

WORK SESSION FEBRUARY 2, 2010

Mayor Tedeschi called the meeting to order at 7:30P.M.

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 18, 2009. 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 Tedeschi, Deputy Mayors Swain and Weinstein and Councilmembers Baratta and Trawinski.

ALSO PRESENT: Acting Manager Kwasniewski, Assistant Municipal Clerk Bojanowski and Attorney Rosenberg.

Closed Session

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, the following Closed Session resolution was unanimously adopted at 7:30 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 Pending Litigation – Landmark; and, Contract Negotiations – Health Benefits

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.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Lawn that the public be excluded since these matters as set forth above are ones which permit the exclusion of the public from such discussions.

At 8:45 P.M. Councilmember Baratta made a motion to return to the Regular Meeting, seconded by Councilmember Trawinski.

Review of Tentative Agenda – 2/9/10

Acting Manager Kwasniewski asked that a Resolution of Support be added along with the Department of Justice and Community Oriented Policing Services (Surveillance Equipment). The Special Meeting Minutes and Closed Session Minutes of 11/4/09 will also be listed. Acting Manager Kwasniewski asked to have the RFQ for Special

Counsel and the Best Kid Foundation added to tonight's regular agenda and that the PVSC overcharges be added for discussion in Closed Session.

Council Liaison Reports

Councilmember Baratta reported that she, Mayor Tedeschi and the Acting Manager attended the 501(c)3 meeting. She recalled that the Council had previously discussed Rainbow Productions who do shows geared towards the Seniors. In conjunction with this, the group will be coming to the Community Center on February 18th at 7:00 P.M. Representatives from the County will be invited to see a sample production and garner some interest in the program.

Councilwoman Baratta said that she and Deputy Mayor Swain attended the LEPC meeting where Carol Wagner presented an update on the H1N1 clinics. Ms. Wagner felt that the first and second waves of the flu were over, however, the third wave, which happens in the spring, could be the worst. Ira Marks gave a presentation on the Borough's emergency operation plan.

Councilwoman Baratta and Acting Manager Kwasniewski attended a meeting on the Farmer's Market. The fee for vendors will remain at \$117 as will the location. The market will run from the end of June through the third week of October and requests will go out for several new vendors. Attorney Rosenberg will get the extension contracts out in February. Councilwoman Baratta reported that she will be meeting with a group tomorrow night regarding the Community Garden.

Deputy Mayor Weinstein stated that the first ADA committee meeting had been cancelled due to the snow storm. He attended the Open Space meeting last night. He feels optimistic about the meeting scheduled with the Freeholders where the Borough will ask for \$509,000 for the acquisition of the Naugle Property. Deputy Mayor Weinstein said that letters went out to the property owners from Acting Manager Kwasniewski. Michael Hakim suggested that the town should wait to send a letter to Lisa Stern because he anticipates that George Street will be completed by that then.

Deputy Mayor Swain referred to the parking issues and recalled that they are going to have recycling and garbage receptacles placed at the entrances to the High School. She asked whether a status report could be sent to the people on the Parking Committee along with some of the residents to let them know that the Council is working on the parking and garbage issues. Councilmembers thought it was a good idea and Mayor Tedeschi asked how many people would be receiving these letters. Acting Manager Kwasniewski said that she has a list of the property owners who indicated an interest in having parking areas designated adjacent to their properties and Councilmembers agreed that this list should be used. Acting Manager Kwasniewski indicated that she will get these letters out.

Deputy Mayor Swain reported that the Green Team is meeting on Thursday night.

Deputy Mayor Weinstein noted that the Environmental Symposium Fair will be held on February 25th. There will be two speakers who will discuss storm water regulations and pedestrian friendly streets.

Councilmember Baratta stated that at the Farmers Market Meeting, it was mentioned that the Green Team would be doing something at the Regatta. She said that a woman from the Garden Committee crochets plastic bags together to make recyclable shopping bags. The Green Team might want to include her in their booth at the Regatta.

Mayor Tedeschi stated that the Environmental Commission is meeting tomorrow night and are focusing on the symposium mentioned by Deputy Mayor Weinstein. They need assistance in getting out information and press releases. Acting Manager Kwasniewski said that they don't have any information except the date. James Van Kruiningen will go to the meeting to get additional details.

Acting Manager Kwasniewski reported that she attended Senator Rothman's Appropriations Meeting on behalf of the Mayor. She will put together documentation that is needed regarding suggestions that Senator Rothman's staff felt were reasonable requests from the Borough. The staff indicated that they would work to ensure that Fair Lawn is at the top of the list. Mayor Tedeschi was pleased to report that the Fire Department had been awarded a grant to \$89,000 for the purchase of escape harnesses. The Borough's share of the overall cost will be \$9,000.

Special Needs:

Mayor Tedeschi stated that he received a request from the mother of a special needs child to allow her child to walk at the track. He asked Attorney Rosenberg to research the Borough's legal responsibility to provide this under the ADA laws.

Attorney Rosenberg stated that under the ADA the track must be available to people with special needs. The law states that a public entity is required to make its programs and facilities accessible except where it would result in the fundamental alteration in the nature of the program or an undue financial or administrative burden. Attorney Rosenberg said that from what he has read the Community Center would have to be modified to provide a service to this individual. Acting Manager Kwasniewski said that in this case the child is only two years old and it has nothing to do with the ADA. Children are simply not allowed on this track for safety reasons.

Mayor Tedeschi proposed that the Council have the Acting Manager ask the Recreation Director to come up with a plan to have the walking track or the gym made available on a regularly scheduled basis so that people know that it is available at specific times. Deputy Mayor Swain questioned what would happen in the case of a two year old who isn't a special needs child. Councilmember Baratta commented that this track is frightening and Acting Manager Kwasniewski said that this is the reason why the track isn't open to children. This child was offered the opportunity to use the gym for walking at any time during the day. Attorney Rosenberg indicated that the rules state that no one under 18 can use the walking track and Councilmember Trawinski said that this would not be discrimination under the ADA.

Councilmember Trawinski said that if they are going to discuss this with the Recreation Director they should also talk to the Joint Insurance Fund (JIF) to find out the implications from the insurance aspect. Acting Manager Kwasniewski commented that it would be better to keep the child in the gym. She contacted Jim Graff about this and he was dumbfounded, however, he agreed that there wouldn't be an issue if the child was allowed to use the gym.

Mayor Tedeschi asked how they should deal with someone over 18 with a disability who is afraid to walk on the track because of the volume of people using the track. Several Councilmembers said that jogging wasn't allowed and Mayor Tedeschi said that it is allowed on the outside lane of the track. Mayor Tedeschi suggested assigning hours and Deputy Mayor Swain said that people with disabilities should be able to come whenever they want.

Councilmember Trawinski suggested recommending this to the ADA Committee. Acting Manager Kwasniewski said that she would reach out to JIF as well as Jim Graff.

Status of Sewer Study on Jasper Road

Acting Manager Kwasniewski spoke to the Engineer who had contacted Malcolm Pirnie. The contract has been signed and at the moment Malcolm Pirnie is collecting data. An evaluation of the data will be performed and a recommendation will be forwarded to the Borough within approximately six weeks. Acting Manager Kwasniewski will follow up at that time.

Councilmember Trawinski wondered if Malcolm Pirnie had been in touch with the area residents. Acting Manager Kwasniewski said she did not know but she would ask them to contact the concerned residents.

Requests from Council

Deputy Mayor Weinstein stated that over the past few months there have been a lot of memos going through the Acting Manager to the various departments. He said that a policy is needed whereby, in the case of a major issue or project, the Councilmember involved would bring it to the attention of the entire Council. The Council could then prioritize the matter, discuss it with the Manager and decide on a time frame in which it should be addressed.

Acting Manager Kwasniewski was asked for her thoughts and she said that there are some things that take longer than others. She pointed out that recently the Police Department had used four people for a considerable amount of time in order to gather information on alarms and summonses. Mayor Tedeschi said that he had made specific requests of the Police Department, and he received a 30 page report for the month of January that he did not ask for. His original question had been why there weren't postings for October, November and December. He has one answer that says entries were temporarily discontinued and then completely discontinued.

Mayor Tedeschi questioned the implications of not enforcing ordinances regarding government records. Councilmembers were referred to the last paragraph of a memo dated January 28th, 2010. Deputy Mayor Weinstein stated that, going forward, something like this needs to come back to the Council for discussion. Councilmember Trawinski said he agreed as long as it doesn't impede the rights of any Councilmember to ask for information. Councilmembers were unanimous in their agreement.

Preparations of Agreements for Department Heads not in Bargaining Units

Mayor Tedeschi stated that the Acting Manager, the CFO, Police Chief and the Municipal Clerk do not have employment agreements. They are not members of a collective bargaining unit and Mayor Tedeschi recommended that they each have their own agreement. He added that the agreements should be consistent. Acting Manager Kwasniewski referred to the Borough's resolution with the CFO which states that the Borough Attorney can draw up an agreement.

Mayor Tedeschi said that his primary concern is benefits such as comp time for senior managers, carry over of sick time, the accumulation of sick time, etc. Acting Manager Kwasniewski stated that anyone hired after 1988 doesn't get paid for their sick time. Mayor Tedeschi distributed a State Commission report stating that excessive benefits and payouts have to stop. Councilmember Trawinski said that this applies to other agencies without the same provisions and it is not an "apples to apples" comparison.

Councilmember Trawinski recommended that the Acting Manager should report back on the benefits for the four positions that were mentioned and pull out the provisions of the other agreements. Any areas of difference would have to be highlighted and discussed going forward. Councilmembers agreed that it is a good idea to have a clear position on benefits.

Fees

Acting Manager Kwasniewski has asked Department Heads for areas where they could recommend fee increases.

Regarding Fire Prevention, there is presently, there is no fee to register non-residential buildings over 1,000 sq. ft. with no fire protection system. A fee of \$75 is being proposed for annual inspections. Legislation has changed and now requires a more detailed inspection. Other communities have a similar fee and it covers the time allocated. Councilmembers found it strange that if there was no fire suppression system the charge was less. Mayor Tedeschi asked to see the comparisons from other towns.

Councilmember Trawinski commented that there is a big difference between inspecting a 20,000 sq. ft. or 50,000 sq. ft. building and a 1,100 sq. ft. building and he suggested considering a sliding scale based upon the size of the building. Acting Manager Kwasniewski will look into this, however, she explained that this fee is to register the building only. Councilmember Trawinski said that he was confused and needed to see

the fee schedule. Attorney Rosenberg said that this is about the registration of common areas and he will find out why this is now being required by the State Code.

Acting Manager Kwasniewski referred to Section 104-10D where it is proposed to change the wording from "inspection" to "registration" as well as the fee from \$10 to \$12. Councilmember Trawinski pointed out that this is State law and asked if the Borough could make changes. He added that this charge also seems very low for an inspection. Acting Manager Kwasniewski will get clarification on these items.

Acting Manager Kwasniewski said that there is a proposal to increase the fee for the certificate for smoke detectors, carbon monoxide alarm and fire extinguisher compliance. This is only done upon the sale or rental of one or two family homes and the proposal would increase the fee to \$100. Councilmember Trawinski said that this fee seems inconsistent with the previous fee that was discussed. Deputy Mayor Swain commented that this cost may be prohibitive, however, Councilmember Trawinski said that this inspection is required by State law. He added that he wouldn't raise this fee because this is just another burden for homeowners. He indicated that he favors an increase in the reinspection fee because this law has been in effect for the last 20 years and everyone should be familiar with this practice.

Acting Manager Kwasniewski referred to the permit for hot tar roofing and pointed out that the fee hasn't changed since 2002. Councilmember Trawinski suggested that they periodically take a group of fees, analyze whether they are reasonable and subsequently tie the fee to the consumer price index. This would avoid large increases in fees that haven't been raised in quite some time and could be done over the course of a year or two. If the department wanted to change the fee to a different amount they would have to approach the Council with the justification.

Mayor Tedeschi asked why the fees were being increased and Acting Manager Kwasniewski said that the amount of time and expense spent on these various services by Borough employees justifies an increase in fees that haven't been raised in years. After more discussion, the Council decided not to change the fee for hot tar roofing.

After a short discussion on piano tuning, it was the consensus to set the fee at \$60.00.

Acting Manager Kwasniewski stated that the Borough loses money every time it gives out a recycling container. The Borough charges residents \$15 per barrel, however, the actual cost to the Borough is \$19. The recommendation is to charge \$25 for a new barrel. Acting Manager Kwasniewski said that other towns give stickers to residents to put on their own recycling containers.

Mayor Tedeschi pointed out that recycling barrels result in less garbage which in turn results in reduced tipping fees. Councilmember Trawinski suggested that the Acting Manager get the Recycling Coordinator's opinion, however, she said that the suggestion to buy stickers rather than barrels is contained in the budget. She added that is a policy decision.

Acting Manager Kwasniewski commented that she couldn't see that there would be any difference in a resident using their own barrel for recycling or using a barrel that is provided by the Borough. Mayor Tedeschi stated that about fourteen years ago he audited the entire recycling program and he learned that in towns where there is co-mingled recycling in barrels the average family had 9.6 lbs. of recycling every two weeks. Deputy Mayor Weinstein questioned the number of recycling barrels that are kept on hand and Acting Manager Kwasniewski estimated that there are less than 100. He said that if the price per barrel is raised to \$25 it is no longer a budgetary issue. When the delivery and storage cost for barrels is factored in the Borough will not be making money.

Deputy Mayor Tedeschi disagreed and said he would charge residents \$19 for the barrels. Councilmember Trawinski said that if people pick up the barrels at the Recycling Center he would agree with the \$19 charge. After more discussion, Mayor Tedeschi suggested two options: \$19 if the barrel is picked up at the Recycling Center; and \$25 to have it delivered.

Acting Manager Kwasniewski stated that the Recycling Coordinator is asking that recycling penalties be increased because the penalty is too low and does not justify having employees appear in Court. Councilmember Trawinski said that he needs more information because he has never heard that the Judge doesn't impose fines that are high enough. Attorney Rosenberg indicated that he would talk to the Judge about this.

Acting Manager Kwasniewski asked the Council if they would be interested in looking at kiosk parking instead of selling parking permits which involves a considerable amount of overtime. There would be issues to work out with New Jersey Transit in connection with non-residents. Councilmembers agreed that it would be a good idea to research this system.

Acting Manager Kwasniewski said that there is no charge for a Borough sponsored event for a Sound Tech or Light Tech. She suggested \$20 for the second or third one. The first one would be free. Presently, the Borough pays for the first, second and third technicians for Borough sponsored events. They get paid \$18 an hour at the moment. Many of the theater companies would not be able to stage a production if they had to pay regular corporate rates. By using this method, both the Borough and the production company each makes some money. Acting Manager Kwasniewski reiterated that this charge would only apply to the second technician and the Borough would be responsible to pay for the first technician.

Mayor Tedeschi recommended that the Council do an analysis of the revenue and the costs involved in all of the Community Center activities related to the theatre when this comes up in budget discussion. Acting Manager Kwasniewski said that they don't know how much is being paid out because electric, gas and other utilities aren't separate. Mayor Tedeschi recalled that last year the former CFO did a report of the revenue and the costs

Councilmembers agreed that they could support a fee for the second and third technician.

Request to Purchase Borough Property, Block 2803, Lot 8

Acting Manager Kwasniewski reported that she has received a request to purchase a part of parkland on Split Rock Road. She wanted Council confirmation that the Borough does not sell parkland. Deputy Mayor Weinstein said that this property is part of the Open Space inventory and the Council agreed that this property could not be sold.

Best Kid

Acting Manager Kwasniewski reported that Mayor Tedeschi had received a letter from the Best Kid Foundation regarding a walk on March 21st from 8 A.M. to 1 P.M. This is the Philippine Asian American Walk for Hope and the Council would have to allow the walking route to be located around the pool. They are a New Jersey Non Profit Organization and are able to get the necessary insurance added on for a single event. Fair Lawn would be the payee and Attorney Rosenberg said that the additional insurance would be \$1 million.

RFQ for Special Counsel

Acting Manager Kwasniewski distributed the RFQ for Special Counsel on an As Needed Basis. Deputy Mayor Weinstein referred to a recent article which had surfaced about Councils squandering money on attorneys and he suggested that a statement of facts should be made to the public as they move forward. He recommended that the Council as a whole send a Letter to the Editor regarding these comments.

Councilmember Baratta agreed and questioned the comments in the article which stated that the Borough Attorney's contract includes a requirement to defer to Mr. Lustgarten on litigation. She has reviewed Attorney Rosenberg's contract and said that this is not true. Councilmember Trawinski agreed and stated that the story fails to point out that a substantial portion of Mr. Lustgarten's fees have been incurred by the unfortunate conduct of the Radburn Trustees in forcing litigation. The article also suggests that it was not a good idea for the Council to include a "not to exceed" provision in the contract. The Council does this all the time in terms of the legal fees and Councilmember Trawinski commented that the hourly rates charged are absurdly low.

Deputy Mayor Weinstein stated that Mr. Lustgarten has been serving the Borough since the late 1970s and has been approved by 30 to 40 different Councilmembers during that time. He added that Attorney Rosenberg was the former Zoning Board Attorney.

There was a unanimous consensus to prepare a letter to the Editor. Councilmember Trawinski said that he and Deputy Mayor Weinstein would draft the letter.

Deputy Mayor Swain pointed out that people may think that the legal fees are going directly into Mr. Rosenberg's and Mr. Lustgarten's pockets. The fees go to the firm who has to cover overhead such as secretaries, utilities, office supplies, etc. The attorneys are not Borough employees and do not receive medical benefits. Councilmember Trawinski said that the "not to exceed" clause has been put in contracts for 30 years

based on the advice of the League of Municipalities and he said he wouldn't support a contract without such a clause.

Miscellaneous Public Comments

Sheryl Cashin, 1 Glenfair Road, said that her 16 year old son is part of the Volunteer Ambulance Corps; however, he is not allowed to use the equipment due to his age. She questioned who would be delivering the recycling cans and Councilmember Trawinski said that this is part of the information they are asking for.

Ray Richter, 19-15 Jordan Road, said that he is happy to hear that a report will be submitted regarding the sewer back ups in the area. He added that there is a serious street flooding issue in the neighborhood during heavy rains and water shoots up out of the storm drains like small geysers. He has spoken to the DPW and the Engineering Department about the situation and he has now been told that the Jordan Brook, which empties into the Saddle River, may have to be dredged by the County. Mr. Richter wants the Council to be aware of the situation.

Councilmember Trawinski asked Acting Manager Kwasniewski to report back on Ken Garrison's and Ron Conti's assessment of the situation. Mr. Richter said that the problem of serious street flooding has been ongoing since Hurricane Floyd. He added that the Zoning Board is approving a lot of impervious coverage variances which may be having an impact on drainage in this area. The system may not be adequate given the amount of run off. Acting Manager Kwasniewski indicated she would look into this.

Pam Coles, 13-34 George Street, said that this has been going on for 10 years and they need to expedite some sort of solution to the problem.

Ms. Coles referred to the fees and said that although they haven't been increased in 9 years, now is not the time to raise fees due to current economic conditions. She suggested that the fee increases be addressed when the economy turns around. Property taxes should be used to pay the salaries of these employees. Ms. Coles felt that \$19 is too much for a recycling barrel and she added that similar barrels are available at Home Depot for \$9.99. Acting Manager Kwasniewski said that Home Depot could bid for this contract if they were interested.

Mayor Tedeschi said that he actually approached Home Depot's corporate office about supplying the Borough with these barrels. Home Depot checked into this further with Rubbermaid, who was their supplier, and they were told by Rubbermaid that they couldn't sell these barrels to Fair Lawn. Councilmember Trawinski said that local vendors can also try to get on the State contract but they don't seem to be interested in registering. He commented that the State contract doesn't always yield the best price. Ms. Coles said that the \$25 is excessive and she doesn't understand why they want to add an additional fee at this time.

Cheryl Cashin, 1 Glenfair Road, commented that the street flooding and drainage problems did not start with Hurricane Floyd.

Councilmember Trawinski said that the Zoning Board continually faces conflicts. As an example he stated that the Board recently allowed the expansion of Garden State Orthopedic Associates and granted a variety of variances. They allowed increased impervious coverage to 98.67%, where 90% is permitted, in an area of town where drainage problems exist. It is not easy for the Board to make these decisions because these types of problems are exacerbated and the Board has to constantly work to strike a balance.

Mayor Tedeschi stated that the County dredged Fleischer's Brook and perhaps they need to put more pressure on the County. He said that it would be easier to convince the County to dredge Jordan Brook and Councilmember Trawinski said that this was the first time he had heard of a problem there.

Closed Session:

Upon motion by Councilmember Baratta and a second by Deputy Mayor Swain, the following Closed Session resolution was unanimously adopted at 10:22 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 Contract Negotiations regarding Supervisors, Blue and White, PBA/SOA; Chase Parking Agreement; and PVSC Overcharges

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.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Lawn that the public be excluded since these matters as set forth above are ones which permit the exclusion of the public from such discussions.

Adjournment

Upon motion by Deputy Mayor Swain, seconded by Councilmember Baratta, the meeting was adjourned at 11:04 P.M.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approved the foregoing minutes.

Mayor Joseph Tedeschi

Councilmember Jeanne Baratta

Deputy Mayor Lisa Swain

Deputy Mayor Steven Weinstein

Councilmember Ed Trawinski