

## **REGULAR MEETING OF APRIL 10, 2007**

Mayor Weinstein called the meeting to order at 7:35 p.m. Municipal Clerk Kwasniewski read the following statement of compliance:

In accordance with the Open Public Meetings Act, annual notice of all meetings of the Borough of Fair Lawn was published in The Record issues of December 15, 2006. Notices were also posted on the bulletin board located on the first floor of the Municipal Building and the Maurice Pine Free Public Library. Copies were mailed to The Community News and posted on the Borough of Fair Lawn Website. The annual notice identified the times and locations of the Council meetings and Work Sessions.

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

**ALSO PRESENT:** Manager Metzler, Municipal Clerk Kwasniewski, Assistant Municipal Clerk Bojanowski, Attorney Rosenberg and CFO Eccleston.

### **COUNCIL COMMENTS:**

Mayor Weinstein stated that Gloria Schoenfeld has stepped down as President of the Ambulance Corps. He commended her for the four years she was president and for all of the service she has given to Fair Lawn. The Veteran Council nominated James Lamauro as Veteran of the Day. He offered his best wishes on this nomination.

Mayor Weinstein said that next Thursday the Chamber of Commerce would be honoring John Cosgrove as Person of the Year. John has been involved as a member of the Fair Lawn Fire Department for thirty-three years, having served as a President, Captain, Deputy Chief and Chief. He has been a dedicated volunteer of the Fair Lawn All Sports Association having served as a coach for Baseball, Street Hockey, Girls' Softball and Girls' Lacrosse and the founder and president of the Fair Lawn Touchdown Club and Fair Lawn Lacrosse Club. He also served as past member of the Zoning Board, Chairman of Cub Scout Pack #27, Chairman of the 75<sup>th</sup> Anniversary Committee and the Fair Lawn Community Center 501<sup>©</sup>) 3 Chairman. Mayor Weinstein felt it was fitting to recognize the time John Cosgrove has given to the Borough of Fair Lawn.

Mayor Weinstein said that two weeks ago Councilmember Trawinski brought up the Police Department and their presentation. Chief Rose and Captain Cook had made the presentation to the Council at a budget meeting in 2005. In March of 2005 the Council had approved hiring two officers and also again in 2006 there will be an additional two officers and in fact one of the officers will be shared with the Board of Education. It will be an SRO Officer in the high school.

They have a public hearing on the Clariant ordinance tonight. In order for this ordinance to pass they would need four votes and he knows that he and Deputy Mayor Tedeschi will not be voting for it. He had received phone calls to see if they could just rescind it, but they want to hear public comments although they have already heard it at the meeting a few

weeks ago. After hearing all the comments and going through the process, he is against rezoning that property at this point and time. He explained how the process was successful with this ordinance. He felt it was a good process to listen to the public and to the experts. After listening to the experts and knowing it will not be remediated until 2010, he felt it was premature to do any rezoning. He would encourage Clariant to continue with the clean up process and when the clean up is at a different level and DEP approves, he would encourage that Council, whenever it would be to look at the issue again. He would encourage them to do the clean up to residential standards. He would like to pass a resolution to the State legislature and the DEP to look at the remediation requirements. There was an article in The Record a few weeks ago about caps and standards that the developers look at to protect the residents. He felt they are relying on the DEP and State legislature, and they need to strengthen those remediation standards. There should just be one standard, not three. He has been speaking to Assemblyman Gordon, taking this on as a personal mission to look at it. He would like to discuss this further at the next Work Session. Keeping that in mind, the Borough does have an issue with COAH. They have obligations to fill. He said they will look to fulfill them but not with Clariant. It was premature to rezone, they learned it from the process and he felt confident with his decision. Out of respect for the other Councilmembers, they will go through the public hearing on this ordinance but he believed that his vote will not change.

Councilmember Baratta stated she had no comments.

Deputy Mayor Etler stated yesterday and today he had visited Thomas Jefferson Middle School and Memorial School to see the DARE classes graduate. It was good to see that community policing is alive and well. He felt this was a great credit to the Police Department.

Councilmember Trawinski congratulated Ken Garrison as the recipient of the Harold B. Florence Meritorious Operator of the Year award given by the New Jersey American Waterworks Association in Atlantic City. Most people in Fair Lawn know Ken as the Municipal Engineer but he is actually one of the few engineers in the State that is also a licensed water operator. He congratulated Ken for being recognized by his peers as the industry's best.

Councilmember Trawinski also congratulated James Graff, who will be the next Parks and Recreation Superintendent. He will have some big shoes to fill but he could not think of a better choice to fill them. Congratulations to him and to the Manager for making that decision.

Finally, there has been an ongoing change in this building by the Municipal employees for the better. The Council had received a memo from the Manager talking about the set up of new police cars. He pointed out that in the past, the Borough sent out new police cars and paid outside wages to have those cars fitted up. There are a number of things that have to be done to the police cars when they come from the manufacturer to be consistent with the Borough's needs. The maintenance supervisor, Dominick Laprezioso took it upon

himself to contact Chief Rose and suggested that the Borough Mechanics could do that. They would do it on a trial basis. To their credit they have done that and have resulted in a 50% savings of what has been budgeted. He felt it was an example of the empowerment given through the Manager to the staff to make operations more efficient. He congratulated Manager Metzler, Chief Rose and Dominick Laprezioso and staff for taking the initiative and saving taxpayers money.

**PROCLAMATIONS:            DAYS OF REMEMBRANCE  
   WATER OPERATOR OF THE YEAR  
   LANDSCAPE ARCHITECTURE MONTH**

Municipal Clerk Kwasniewski read the proclamations. Mayor Weinstein presented the proclamation to Ken Garrison as Water Operator of the Year and to the Zoning Board Chairman Scott Levy for Landscape Architecture Month. Scott Levy thanked the Mayor and Council for recognizing Landscape Architecture Month. Landscape architects develop parks and playgrounds.

**RESOLUTION NO. 136-2007 - ANNUAL BUDGET EXAMINATION**

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Etlar, Resolution No. 136-2007 was discussed.

CFO Eccleston stated there is a provision in the law that gives the Borough has a right to self examine its budget and the third year the State will check the audit again and make a determination after that. About one third of the municipalities in New Jersey are self examined.

There being no further discussion, Resolution No. 136-2007 was passed.

**PUBLIC HEARING ON 2007 BUDGET**

Upon motion by Deputy Mayor Etlar and a second by Councilmember Trawinski, the time for public hearing on the 2007 budget was passed.

Harvey Rubinstein, 28 Rutgers Terrace, did not believe that the budget should require a \$98 increase to the average homeowners. To Mayor Weinstein he said at a prior meeting, he said it was silly season, Mr. Rubinstein disagreed because it is between September and November. This is a season for sober analysis to measure the governments process, where they have gone and where they are going.

In reviewing the Saturday, January 27 budget meeting they did not want to go line for line but if the Council had, they would have seen that the Borough paid almost a quarter of a million dollars for legal expenses. In 2005 Mr. Lustgarten was paid \$134,174. He talked about the reasons why the Borough needed the additional lawyer for the various cases

such as defending the Borough from development. This Borough should be a poster child for taxes spent. The only place in America where you can be fired and make more money than your replacement. He also wondered if there would be enough surplus to offset the \$835,000 payment made by the 501(c)3.

Mr. Rubinstein stated that in regard to the 501(c)3, those volunteers said they could have spent all of the money but each brought their business skills to the project to save approximately \$2 million. He applauds them for that, but it is not found money. It is borrowed money that they will have to pay taxes to pay off the principal and interest. No one reached into their own pocket for that money. He asked Councilmember Baratta and Councilmember Trawinski to vote no on this budget.

Deputy Mayor Tedeschi stated he wasn't sure where he had gotten the legal numbers from because on March 21 they received three years of legal expenses from the CFO. In 2005 the Legal Department had a total cost of \$239,174, in 2006 when Mr. Kates took over, it went up to \$285,957, an increase of about \$57,000. This year they are estimating the legal expenses to be \$228,000 which is less than what it was in 2005. Mr. Rubinstein stated it is still a quarter of a million dollars.

Joan Goldstein, 12 Bedford Place, suggested printing the agenda on both sides of the paper.

Bob Gremillot, 1 Bristol Place, spoke about the financing of the Recreation Center. He questioned what the Borough does with the overage. CFO Eccleston said it goes to debt service. Deputy Mayor Tedeschi stated that statutorily that is the only place it can go.

Mr. Gremillot asked about the pensions. He heard that the State and the municipalities have not funded the plans. Councilmember Trawinski stated that the State is failing to meet their requirement. CFO Eccleston explained that the State floated bonds for the pension system. For three years they did not require municipalities to pay their share into the system. The problem was the State did not pay their share. In regard to the Health Insurance, the Borough is fully funded. Furthermore, the Borough pays the pension yearly.

Harry Posner, 13-10 2<sup>nd</sup> Street, asked if the Borough borrowed \$12 million for the Recreation Center, does that mean when the payments are finished, the Borough would have paid \$36 million for it. Deputy Mayor Tedeschi stated looking at the payments it would come to \$24 million.

There being no further discussion, the time for public hearing on the 2007 budget was unanimously closed.

#### **RESOLUTION NO. 137-2007 - ADOPTION OF 2007 BUDGET**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 137-2007 was discussed.

Deputy Mayor Etler stated this budget marks a milestone by trying to balance the long-term needs with future expenses. The Manager and CFO pared the budget in what he called a fair and economic manner. The result will bring a minimal tax increase of \$100 per year on a house valued at \$400,000. He wished that he could say the same for the school tax but that will be decided by the voters on April 17. It was safe to say that they will be delivering good services at a fair cost in the future. He thanked Manager Metzler and CFO Eccleston for all their efforts. As always, he felt Fair Lawn was still a great place to live.

Deputy Mayor Tedeschi complimented the Council who had the courage last year to accept the plan the Manager and CFO presented to them. For the next several years the taxes in Fair Lawn will average what they are averaging now. It will include the expense of paying back the bonds on the new Recreation Center.

Councilmember Baratta stated that she was pleased to support this budget this year. She thanked the Borough Manager and the CFO for a job well done. She thanked the Department Heads and employees. The Borough Manager had a vision when he came on board and he sold it to the employees. They could tell by when the budget came to them this year the wish list was different from in the past. They understood what the Manager was trying to do.

Mayor Weinstein stated that last year there was a change philosophically in the budget. For many years, the Republican and Democratic Councils had a different philosophy. Last year it was to plan for the future, two, three, four years out. The employees, Department Heads and the majority of the Council bought into this plan and it is working. It accounts for the Community Center, the snow plowing and leaf pick up. Every service the residents of Fair Lawn are used to are in this budget. He is pleased and will support this budget. He thanked the CFO, Manager, Department Heads, the employees and to the residents of Fair Lawn, this is for them and he believed they are heading in the right direction.

Councilmember Trawinski stated when Deputy Mayor Tedeschi and he were in the majority on the Council, he was insistent together with the CFO that they look at the budget in three or four year cycles not one year cycle. He lead the Council in that direction at that time. It is not fair for Mayor Weinstein to say that under both parties they didn't look to the future because the last full Republican Council they had was when both he and Deputy Mayor Tedeschi were on it that was his position, which he supported.

## **PUBLIC HEARING ON RRIC BUDGET**

Upon motion by Deputy Mayor Etler and a second by Deputy Mayor Tedeschi, the time for public comments on the RRIC budget was unanimously opened.

Harvey Rubinstein, 28 Rutgers Terrace, stated he was confused why they are having a vote on this budget. He thought they only collect taxes for the RRIC. Councilmember Trawinski informed him it was a statutory requirement.

Mayor Weinstein commended the RRIC for the great job they have been doing for the last 13 to 14 years.

There being no further discussion and upon motion by Deputy Mayor Etlar and a second by Councilmember Trawinski, the time for public comments was unanimously closed.

**RESOLUTION NO. 138-2007 - ADOPTION OF RRIC BUDGET**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 138-2007 was unanimously passed.

**PUBLIC HEARING ON BIC BUDGET**

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi, the time for public comments on the BIC budget was unanimously opened.

Mayor Weinstein thanked the volunteers for the work they did in selecting a planner to review the area.

There being no further discussion, upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi the time for public comments was unanimously closed.

**RESOLUTION NO. 139-2007 - ADOPTION OF BIC BUDGET**

Upon motion by Deputy Mayor Etlar and a second by Deputy Mayor Tedeschi, Resolution No. 139-2007 was passed with Councilmember Baratta and Councilmember Trawinski recusing themselves.

**ORDINANCES: SECOND READING**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, it was unanimously agreed to read the following ordinance by title and open the time for public comments.

**Ordinance No. 2070-2007**

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 125, ENTITLED "LAND DEVELOPMENT" BY INCORPORATING INTO RESERVED SECTION 125-23 CRITERIA FOR A NEW "PLANNED INCLUSIONARY TOWNHOUSE AND MULTIFAMILY RESIDENTIAL DISTRICT" R-5-4), AND DESIGNATING LOT 2 IN BLOCK 5729 AS THE "R-5-4" DISTRICT IN LIEU OF ITS PRESENT DESIGNATION AS "I-2 GENERAL INDUSTRIAL".**

Robert Gulack, 4 Bancroft Place, thought Fair Lawn should be happy with Councilmember Trawinski and Councilmember Baratta who have supported open space. He was glad to see the Clariant ordinance was put aside.

Marvin Levitt, 35-15 High Street, stated that he had searched the minutes of the Environmental meetings and found that they were not doing anything with the pollution because the Council did not tell them to do anything. He said he spoke to the Chairwoman, Wendy Dabney, who informed him that sometimes they have a difficult time getting a quorum. Mr. Levitt said that he and his wife were instrumental in getting the environment ordinance passed. He passed out minutes from an Environmental Commission meeting held in 1986 suggesting the Council read them to see what they had accomplished. He felt this was an important commission and should be staffed with people who have substance. Mayor Weinstein stated that he agreed with him and in two weeks the Council would be giving the Environmental Commission more authority and a budget. Councilmember Baratta stated that the Environmental Commission is active and has given reports about Clariant. Councilmember Trawinski stated that Councilmember Baratta was correct. He knows that Mrs. Dabney puts her heart and soul into the Environmental Commission and did not think it was fair to paint a picture of the committee being unresponsive. Mr. Levitt thought Mrs. Dabney was a good chairperson. Deputy Mayor Tedeschi stated that he and Mayor Weinstein will be meeting with Mrs. Dabney to go over some issues which include a greening committee. They have to look to the future.

Harvey Rubinstein, 28 Rutgers Terrace, suggested they set up a procedure to see reports as they come in. Councilmember Trawinski stated they do receive reports. Manager Metzler stated the reports come from the DEP and get forwarded to the Mayor and Council.

Arlene Rubinstein, 28 Rutgers Terrace, thanked Councilmember Baratta and Councilmember Trawinski for having foresight and persistence to see that this ordinance was wrong from the beginning. She felt it was only after they received a petition that they changed their vote.

Terry D'Aurizio, 15-16 4<sup>th</sup> Street, stated there were people who said they were not happy about this project. In New Jersey Monthly an article said their side of town was seedy. They have the American Legion, the Board of Education buses and the Board of Education building is peeling. She asked the Mayor and Council to take a long hard look at this. Yes she understood that a cap would have to be laid on the property. She asked the Mayor and Council to not let the developer walk away. Ms. D'Aurizio suggested they put away their political differences and think of the people of Fair Lawn, the ones who have been deprived. She thanked the developer for coming to the meeting. Mayor Weinstein stated he heard what she had to say and felt that right now hearing that the site would not be remediated until 2010 -2014, he could not support this ordinance. He is going to ask Clariant to take down the buildings. He asked Manager Metzler to talk to the Board of Education about the buses and the peeling paint. He felt in time the area will be developed. Mrs. D'Aurizio stated the residents there don't want retail or office space. She

was concerned if the buildings are taken down the area would go downhill. Attorney Rosenberg stated that Clariant would be responsible for keeping it maintained.

Anna Dinardo, 13-06 2<sup>nd</sup> Street, stated that she wanted that area cleaned up. The Seniors need townhouses to live in. She lives on the seedy side of town explaining what they contend with, such as truckers idling on Third Street. Power Tech, who is behind her house has installed an acid scrubber and the noise is so loud. She felt there should be questions she should be asking but does not know what to ask. Manager Metzler stated that another resident said the noise was excessive. He explained that the company installed a new scrubber and after being told the noise was excessive, they installed a suppression system.

Ms. Dinardo stated that when she bought her house in 1967 it was a decorating place and was concerned what kind of company can move in there in the future. Councilmember Baratta stated that another resident brought this up and she mentioned it at an Environmental Meeting. She will follow up with this. Deputy Mayor Tedeschi stated that on September 19, 2006, Councilmember Trawinski remarked that remediation could go on for 10 to 15 years. He did not think anyone would want to live on the site while it was being cleaned up. Ms. Dinardo said that it has to be cleaned up. When it was, she felt they should allow senior housing to be built.

Ron D'Aurizio, 15-16 4<sup>th</sup> Street, stated that the western section of the town border does not end at River Road. His section borders an industrial section. He felt there was no reason why 18 wheelers have to go down Third Street. He reminded them that there are votes on the other side of River Road. They pay taxes as everyone else does. The noise and the traffic are too much. Mayor Weinstein stated the Council wants the area cleaned up. He asked Manager Metzler to check into this. Deputy Mayor Tedeschi asked if anyone has come to the Council or Manager when the 18 wheelers are there. Mr. D'Aurizio said they have called.

Harvey Rubinstein, 28 Rutgers Terrace, said he recalled at a Zoning or Planning Board meeting that Lazon Paints came in for an extension to their property. He remembered that residents from 3<sup>rd</sup> and 4th Street came in specifically about the trucks and the trucks idling there. He recalled that Mr. Landzettel said they would not be allowed to idle there overnight. It was brought to the attention of the proper authorities and if nothing has been done. He suggested that someone look at the minutes or resolutions of the those Boards.

Barbara Simon, 15 Schweid Court, stated she was a founding member of the River Road Improvement Corp., a long time resident of Fair Lawn and currently serves as a trustee of the RRIC. She was speaking on behalf of the board. The RRIC has long believed that the development of the Clariant site is in the best interest of the property owners and the residential neighbors that live near the property in the River Road commercial district, which the RRIC represents. The Clariant site has been included in the RRIC district since the inception of the RRIC. In 2005, the RRIC was informed that a developer had been selected by Clariant to develop the site. The RRIC was asked by the developer to comment on the developers conceptual plan. The RRIC shared the proposal with the

neighbors. The RRIC, based on the reviews they received found the proposed residential development consistent with the direction of their study as well as the Borough's engineering firm who conducted a redevelopment assessment. In 2006 the RRIC supported the direction the development would take before this Council and supported the zoning proposed by the Borough Council to realize that development. They did so to support the remediation of the contaminated site which is required to accommodate the development. They did so to support the neighbors' desire to see the contamination abated and to see the improvement of the property that was undermining their property values. They did so because it would bring new tax ratables to Fair Lawn and because of the overall positive impact the development would have on the River Road district and for all of Fair Lawn.

Ms. Simon said that based on the comments by the Council, the RRIC is now of the impression that the current members of the Council are inclined to reject the zoning offer for this site. As advocates for River Road, they wanted the Council to know that they remain supportive of the development of this site for residential purposes. They remain supportive of the remediation of this site and it's environmental concerns to the highest level of remediation, namely, residential use. They urged the Council to send the property owner the strongest possible endorsement that Clariant should continue to pursue aggressively with the New Jersey DEP a remediation strategy for residential use and the development and higher investment by Clariant that such a standard requires. Clariant should receive a firm signal from the Councilmembers that they are committed to residential development on that site as opposed to all other uses which require a lesser standard of remediation. The owner must know, the neighbors must know and the RRIC would like to know that they have not left this property's future uncertain. She asked the Council to pledge to support the residential development of this site and the investment of the property owner needed to clean up this property to residential standards.

Mayor Weinstein said he felt they were stating that they would like their good neighbor, Clariant, to continue the remediation to the highest standards of residential development. Ms. Simon wondered if that was conveyed to Clariant. Mayor Weinstein stated it was said at the last work session and again tonight. Ms. Simon asked if the Council was going to consider sending something formally to Clariant that this property would eventually be rezoned to residential so the remediation will be done to the highest standard. Mayor Weinstein stated they have been saying that but he felt it was a legal question that they will have to speak to the Borough Attorney about. The Council would like to see the area cleaned up and the buildings taken down. They would like Clariant to remain responsible for the cleanup. He said before they commit to any residential development, they have to see if it is proper development. The environmental situation is paramount right now. Ms. Simon asked if Clariant had the option to remediate to lesser standards and walk away. Mayor Weinstein stated they do have the option to remediate to lower standards. Deputy Mayor Etlar stated they could be remediate to industrial standards because that is what it is zoned for. Mayor Weinstein felt it would be best if they remediate to residential standards. Ms. Simon thought the Council would have to say this to Clariant. Mayor

Weinstein said they would have to speak to the Borough Attorney about this.

Attorney Rosenberg stated on the issue of whether or not this Council could legally bind future Councils, the answer is a no they cannot on governmental policy.

Councilmember Baratta stated that they had just recently received a letter from Clariant Corp. saying they were committed to remediate this site to residential standards. Mayor Weinstein felt they were asking for encouragement from the Council in that letter. Deputy Mayor Etlar stated that was based upon passing this ordinance. Councilmember Baratta felt that was not true. Ms. Simon wondered if it was the Council's understanding that Clariant was willing to rededicate to residential standards. Mayor Weinstein stated they will discuss this further at a later date.

Toni Fasten, 12-61 2<sup>nd</sup> Street, thanked the Council for voting down this ordinance. There is a process and she felt they should do it right. She would like the site to be developed for residential use but first it needs to be cleaned up. She thanked Councilmember Baratta and Councilmember Trawinski for their support. She especially thanked Councilmember Trawinski for his guidance and reassurance that the ordinance would not go through.

Claude Beinstock, 39-11B Broadway, felt that houses could not be built on contaminated soil. Something has to be done. He hoped it would not take 30 to 40 years to clean it up. The sooner it is cleaned up the sooner it would help property values.

Bob Landzettel, President of RRIC, stated that the Council over the last 12 years has supported the RRIC, the EDC and the BIC to look out for future development. On Route 208's industrial area, companies are leaving and their sites are empty. The State has plans to redevelop the areas. As planners of the future, they have to decide what should go on not only at Clariant but also at Kodak, Kem Manufacturing and Fair Lawn Industries. He appreciated the thought that went into this.

Deputy Mayor Tedeschi stated can't they all agree that they have to do what is best for Fair Lawn. They have to look past the next 4 to 5 years. They have been looking at Clariant as part of the answer for the Borough's COAH obligation.

Mr. Landzettel asked the Council to expedite the thought of what direction they want to go in. He spoke about the spill at Lazon Paints. It was from a drum that was on the truck and leaked out. In regard to the trucks, if they see them idling, call the Police.

Barbara Gremillot, 1 Bristol Place, thanked Councilmember Baratta and Councilmember Trawinski for their concern about the residents. She suggested a park or a golf course. If they put residential on that site, there would be more traffic and people.

Gennaro Corvino, 2-06 37<sup>th</sup> Street, stated he sees both sides of this issue because he works for the DEP. The Borough has a developer that wants to come in and clean the

area up. Mayor Weinstein reminded him that the process for remediation was started in 1992. The Council has been told that it could take until 2014 to be remediated. Councilmember Baratta stated the developer was not cleaning up the site. Mr. Corvino stated that someone wants to do this and the Council is pushing them away. Mayor Weinstein stated it is not ready right now. He felt it was premature to move in that direction. The property owner is obligated to clean it up. Assemblyman Gordon is taking it a step further with the State. At the next work session they will discuss it further. Mr. Corvino said the area has to be cleaned up and suggested senior housing.

John McGarrick, 15-07 3<sup>rd</sup> Street, stated that when he signed the petition he did not think it was against rezoning the property. He asked if the Council wrote to Clariant yet. Mayor Weinstein said he was going to ask the Borough Attorney to do that. Mr. McGarrick wondered if Clariant could let anyone go in and use the buildings. Deputy Mayor Etler said that Clariant has no intention of upgrading the property. Deputy Mayor Tedeschi said that Clariant wants the highest and best use for that site. Councilmember Trawinski said it was possible but highly unlikely that they would use it as an industrial site. Deputy Mayor Etler felt they would do whatever they could to make money. If the ordinance gets voted down, they would have no incentive to clean it up to the residential standards. Mayor Weinstein said the Council would encourage them to do just that.

Dennis Frank, 16-30 Saddle River Road, stated he had no personal interest in the Clariant site. Thirty years ago, the site which is now the Recycling Center was a sewerage dump. Every summer the residents in the area had to stay inside because the smell was so bad. For several years, the residents worked hard to get rid of the dump and finally in the late 70's it was removed. He felt something should be done for the residents who live near Clariant because no one should live in that type of condition.

Stuart Pace, 3-48 Plaza Road, stated this project has value and wondered what incentive Clariant would have to remediate the site. He also wondered if this Council was against development, and also if Kodak be developed. He questioned if this decision was based on an election year because that's the way it seemed. He suggested that they see what the residents want.

Bob McNerney, 266 Harristown Road, Glen Rock, New Jersey, principal Shellmarc, LLC, said he wanted to understand what the Mayor and Council were telling them. The residential development of this site could not take place until the clean up of the area was completed. Mayor Weinstein stated that as a layman and listening to the experts, common sense says that development should not take place right now. According to what they heard from the experts that night, 2010 is possibly the earliest that it would be cleaned up. He also heard that there are pockets of the areas that could be developed. In his opinion, if they hit the bedrock, it could be disturbed and then that area becomes contaminated. He just did not feel secure about development at this point in time. He said he would encourage Clariant to clean up to the greatest extent possible and also to take down those buildings and to make it better in the meantime. He felt it was for the best interest of the

residents of Fair Lawn that they continue to do the clean up to the highest standards possible.

Councilmember Trawinski quoted what someone once said to him which expresses his view, "upon the completion of the environmental clean up, the buildings are to be demolished to make way for the site's redevelopment", that is his position and has not changed.

Mr. McNerney read from the minutes of May 2, 2006, where Councilmember Trawinski stated that the concept is one he would favor and would even favor a slight increase in density if some Mt. Laurel obligation could be shifted to this site. Councilmember Trawinski stated absolutely but the concept was their concept, the very one they gave to the Council that said, upon completion of the environmental clean up, the buildings are to be demolished. Mr. McNerney stated that his concept has not changed. What is driving the residential clean up is the contract they have in place with Clariant. When he went to Clariant in February, 2004, he proved to them that this project was an economic and viable project for residential development. They were committed to them. They met in May of 2005, when they encouraged Clariant to come into the fold. Now everyone is changing their position except for Deputy Mayor Etlar and they are having a hard time understanding what is going on. The fact of the matter is, if they don't approve a residential development for this site, Clariant is going to clean up to industrial regulations. The highest standards are residential. Clariant is a multimillion dollar corporation that has committed to fund this project for residential. The residential clean up is predicated on the concept plan that they submitted to DEP. Without that approval, it is not going to happen. What they are doing here is taking a project that is on track to be redeveloped in three or four years and saying wait until the end. The end will never come because Clariant does not have the incentive to spend the money for residential clean up. He read a letter from Clariant to the Mayor and Council dated March 26, 2007. Which stated they thought they were doing just what the Borough wanted. Their remediation strategy and time line were directly tied into the site being zoned for redevelopment for multi-family residential use. Clariant wrote that they will have to step back and reevaluate their plans for the site and its remediation. They also wondered what incentive they would have to proceed with the residential driven remediation. Some of the remediation process was joined with this project. The Borough wants the Clariant site redeveloped now it has removed Clariant's just to do that. They asked the Borough to provide clear guidance to Clariant whether all of the zoning conditions will be met once the DEP site has been remediate to applicable standards for the proposed townhouse development. In the letter, Clariant made it clear that they will continue to clean up the site since they have been doing this for well over a decade.

Mayor Weinstein stated there was a follow up letter from Clariant on April 5, 2007. In that letter they said they are confident that the remediation would enable them to make a transformation in the future. Clariant asked the Mayor and Council to affirm publicly that it is the desire of the Borough to see the Clariant property redeveloped as a multi-family residential complex in the future. They also asked the Mayor and Council to encourage

Clariant to continue with their remediation program that is designed to clean up the site as required by the DEP for such residential development. Once they get the affirmation from the Borough, they will continue their aggressive clean up of the site. Clariant is willing to work toward a goal that is publicly endorsed and shared by the Borough officials. Mayor Weinstein stated that they have made assurances that if it is cleaned up, they will then address the situation. Personally, it is a great idea but then they heard the environmental issues which were paramount to all of this.

Mr. McNerney stated if it takes three or four years to clean this up, then they come back for a site plan review it will take another three years, they won't see this project for six to seven years. What is the problem of rezoning this site simultaneously with the clean up? Mayor Weinstein stated it was premature. He suggested the site be cleaned up before they rezone it. Mr. McNerney said they were not going to entertain another redevelopment plan until the clean up is finished, and then the application process will take another two to three years, how is that the right decision. They have been before the Mayor and Council since 2004. They have not taken an adverse position. They thought they were working with the Borough. They are very disappointed with this decision. Mayor Weinstein said the Borough has been true to its word. There is a disagreement here with the time frame. Mr. McNerney wondered how the opinion can change so dramatically from January to March.

Deputy Mayor Tedeschi stated opinion is shaped by information. The word potential means perhaps not necessarily absolutely. The original resolution he referred to said potential redevelopment. He felt Mr. McNerney was chastising this Council because he did not get the outcome he wanted. He has a problem when Mr. McNerney says if the Council does not rezone this, they will get industrial use there. Mr. McNerney said it was not financially feasible to clean it up for residential use without the zoning change. This plan is consistent with the Master Plan. The clean up is ongoing. They brought it along quicker than it should have been. Deputy Mayor Tedeschi said the Council said when it is remediated, lets see what happens. Mr. McNerney said the Council sitting here might not be here in three years.

Colin Quinn, Shellmarc, LLC's attorney, thanked the Mayor and Council for the long road they have traveled. He felt it was premature to render a judgement before the public comments have been given. He felt it was appropriate to take its time with this process. He sees that the Council is sensitive to the environmental issues. His client has taken great pains to work on that. They have been before the Mayor and Council at least ten times and before the Planning Board twice. The Borough and Clariant have followed the process. The DEP has endorsed this project as a type of brownfields development that the State and this town needs to enter into the 21<sup>st</sup> century. Mr. Quinn said that each and everyone endorsed this project. The Planning Board's members were in favor of it also.

Mr. Quinn said Shellmarc has spent time and money on this project. This project is all about Fair Lawn. He thought they could take some time and think about it. He and his

client are disappointed at this outcome. He thought it was not appropriate that he was told what the outcome would be even before the public's input. He reminded them that the DEP has endorsed this project. He reminded the Council that his client has spent a lot of money on this project to make it work for Fair Lawn. If they say no, Clariant will not work on the remediation for residential use. They might even lease it out to an industrial facility. He also mentioned that he read the petition and found it was not legal.

Mayor Weinstein stated a few times it was mentioned that this was done because of politics and this is simply not true. The Council will not pass this ordinance because of the clean up that still remains. Mr. Quinn stated that the property will not be cleaned up to residential standards. He knows the environmental process takes time. There would be no CO's issued until the property has been remediated and is ready. He asked them not to turn a viable project away from the Borough.

Harry Posner, 13-10 2<sup>nd</sup> Street, asked why the Council could not pass an ordinance with restrictions in it such as having DEP approval before they proceed. Mayor Weinstein stated it is up to the DEP to approve an area. Attorney Rosenberg stated that the Council has no authority to preempt the jurisdiction of the DEP.

Louise Orlando, 12 Arlington Place, stated it was her understanding that the Clariant property is zoned industrial. Attorney Rosenberg stated it falls under the I-2 zone. Ms. Orlando asked if it was possible to rezone it to the R1-1 which would be residential. Councilmember Trawinski stated the Council had discussed rezoning this to residential but need to redo the Master Plan. Ms. Orlando asked if that had an impact on the DEP and the clean up. Attorney Rosenberg stated that the clean up is between the applicant and DEP. The Borough can't know what or predict what the DEP would do. There would be no cause for them to impose a higher remediation standard.

Mrs. Orlando asked about the contract between Clariant and Shellmarc, LLC. Attorney Rosenberg stated the Borough has never seen the contract between them. The Borough has no information on a private contract. Mrs. Orlando asked if those two companies came to an agreement to clean up the property, would that give the Borough a level of comfort to rezone the area. Attorney Rosenberg stated the Borough is not a third party to the agreement. Mrs. Orlando wondered since these questions have been raised, would it be possible to table this ordinance for a month. Mayor Weinstein stated it was deferred already. He said at another work session they will discuss asking the Borough Attorney about this other than the rezoning.

Mrs. Orlando stated that in the ordinance it spoke about the COAH obligation. She wondered if that had any effect on what was going to happen now. Mayor Weinstein stated they will vote on this ordinance tonight as it exists.

Albert Caldarone, 15-09 George Street, asked who was paying for the residential remediation. Mayor Weinstein stated that Clariant was. Councilmember Trawinski stated

they are obligated to do so. Mr. Caldarone asked if the developer left would it still be remediated to the residential standard. Mayor Weinstein stated at a future work session the Council will discuss this. Mr. Caldarone asked why they would still be involved if Shellmarc pulls out. He felt that Clariant was doing the cleanup because the developer was here. Councilmember Baratta stated that Clariant has been doing the remediation since 1992. Mr. Caldarone wondered if the Borough could trust that Clariant would still continue. Councilmember Baratta stated that they can trust Clariant. They are responsible for the clean up. Her conscious will not allow her to think of people living on that site. They want it to be safe. She said this ordinance did not include senior housing. She suggested they get the area cleaned up first.

Howard Mark, 12-23 Ferry Heights, said do not rezone the Clariant site because look what happened when the Naugle House was rezoned.

Joan Goldstein, 12 Bedford Place, wondered what happens if the zoning does not get changed. Mayor Weinstein stated it was at an industrial level. Right now Clariant wants reassurance from the Borough for them to be remediated to residential standards. Ms. Goldstein asked if the ordinance passed at the second reading the remediation would have to be at residential standards. Attorney Rosenberg stated those are two separate issues. One of them is whether Clariant cleans it up to the residential standard is between them and the DEP. Clariant wants reassurances that it will eventually be rezoned. Ms. Goldstein wondered if the ordinance passed would it give the groundwork to have it remediated to the residential standard. Shellmarc would like to see this ordinance pass so that they can go to the Planning Board. He explained this is the first step whether it is this project or another one. Councilmember Trawinski stated that the Mayor and Council have to deny and reject this ordinance.

Deputy Mayor Etlar read the following statement, in 1989 Clariant began the cleanup of their property on 3<sup>rd</sup> Street. That remediation continues today. In 2003 Clariant was notified by this Council that it was in need of redevelopment. With that notification it proceeded to clean their 13 acres up to a residential grade standard, which according to the DEP is the highest rating. Indeed they were told by Clariant and the DEP that they are using a new method along with sparging and this is the infusion of Hydrogen Peroxide to help in its remediation process.

Subsequently, Shellmarc and Clariant entered into a deal to build townhouses on this property, only when the DEP was satisfied that this property was fully remediated to residential standards.

Last year a concept plan was brought before this Council, showing about 175 townhouse units to be there in the future. He thought that plan looked very good, and so did the Planning Board. Since he never takes things of this nature for granted, he went there on three separate occasions and walked the property just to see again and again that this would be good for Fair Lawn and the immediate neighborhood. The answer came back

indeed it was, and the first step was to rezone this industrial site to townhouses.

What you see before you tonight are the result of many months of hearings and meetings. My colleagues feel that this change in zoning is not needed now, but they can speak for themselves. If it is withdrawn or does not pass then this town will have missed the chance for additional senior housing, a chance to have this property cleaned up to residential grade or a chance to beautify the area and a chance for better tax rates. He intends to vote for this ordinance. Any other action would be a disservice to this community.

Attorney Rosenberg advised that he would like to correct one thing that Deputy Mayor Etlar said. The resolution was from the Mayor and Council to ask the Planning Board to take a preliminary look at whether the five different properties were to be included in a State redevelopment statute. The Council had not taken any further action to declare Clariant as an area of redevelopment.

Councilmember Trawinski stated there has been no secret that he intends to vote against this ordinance. He understood that some people thought he changed his position. He did not think that he had. His position was predicated on what he thought was a clear plan submitted by Clariant that they would not put a shovel in the ground or demolish the structures until the remediation was completed. He understood that the site would be 100% age restricted not a site that gave them 21 or 27 age restricted units. He is sorry that some people have seen fit to say that his views were political in nature. He sits there as a legislator not as a Planning or Zoning Board member. Frankly, if he wanted to, he could say he does not like it and vote against it. He is not stuck with the same standards as the Boards or a Court of law. Despite that fact, he applied those standards to this application. He read a fair amount of environmental information which convinced him more than ever that the developer was right in his initial submission to them that the site would not take development until the remediation was concluded. That was compounded when he heard from the DEP that it was correct also.

Councilmember Trawinski stated he did not view this a public/private partnership. In his opinion, this is nothing more than a premature money grab by a developer that may be politically connected to the Chairman of the Planning Board. He places no stock under these circumstances in the recommendation of the Planning Board. He knew that the Chairman recused himself but he still does have a significant ability to impact on the members of the Board. He will not support that kind of development with an undercurrent such as that. The developer has made substantial political contributions throughout the State of New Jersey. He will not support a developer that has done that. He felt there will be other developers for that site. Councilmember Trawinski said the Council received a letter from the Bergen County Executive asking whether Fair Lawn would consider becoming a receiving zone for development that can't take place in the highlands. They have not discussed this yet but he felt it was indicative of the development pressure they feel, it will continue.

In regard to trusting Clariant versus a politically connected entity, he does not place his stock in that entity. Frankly, he does not place stock in the DEP because the newspaper is full of articles about them making mistakes. Those representatives from the DEP that were here, are well intentioned and doing their job the best they can. He felt they were overtaxed and over stressed because of manpower cuts that had taken place in the department for many years.

Councilmember Trawinski said there was more than a scintilla of evidence for him to decide this. He sits there as a legislator and under the first amendment these people that spoke and have a right to address the government with their grievances, they have exercised both sides of the fundamental act of democracy that they can exercise. He will not endorse this. He thanked the Council for changing their mind about this ordinance.

Deputy Mayor Tedeschi stated that Mr. Quinn had asked why and the answer to that is the site has not been remediated yet. It was an easy decision because there are a lot of things to be considered. He felt this was best for Fair Lawn.

Councilmember Baratta stated she was going to vote no on this also. She said Clariant has been doing the cleanup since the 90's. She wants the Council to have a clear conscious.

Mayor Weinstein stated there is a relationship between the Planning Board Chair and an individual in Shellmarc. The fact is that the site has not been remediated yet. He will vote no on this ordinance also.

There being no further comments, upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to close the time for public comments.

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi, Resolution No. 140-2007 adopting Ordinance No. 2070-2007 failed with only Deputy Mayor Etler voting in favor of it.

#### **PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the time for public comments on Agenda items only was opened.

There being no comments from the public, upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the time for public comments was unanimously closed.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, Consent Agenda 10-2007 containing the following items was unanimously passed.

- a. Resol. #141-2007 - Approval of Minutes:
  - Work Session 2/6/07
  - Special Meeting 2/6/07
  - Closed Session 2/6/07
  - Regular Meeting 2/13/07
  - Work Session 2/20/07
  - Special Meeting 2/20/07
  - Closed Session 2/20/07
  - Regular Meeting 2/27/07
- b. Resol. #142-2007 - Refund of Overpayment of Taxes
- c. Resol. #143-2007 - Award of Bid: SCADA System Maintenance
- d. Resol. #144-2007 - Award of Bid: Bioxide
- e. Resol. #145-2007 - Award of Bid: Soft Drink and Food Concession at Memorial Park
- f. Resol. #146-2007 - Approving the LOSAP Certification List
- g. Resol. #147-2007 - Authorizing the Execution of Agreement with Fair Lawn Commons for Scavenger Services
- h. Resol. #148-2007 - Authorizing Signing of Agreement with the DEP for GAC Demonstration Project

## **MISCELLANEOUS PUBLIC COMMENTS**

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to open the time for public comments.

Magdalena Castiglia, 12-30 Edward Street, expressed her concerns about the Fire Co. #1's application before the Zoning Board. The area has mostly single family homes. The Fire Co. is asking to put an addition on their building beyond the 30' height restriction. Their attorney, Mr. Ahearn, had spoken about the Fire House being operated by the town. They want to build the addition to 43' tall. The Fire Co. wants to swap the land but in the deed there are terms that it would revert back to the Borough if the property was to be sold. She felt if money is made it should go to the Borough not the Fire Co.

Ms. Castiglia also stated that the residents of George Street do not want River Road encroaching on them. They would like a pocket park instead. Mayor Weinstein stated he will set up another meeting with RRIC and the property owners. Councilmember Trawinski asked if the Zoning Board attorney had asked for a copy of the deed. Ms. Castiglia explained what happened at the Zoning Meeting the night before. In the end it was a four to three vote in favor of the Fire Co. to have a permitted use within a residential zone.

Mayor Weinstein stated they will meet with her but it is not appropriate for the Council to be

judgmental of the Zoning Board. Deputy Mayor Tedeschi asked if she had made all of this available last night to the Zoning Board members. Ms. Castiglia said the drawings were not available. She said that only part of the application was heard last night.

Councilmember Baratta stated she was at the meeting and what she had given them, this was given out to members in the audience. The attorney for the Fire Co. had copies of it. Only part of the application was heard last night, and there is a second part that she gave to the Borough Attorney and the Municipal Clerk who will give out to the Mayor and Council.

Manager Metzler stated he wanted to make sure everyone was clear that when they are referring to the Fire Department attorney or Engineer, it is Fire Co. #1, Inc. That building is not owned by the Borough it is owned by the members past and present who belong there. It is a non profit organization.

Harvey Rubinstein, 28 Rutgers Terrace, stated that at the Zoning Board meeting the only testimony was from the Fire Captain. The Engineer for the Zoning Board brought up the section on the height. There was no time to talk to the architect after his presentation. He felt that the building could be a little smaller and felt there was tweaking that has to be done.

Mr. Rubinstein said he read an article that may be beneficial to the Borough about a central location for grants from the Federal government. He gave copies to the Municipal Clerk to be copied.

Mr. Rubinstein asked for an explanation about authorizing the DEP GAC project is and the bioxide bid. Councilmember Trawinski stated that bioxide is an environmentally safe chemical that the Borough goes out to bid for occasionally. DEP contacted the Borough because the DEP is undertaking an experimental project to study the water to see if they should redefine their standards to make them even more stringent. They are investing \$1 million into the Borough's system. It should take several years. Attorney Rosenberg said it should take about five years.

Manager Metzler answered the question about the Mental Health Center, what the budget was and the percentage of employees and residents of Fair Lawn that use it in comparison to the other communities that utilize the center. A full report was prepared by them and given to the Council and was figured into the budget.

Mario Caveda, 1-42 34<sup>th</sup> Street said that he and his neighbors on Rosalie Street see cars speeding in excess of 40 mph. He counted 21 houses with 20 kids in those houses. Warren Point School is right there. He asked about speed bumps. Mayor Weinstein asked the Manager to have the Police Department check this out.

Manager Metzler said the Traffic Safety Officer will recommend against speed bumps. The Traffic Bureau has proactive approaches that it will take and they will do enhanced

enforcement. He will speak to Chief Rose. Mr. Caveda wondered since Rosalie is a flat



unanimously closed.

**ADJOURNMENT**

Upon motion by Councilmember Baratta and second by Councilmember Trawinski, the meeting was adjourned at 11:16 p.m.

Respectfully submitted,

\_\_\_\_\_  
Marilyn B. Bojanowski, RMC  
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

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

\_\_\_\_\_  
Councilmember Jeanne Baratta

\_\_\_\_\_  
Deputy Mayor Martin Etler

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

\_\_\_\_\_  
Councilmember Edward Trawinski