

# Minutes of the Open Space Committee

May 18, 2009

Councilmember Trawinski called the meeting to order at 7:35 pm.

**Present:** Councilmember Ed Trawinski, Michael Hakim, Crystal Robbins, Kurt Peluso, Peter Weissberg, Benny Salerno, Peter Kortright, and Maureen Moriarty.

**Absent:** Mayor Steven Weinstein, Acting Manager Joanne Kwasniewski, Superintendent of Recreation Jim Graff, Jack Susser, Heather Blecher, Joan Goldstein, Ted King, Ira Frankel and Wendy Dabney

## **Minutes and Attendance:**

A motion was made and seconded to approve the minutes from the previous meeting.

Grant Application due July 13, 2009 – According to Michael Hakim the Smart Growth grant has been completed. It is the grant for the environmental resource inventory update. The grant was actually due in May and was submitted by the Borough Manager.

## **Updates:**

Green Acres Acquisition of Daly Field – Michael Hakim stated that one state agency does not like to step on another state agencies toe. Another town had a similar situation where there was an approved site on an open space inventory for Green Acres and Green Acres was getting ready to fund the site when COAH stepped in and said that COAH has first reservation on the property. There was discussion between Green Acres and COAH and the Commissioner of the DEP told Green Acres to back off. The question was raised on how the Daly Field site was approved by Green Acres only to have COAH step in and say it was not a candidate site for funding. The answer is that there are agencies with a lot of people. Lisa Stern is not the person that reviews the local inventories, but the people that do review the inventories rely on local information and there is no reason why it should not have been included. Michael Hakim asked Lisa Stern if it was a site that should not have been included because there is no regulation in Green Acres that states that a town can not include a COAH site. The inventory is really a “wish list” of sites that hopefully over time the town will be able to acquire. Green Acres does not look at every detail of every site. When COAH sent a red flag e-mail to Green Acres, Green Acres immediately called the Borough Manager and stated that the money could not be used for Daly Field.

Michael Hakim stated that the Daly Field property was a “dark horse” until the last grant money came in. Green Acres stated not to give up the fight for the property and what needs to happen is the COAH designation needs to be removed. Once the COAH designation is removed, the site gets viewed just as any other site on the inventory and Green Acres will back the Borough.

The Borough is in the third round of COAH. The third round plan for Fair Lawn does not include Daly Field. The second round plan, which is certified already, does include Daly Field. The hurdle is getting the site removed. Due to the litigation, the Borough chose to submit directly to the courts and not to COAH. It will be up to the judge and lawyers to decide if Fair Lawn can produce enough affordable housing without the use of Daly Field.

Peter Kortright asked the Mayor and Council what the plan is for COAH. The courts are looking for zoning requirements, which the Borough does not have yet. Peter Kortright indicated people are questioning the intent of the Council regarding Daly Field. It seems as though the Council is trying to satisfy everyone when in reality everyone is dissatisfied. Other towns have lost their COAH challenges to the court and Fair Lawn's situation is not going to change. Until the Mayor and Council can designate zones, the Borough is not being realistic.

Crystal Robbins asked if the eminent domain that the town proposed, was it predicated on having the grant money to make the purchase of the open space. Councilmember Trawinski stated that it was not. Crystal Robbins stated that the Borough has the ability to bond against receipts from the Open Space Tax. Councilmember Trawinski stated that it was true and to use other funds that are already earmarked for open space acquisition. Crystal Robbins asked if the Radburn trustees terminated their contact with Landmark, would it release the Borough from the COAH obligations on the Daly Field piece. Councilmember Trawinski stated that the special council has advised the Borough Council that the Radburn trustees have a right to release the contract and if the trustees exercise that right that the Borough's special counsel will be back in court to ask Judge Harris to dismiss the current litigation because the whole Landmark plan is predicated on both sites.

Councilmember Trawinski explained that the COAH rules state that once the round 3 plans are approved by COAH, the municipality has 45 days to change zoning requirements to meet the plan. Judge Harris has stated that Fair Lawn has not implemented the round 2 plan which there is the dispute about. The round 2 plan that COAH did approve required Fair Lawn to rezone the McBride parcel to allow what is there, which generated one extra affordable housing unit. The Borough was also obligated to create three overlay zones. Two of the overlay zones were created within the 45 day time period in 1996. The third overlay zone is Daly Field and Hayward. The COAH report accepted Fair Lawn's proposal that it be created when the remediation was completed. In 2005, to get a further extension to the COAH rules, the then Council agreed it would be done right away. The Council put an overlay zone that Judge Harris ruled unconstitutional. It was never the obligation of the Borough to put the third overlay zone on until 2005. COAH has not reviewed the Borough's round 3 plan and the Council decided to go to court.

Michael Hakim was asked how Green Acres feels about the Borough waiting to use funds for Daly Field. Michael Hakim stated that Green Acres understands that this is extenuating circumstances.

Peter Kortright stated that it is good to have big ambitions, but it would be nice to have some small accomplishments. Councilmember Trawinski stated that is the reason the Council was moving forward with the George Street property and Michael Hakim has submitted paperwork to Green Acres on that site. Green Acres now has everything that they need except for the closing and the request for reimbursement for those funds.

Michael Hakim stated that Fair Lawn will soon be receiving an at "risk letter" regarding the Daly Field from Green Acres. This letter states that this is a site that is on the Open Space Inventory, but Green Acres can not fund it at this point in time due to the litigation, but if the Borough would like to proceed, it can do so at their own risk. However, if the Borough is successful in removing the site from the COAH list, the Borough can then go through the same process as any other site on the list.

Crystal Robbins asked an approximate figure that it would cost for Daly Field in the eminent domain situation. Councilmember Trawinski stated that the Council has authorized two appraisers to be hired. It is the intent of the Council to only hire one pending the COAH issue. Everyone has an idea of the price, but an official appraisal has to be done.

Michael Hakim stated that in the unlikely scenario that the COAH obstacles are overcome very quickly, and the community has 1.2 million dollars from Green Acres to use, the sequence of events is crucial. The Borough can not purchase the entire 5.5 acres. If properties are partially funded using Green Acres funds, it can not be diverted to any use other than open space or recreation.

**Public Comment:**

Mark Spinelli, Rutgers Place, asked if the Borough was giving up the idea of preserving the 5.5 acres as open space. Councilmember Trawinski stated that the Council is still continuing to pursue the other avenues. The Borough has petitioned the Supreme Court of New Jersey, however only one in five petitions are heard in front of the court and only one in five of those have the changed the lower court decision. The Council is acting on what it has before now.

Craig Miller, 5 Ramapo Terrace, asked about Judge Harris' ruling regarding COAH. Councilmember Trawinski stated that Judge Harris has an independent power technically because he is a court of equity and he can do whatever is fair. COAH has stated, on request of Landmark that COAH is not even going to consider Fair Lawn's plan. COAH has refrained from acting. Craig Miller asked if TPL can assist Fair Lawn. Councilmember Trawinski stated that TPL is still willing to help Fair Lawn on acquisition, if the Borough gets to the point where people are talking to each other. TPL will not help with anything involving litigation or condemned issues.

Stu Kramer, 16-07 Berdan Avenue, asked if the committee could discuss some of the parcels that are being considered for the open space money. Councilmember Trawinski stated that there are no other parcels being considered except for George Street. There are no other sites because there is not a willing seller for the other sites. Inquires have been made to other potential property owners recently, and the Borough did receive two responses of owners who might be willing to sell. Michael Hakim stated that the Open Space and Recreation Inventory is on the Borough website.

Councilmember Trawinski stated that if there is any other parcels that the residents think are right for acquisition, let the committee know. Peter Kortright stated that he has been approached by the representatives from the Kodak site who has indicated that the Kodak representatives are willing to sit down with the Mayor and Council. However, Councilmember Trawinski has indicated that the Wilf family is not ready to sit down yet. Peter Kortright stated that the Planning Board has reviewed the plans for the Kodak site over the last twelve months and at each of those meetings, the representative has indicated, to the subcommittee that the family is ready to go. Councilmember Trawinski stated that it has never come to the Council for action.

Councilmember Trawinski stated that there has been no news on the Lackland property. The George Street application is on the June 15 meeting of the Zoning Board. This will be the first significant success of the committee using Green Acres funding.

Michael Hakim stated that the \$750,000 that the Borough received most recently came out of 2008 special funding that the Governor put in place because the previous grant ran out of money. The State should get a bond issue similar to the one that was received in 2008 later this year which is a \$600,000,000 emergency appropriation.

Felice Koplick, 6 Reading Terrace, stated that the County came to Fair Lawn and awarded the Borough a \$19,500 grant that will be matched by Fair Lawn. The grant was for the preservation plan for the Naugle House. Mr. McNerney was present and Mrs. Koplick mentioned to him that the Borough cannot use the money until the Borough owns the Naugle House and asked if the County was open to discussing the land being added on to the County Park. Mr. McNerney did not say no. Councilmember Trawinski stated that Mayor Weinstein has had discussions with the Park Director, Mr. Dressler, and the Council will be discussing this under closed session.

**Next Meeting:** The next meeting is scheduled for June 22, 2009.

**Adjournment:** The meeting was adjourned.