak parcel, they accelerated their discussion to complete the vision for Route 208 both in Fair Lawn and Glen Rock. Fair Lawn is approximately 90% of the study area and Glen Rock is 10%.

He presented a draft of the vision plan that presents a holistic approach to what is possible for Route 208 and what is preferred. The presentation was turned over to Bob Landzettel and Stu Herrmann to review the goals and objectives of the Route 208, which is to establish a vibrant business park with high quality commercial and light industrial uses in a safe and functional visually attractive environment.

Bob Landzettel stated that the original park was built 50 years ago. While the zoning has stayed the same, industry has changed throughout the country and in New Jersey and there has been an exodus of industrial jobs. They need to devise a way to keep the area healthy. They would encourage high quality commercial buildings along the frontage of Route 208 and Harristown Road, encourage new investment opportunities throughout the business park, improve the visual quality of the entire business park and minimize conflicts with residential uses that enjoin the business park. They would improve the overall circulation within the park and promote the Route 208 corridor as a prominent business destination. Residential uses would be permitted in appropriate locations in order to address the affordable housing obligation created by new investment in the business park as well as the existing requirements under COAH. The term Business Park was used to differentiate what has been called an industrial park to show that this is more than just industry and that other commercial and high-tech office uses would be encouraged.

A new commercial office zone for the Route 208 corridor would be created to permit offices and commercial uses such as banks, hotels and retail sales. Nabisco's property is the largest single property at 40 acres, and the committee discussed a possible alternate use for this space. Stu Herrmann stressed that there is no plan at this time for Nabisco to leave. An overlay zone would be created for the Nabisco property which means the zone and use would continue to conform with the current ordinances, but would leave a planning concept that might be used for future development should Nabisco leave.

Mr. Landzettel presented a map that showed the new designations of the districts including Commercial Office, Commercial Industrial, Mixed Use (includes affordable housing and permits some retail sites) and a Multi-family affordable housing area. The plan will be presented to the Planning Board Work Session next week and will be brought back to Council for approval.

## **Budget Wrap Up:**

Manager Metzler reported that all requested documents had been forwarded and all questions answered.

Deputy Mayor Etlar felt this was a good budget. The Manager and CFO worked diligently with the Mayor and Council. He was prepared to support it. Councilmember Baratta felt the Manager and CFO Eccleston should explain the revaluation as many residents had concerns about the tax implication. She could support the budget. Deputy Mayor Tedeschi felt people were afraid Page Four

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of the revaluation based on what had happened in other towns. Mayor Weinstein felt it was important to reach out to Councilmember Trawinski to see if he had any questions.

CFO Eccleston stated the budget would be introduced on March 13 with a public hearing held on April 10 and possible adoption on that date as well. They had been told to wait until the Governor had introduced his budget since there might be some Cap changes and they were waiting for the final certification on State Aid.

Mayor Weinstein stated this process started last year and is never a one year process. They are constantly planning ahead with both the capital and operational budget. He felt that needed to be explained as well. He favored supporting the introduction. Deputy Mayor Tedeschi stated the Department Budgets were actually less this year and felt it was important to mention that at the public presentation. CFO Eccleston stated there were some excess revenues that were not anticipated, but even without those revenues they were on target and that only helped to make the future look brighter.

There was a unanimous consensus to introduce the budget.

## **Discussion on Ordinance Regulating Clothing Bins and Other Receptacles:**

Deputy Mayor Tedeschi stated this issue was initially raised by George Bate. Since there was a large influx of clothing bins emerging throughout town, he asked if Council would like to create an ordinance to control them. Deputy Mayor Etlar expressed an interest in supporting this and Mayor Weinstein and Councilmember Baratta agreed. Deputy Mayor Etlar indicated he had a sample of an ordinance introduced in the State Legislature that could be adopted. Deputy Mayor Tedeschi pointed out that the containers are often run by "for-profit" companies and people think they are making a donation when they drop off clothing when in fact they are not.

Deputy Mayor Etler discussed how people leave garbage/junk items at these sites forcing the Health Department to issue citations. Councilmember Baratta asked if this could be regulated so that an organization such as DARE could still have bins, but Deputy Mayor Etler felt the same problem would occur. Attorney Rosenberg stated he would prepare a draft, incorporating not-for-profit companies for the March 6 work session.

### **Outstanding Litigation on Proposed Development (Summary):**

Deputy Mayor Tedeschi asked for an update from Attorney Rosenberg. Attorney Rosenberg reported that the Borough is aggressively defending two major litigations. Landmark was successfully defended by Richard Lustgarten. The only pending matters remaining have to do with COAH mediation, which is scheduled to be heard on March 8.

The Borough is also defending the Naugle House litigation. The developer is challenging the denial of application. The developer is also challenging the validity of the Borough's ordinance which prohibits demolition of historic structures.

Attorney Rosenberg also reported that Blue Hill which is a town house project was remanded back to the Zoning Board but the developer has not elected to proceed.

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### **Non-Conforming Signs Requiring Variances Should Be Removed Immediately and Enforcement:**

Deputy Mayor Tedeschi questioned why an illegal sign was allowed to stay up while the owner seeks a variance. Attorney Rosenberg explained that N.J.S.A. 40:55D75 provides for a stay of proceedings when an appeal is filed. If someone is cited by the Zoning Enforcement Officer of the Borough and appeals to the Board of Adjustments, the MLU states an appeal to the Board of Adjustment shall stay all action unless the officer certifies that the stay would cause imminent peril to life or property.

Deputy Mayor Tedeschi asked if there could be an expedited process to hear the case immediately. Attorney Rosenberg stated the applicant has the right to ask for an adjournment or request an extension of the appeal while the parties work out their differences. He felt there should be a mechanism where the applicant is compelled to proceed with their application and be issued a denial if they do not.

Attorney Rosenberg felt a letter should be written to the League of Municipalities stating applicants are using the law as a shield to stall. The wording should be changed to reflect a time limit that stay of proceedings would not exist for more than 90 days or 120 days. He will speak with Councilmember Trawinski and then draft a letter for Mayor Weinstein to sign.

### **Review of Prosecutor's Salary: Closed Session**

This matter was deferred to Closed Session.

### **Attorney's Opinions:**

Public Participation During Work Session - Attorney Rosenberg stated that the Open Public Meetings Act as amended in 2002 prohibits the Mayor and Council from limiting public comment to agenda items only. During the Work Session the public has the right to comment on any governmental issue. The Mayor and Council still have the ability to limit the duration of that participation.

Applicability of Borough Pay to Play Ordinance on SIDS - Attorney Rosenberg presented a March 2006 opinion of the Attorney General which supports his conclusion that the Borough's pay to play ordinance does apply to the SIDs to the extent that there are appropriations made by the Borough for professional service contracts. In addition to the Borough's pay to play ordinance there is a State pay to play law which applies to contracts in excess of \$17,500.

Manager Metzler asked about the money provided to SIDs by the Borough which were not used for professional services. Attorney Rosenberg stated they did not fall under the Borough's Pay to Play ordinance because the Borough's ordinance is only for a non-fair and open professional service contract. There is an issue as to whether or not the state's Pay to Play ordinance would come into effect as it says contracts in excess of \$17,500.

Councilmember Baratta asked if they would be subject to that if they did the River Road parking lot and they lent RRIC that money. Attorney Rosenberg felt they would because it was a loan. He

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will check into this further. Deputy Mayor Etlar asked about the EDC and was told it was applicable. Mayor Weinstein asked if an organization raised its own funds and received an appropriation from the BIC would that be considered commingled. Deputy Mayor Tedeschi stated that was correct as they were indivisible. Attorney Rosenberg stated he would give the opinion to SIDS for review as he felt they may have an independent compliance obligation under the State pay to play law for any contract in excess of \$17,500.

Municipal Clerk Kwasniewski inquired if they are subject to the pay to play ordinance, did that mean the Borough should be doing professional services resolutions. They are not doing professional service resolutions now. The BIC simply hires and pays the professionals. Attorney Rosenberg felt they should have the professional service resolution and the attendant disclosures required for the Borough appropriations. Municipal Clerk Kwasniewski asked about the case of the BIC hiring a planner with grant funds and stated that no professional service resolution was done for this. The BIC was given \$30,000 and the Borough does not know how that money is spent and no longer does professional services resolutions for them.

Mayor Weinstein stated there is accountability as the Council approves their budget yearly and receives a financial statement. Municipal Clerk Kwasniewski stated they are given their funds, which are used to hire street cleaners and advertisers and they have one professional service contract. There are additional funds available since each Board member makes a contribution, which might be used for professional services. Attorney Rosenberg stated that would not be

considered an appropriation and the Borough had no tracking obligation and they have no disclosure obligation. Since the State laws were broader than the ordinance, Attorney Rosenberg felt that contracts in excess of \$17,500 using the BIC's money trigger compliance obligations. It would be their responsibility to complete the forms and the Borough would not be required to do professional service resolutions for them.

Don Smartt stated the three entities are willing to comply voluntarily with the pay to play rules. He asked for clarification about a previous comment that all the funds were put together regardless of their use since it was also stated that the funds wouldn't qualify unless they were used for professional services. The majority of SID's budget comes from assessments and private contributions, which could be used to pay his portion of the contract but he questioned if that would trigger the pay to play ordinance. Attorney Rosenberg's opinion was that the State law would apply but not the Borough's ordinance. Deputy Mayor Tedeschi stated he would look unfavorably on the unwillingness of an organization to complete pay to play documentation. He questioned if Council could require pay to play documents be completed as a caveat to making the appropriations available for professional service contracts and Attorney Rosenberg stated they could.

### **Amended Ordinance on Cellular Antenna Zone:**

Attorney Rosenberg explained this was designed to allow temporary wireless installations including cells on wheels (COWS) only in the communication antennae zones in the Borough. The ordinance will be introduced at the next meeting.

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### **Cellular Tower Antenna for Municipal Building**

Manager Metzler stated there was a request from a cell carrier to consider the placement of the cellular tower at the Municipal Building. In the 2006 Capital Budget, the Police Dept. requested replacement of all wiring and antennas from the base stations to the existing antenna tower. At that time Council had inquired how many parking spaces would be lost and requested drawings. The tower will need to be replaced in four years.

The Cellular company is willing to provide removal of the existing pole and installation of new cables. The Police had requested a pole 180 feet high which is double the height of the existing pole. Manager Metzler asked if they wanted the company to make a presentation. The consensus was to have the company make a presentation at the March 20 work session.

### **Conte Pool Easement:**

Councilmember Baratta recused herself.

Manager Metzler stated the Council granted permission for the fence but denied the pool. Mr. Conte wrote several letters to Engineering and the Council and notified the Manager that he knew of other pools that were allowed to be installed on easements. Mr. Conte was asked to provide a list but he declined. Manager Metzler found one such location.

After reviewing the site survey it appears the resident has a deck on the edge of the easement and may be able to fit a pool in that area. He would like to offer Mr. Conte an opportunity to pay to have a surveyor come in and place the pool on the survey to show that it will not be over the pipe in the easement. Attorney Rosenberg advised Council that now there is one precedent, but granting Mr. Conte this right will give the next homeowner two precedents. It is a six-inch pipe now, but what if the requirements change for a larger pipe. He could put a reservation of rights clause in the agreement.

It was the consensus of Council to support the survey request.

### **Community Video Showcase Program:**

Manager Metzler reported that he received a proposal from a vendor to produce five three-minute professional videos that would link to the Borough's website. The vendor will sell advertising. When the video comes up advertising surrounds it.

Attorney Rosenberg expressed concern about the perception that the Borough was endorsing the entities on the video. Also, the Borough would not have control over the content of the advertisements. He felt a prominent disclaimer would be required at each site.

It was the consensus of Council not to move forward with this project.

### **Community Center Goals:**

Manager Metzler asked for direction on how success would be measured. Is it going to be measured by the number of residents that use the center, the amount of money generated or both. More than 500 children attended the dance and two events were scheduled for the upcoming weekend. They have been approached by several promoters that want to bring programs through the Center on a fairly regular basis. There is a fee schedule in place that needs to be fine tuned.

Mayor Weinstein thought the Center was successful because of the many activities, and felt they should get involved with the promoters. He thought the Community Center should be used as many hours as possible and rentals should be worked in around those activities. Deputy Mayor Etlar felt there should be a benchmark for the fees for cultural events. Recreational activities should be offered but overhead expenses should be considered. Councilmember Baratta felt the main purpose was to serve the people of Fair Lawn and any funds brought in should be considered a bonus. They are not going to cover the costs of the center. They should rent it out, but not take it away from the residents who want to use it. Deputy Mayor Tedeschi felt the primary vision was to satisfy the recreational needs of the children and plan events to bring in revenue.

Manager Metzler felt that the shows brought the arts to the community. He felt they should

encourage residents, community schools and production companies who want to put on a show, enabling the programs to grow and double the revenue in the future. He felt the primary focus should be recreation and the arts. They would continue to work on the commercial market.

Councilmember Baratta felt this was a learning experience through trial and error. Deputy Mayor Tedeschi agreed that they were on the right track but felt theatrically it needed more leadership. He suggested a weekly Senior Citizen program so that the Center remained full during the week.

Councilmember Baratta stated she had a request from the 501(3) to name the weight room after Benny and Mary Salerno and name the gym after John Cosgrove.

It was the consensus of Council to approve this request.

### **Professional Services - Municipal Building Renovation Phase II**

Manager Metzler discussed the proposal from Mr. Mecky for the renovations to the Municipal Clerk's offices and the Court offices in the amount of \$7,600. It was the consensus of Council to approve Mr. Mecky as the architect for this project.

### **Special Meeting:**

Upon motion by Councilmember Baratta and second by Deputy Mayor Etlar the Work Session was recessed to the Special Meeting at 10:10 p.m.

Mayor Weinstein reconvened the Work Session at 10:15 p.m.

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### **Public Comments:**

Harvey Rubenstein, 28 Rutgers Terrace noticed several trees at the Community Center had died and asked if there was a guaranteed replacement. He continued that on Friday night there were 600 kids at the Center and as he walked he saw car after car after car. The Police that were directing traffic did a terrific job and it didn't take him more than two minutes to come up Cadmus, go around Berdan Avenue and come into the lot. At the door there was a man that was probably Jimmy Graff standing there and two of the adult staffers checking the kids coming in. It was orderly. It went from 100 boys and girls to 200 boys and girls throwing basketballs and using that arcade area and it's a wonderful place to keep the kids off the streets.

Someone suggested that they should name Berdan Park after George Frey. He thought they should consider naming the building after George Frey for all of the work that he put into the town and into that building. He held off until now because of this mourning period, but since they were naming all kinds of places at the Center for other people, he felt they should really consider naming the building for George Frey.

He asked if there was a time limit for a developer who had been remanded back to Zoning Board. Attorney Rosenberg stated there was no limit and they could either go back to the Zoning Board or the Planning Board depending on the application they decided to come back with.

Mr. Rubinstein asked what happens if a financial disclosure shows a \$300 contribution to a Councilmember from someone offering professional services. Mayor Weinstein stated they would have to go through the open and fair process. Municipal Clerk stated he would be banned from getting a non-fair and open contract provided this occurred after the date of the ordinance.

Mr. Rubinstein concluded by asking if extensions could be put on a tower. Attorney Rosenberg stated the ordinance allowed towers up to 200 feet. Manager Metzler will check with Engineering to see if extensions were allowed.

Arlene Rubenstein, 28 Rutgers Terrace addressed a rumor that she walked at the Community Center on a regular basis when in fact she prefers Dunkerhook Park.

Craig Miller, 5 Ramapo Terrace commended the Department of Works for the excellent plowing job and in particular he thanked the employees in truck number 994. He mentioned a vacant property that was not shoveled. Manager Metzler will look into it.

Don Smartt updated the Council on the application concerning signage for Zap Lube. The applicant had rejected the recommendations of the Broadway Improvement Corporation. Mr. Smartt asked for clarification on the pay to play ordinance and the EDC. Attorney Rosenberg felt strongly that it did apply to the EDC. Mr. Smart stated that RRIC does not receive any appropriations from the Borough and would not need to file under the Borough's pay to play Ordinance. The EDC and BIC have not yet received an appropriation but they have received the appropriate forms to be completed from the Municipal Clerk. The EDC received a grant to hire a professional planner but was told that Council had to award the contract. He asked if compliance with the pay to play ordinance belonged to the Borough and was told it did. The BIC is prepared to enter into a contract with a team to do the master plan. He asked if it would be Page Ten

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appropriate for them to comply with the Borough's pay to play ordinance prior to entering into the

contract. Attorney Rosenberg stated it would be if the appropriations were made by the Borough. He would obtain the materials from the Municipal Clerk and seek her guidance.

**CLOSED SESSION:**

Upon a motion by Councilmember Baratta and a second by Deputy Mayor Etlar the following closed session resolution was unanimously adopted at 10:25 p.m.

**WHEREAS**, the Open Public Meetings act of the State of New Jersey permits the public to be excluded from certain matters to be discussed by the Governing Body; and

**WHEREAS**, the Mayor and Council of the Borough of Fair Lawn desire to discuss Personnel - Prosecutor's salary; and

**WHEREAS**, these matters are ones which permit the exclusion of the public from such discussions; and

**WHEREAS**, minutes will be taken during this closed session and once the need for confidentiality no longer exists the minutes will be available to the public.

Mayor Weinstein reconvened the meeting at 10:50 p.m.

**CLARIFICATION OF CLOTHING BINS:**

Attorney Rosenberg asked for clarification on the ordinance for the clothing bins. He wanted to know if the Council wanted an absolute prohibition against clothing bins or did they want to have a mechanism to regulate the placement of the bins and who will administer the registration and decision as to where the bins may be located. Deputy Mayor Etlar felt they should be prohibited but it may not be possible to do that at first. He thought they should set the standards and let the Property Maintenance employee do it. Councilmember Baratta reminded them that the Police Department has requested permission to have a bin.

Attorney Rosenberg stated that the State statute requires a registered charitable organization to obtain a permit from the local enforcement agency. Mayor Weinstein suggested that Attorney Rosenberg call the sponsor to see why they recommend the police department. Deputy Mayor Etlar felt strongly that they have the opportunity to enact an ordinance to do it any way the Council wants. He expressed strong doubt that the police would enforce the bins. Deputy Mayor Tedeschi suggested considering a maximum number of bins in the community.

Deputy Mayor Etlar left the meeting.

Mayor Weinstein requested that Attorney Rosenberg draft an ordinance using his best judgement for the Council to consider.

**ADJOURNMENT:**

Upon motion by Councilmember Baratta and second by Deputy Mayor Tedeschi the meeting was adjourned at 10:55 p.m.

Respectfully submitted,

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Joanne Kwasniewski, RMC, CMC, MMC  
Municipal Clerk

The undersigned have read and approve the foregoing minutes.

\_\_\_\_\_  
Mayor Steven Weinstein

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Councilmember Jeanne Baratta

\_\_\_\_\_  
Deputy Mayor Martin Etlar

\_\_\_\_\_  
Deputy Mayor Joseph Tedeschi

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Absent  
Councilmember Edward J. Trawinski