

## WORK SESSION OF AUGUST 14, 2012

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

**PRESENT:** Mayor Baratta, Deputy Mayors Cosgrove and Trawinski, Councilmembers Peluso and Swain.

**ALSO PRESENT:** Acting Manager Metzler, Municipal Clerk Kwasniewski and Attorney Mondello.

### **CLOSED SESSION RESOLUTION:**

Upon motion by Deputy Mayor Trawinski and a second by Councilmember Swain, the following closed session resolution was unanimously adopted at 7:32 p.m.

**WHEREAS;** the Open Public Meeting 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 – Taylor and Kneer; and

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

**WHEREAS;** minutes will be taken during this closed session and once the need the 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.

Mayor Baratta reconvened the meeting at 8:20 p.m.

### **FIRE DEPARTMENT REQUEST FOR ORDINANCE CHANGES**

Michael Mullens was present.

Attorney Mondello stated that they removed the restriction as to the number of firefighters allowed so that fire companies can now have over 40 members. A probationary firefighter 18 years of age who is still in school must follow all junior provisions until they leave high school or complete a GED. Deputy Mayor

Trawinski asked why an 18 year could not be a full-fledged firefighter. Deputy Mayor Cosgrove explained that they did not want 18 year old students leaving school to attend to fires.

Attorney Mondello stated that the nomination process for Chief, Deputy Chief and Battalion Chief was changed. The Board of Fire Commissioners will nominate qualified candidates from a pool of candidates selected by each fire company. Previously the board nominated candidates. Deputy Mayor Cosgrove stated that candidates must attend four courses for each office. Attorney Mondello stated that there is still a provision for write-in votes and there were some procedural changes in the voting process.

Firefighters with a DWI, Driving with a Suspended License or any arrest have to notify the captain within 48 hours of such arrest.

The Fire Department has proposed enacting a Truss Identification Ordinance which requires the installation of a truss identification emblem, which will be supplied by the Borough, if there is construction or renovations of any building in Fair Lawn. There will be a \$250 fine for non-compliance. Deputy Mayor Cosgrove explained that if one truss collapses the entire building could come down, which is how the firefighters in Hackensack were killed. Attorney Mondello stated that Fire Marshall Bender will be the compliance officer. Deputy Mayor Trawinski felt there should also be involvement of the Building Department since they review the plans and identify the truss.

Michael Mullens, Fair Lawn Firefighter, asked about moving the annual election from a Monday night to a Wednesday. Deputy Mayor Cosgrove explained that elections were moved to a Wednesday night because Fire Company #2 and Fire Company #3 have their meetings on Monday nights. None of the companies have meetings on Wednesday nights.

There was consensus to approve the changes to the Fire Department Ordinance.

Deputy Mayor Cosgrove stated that they need the Chief Election ordinance to be separate, as it needs to be passed so they can proceed. Municipal Clerk Kwasniewski stated that the ordinance was ready with the exception of three items that were not in the draft she received from Wendy Demeraski. She will have the ordinance ready for the next meeting and then the truss identification ordinance will have to be drafted by Attorney Mondello in September.

## **BOROUGH CODE CHANGES**

Traffic Safety Officer Franco was present.

In-street Pedestrian Crossing Signs – Traffic Safety Officer Franco stated that he would like to place in-street pedestrian crossing signs at Morlot Avenue and Burke Place, a heavily traversed area at the High School and also at Fair Lawn Avenue and Sanford Drive, which is the Famers' Market location.

There was consensus to approve the installation of in-street pedestrian crossing signs at the intersections of Morlot Avenue and Burke Place and Fair Lawn Avenue and Sanford Drive.

Establishing restricted parking zone – Traffic Safety Officer Franco stated that he changed his position on making a restricted parking zone in front of a residence occupied by a handicapped individual. He misread the statue and the family member requesting this action on behalf of her father does not live at the residence as required. The application must be filed by the handicapped individual that owns or operates the vehicle, but the resident no longer drives. Mayor Baratta clarified that the space was being requested by the resident's daughter, who drives her father to various places. The walk is shorter for him if the daughter parks in front of the house. Traffic Safety Officer Franco stated there is statute that would establish a restricted parking space in front of the home but it could be used by any individual who is handicapped.

There were five houses in the dead end of Arcadia Road where the resident lives. He spoke with every neighbor and asked that they not park in front of the resident's home but apparently there is a conflict with one neighbor, which is the basis for the request. He spoke with other traffic safety officers who advised him to establish guidelines, such as no usable driveway space available. He could put a restricted parking space in front of the residence that would allow anyone with a handicapped parking permit to use it; however, both the resident and his neighbor have such permits. He recommended against establishing a designated parking space.

There was consensus not to establish a restricted parking space on Arcadia Road.

Deputy Mayor Trawinski suggested asking Senator Gordon to introduce a legislative change that would allow them to deal with this on a case by case basis. Traffic Safety Officer Franco stated that other traffic officers do make provisions even though it is not statutorily correct, but it is written in their guidelines and Borough ordinance. Deputy Mayor Trawinski stated the resident should receive an explanation as to what they were looking at to address the concern. Traffic Safety Officer Franco stated that he explained the situation to both the neighbor and the requestor.

Deputy Mayor Trawinski asked Traffic Safety Officer Franco to return with a recommendation. Traffic Safety Officer Franco stated that he would research

the ordinances from other towns and get back to them within the next six months.

No parking 8 – 10 a.m. on Burbank Street – Traffic Safety Officer Franco explained that some residents on Burbank Street have asked for relief from commuter parking. He recommended that parking to be restricted from 8:00 a.m. to 10:00 a.m. on the west side of the block, 150 feet south from Fair Lawn Avenue to Floral Lane.

Councilmember Swain asked if the residents understood that the restriction applied to them as well. Traffic Safety Officer Franco stated that they do.

There was consensus to restrict parking on Burbank Street from 8:00 a.m. to 10:00 a.m. on the west side of the block, 150 feet from Fair Lawn Avenue to Floral Lane.

### **BURGULAR ALARM ORDINANCE**

Attorney Mondello stated that since the purpose of the ordinance was to reduce false alarms he was not sure why medical alarms were included. Municipal Clerk Kwasniewski stated that Sgt. Schultz explained it would give the Police the ability to track the number of calls and pinpoint a problem. Attorney Mondello noted that a medical false alarm is not included in the fine list.

Manager Metzler stated that he and Attorney Mondello are still not clear on some issues, so he cannot recommend proceeding until they have an opportunity to speak with Sgt. Schultz and Chief Rose. He asked that they postpone this matter until the next Work Session.

### **REVIEW OF TENTATIVE AGENDA**

Municipal Clerk Kwasniewski stated that she is adding an application for the Municipal Alliance Grant, an Open Space application authorization for Walsh Park Phase I and Berdan Avenue, Section 5. Resolution No. 247-2012 authorizes an extension agreement from the County for the Warren Point Skate Park.

Manager Metzler stated there was a meeting regarding the ADA playground, during which Councilwoman Swain pointed out that the Council had previously asked him to prepare a grant application for the playground, which is now at \$454,000. Municipal Clerk Kwasniewski stated that she had prepared Resolution No. 249-2012 for this project.

Manager Metzler reminded the Council that they authorized Capital Alternatives to file a grant application for improvements to Berdan Avenue

section 5, which is near the High School. He will be filing a similar grant application to offset the cost of repaving Radburn Road.

Deputy Mayor Trawinski referenced Resolution No. 239-2012 and No. 240-2012. He asked what grant receivables were being cancelled and whether the cancellation of the grant receivables in No. 239-2012 will have any effect on increasing the surplus. Manager Metzler explained that this was a duplicate posting in two different lines items for the same amount of money. Deputy Mayor Trawinski asked if the duplicate posting will reduce the appropriation and expenditure. Manager Metzler explained that when they applied for the grants the amount was put into a line item. When the grant was received the amount was applied to the project it was funding. It was never cleared out. CFO Palermo wanted the Council to be aware that these line items were being removed. Deputy Mayor Trawinski asked if the same was true for Resolution No. 240-2012 for the DOT grant. Municipal Clerk Kwasniewski stated that the project was finished.

Councilmember Swain stated that she will not be present for the August 21<sup>st</sup> Council Meeting.

### **COUNCIL LIAISON REPORTS**

Councilmember Swain asked the Council if they were able to review the drawings for an inclusionary playground at Berdan Grove, which she felt was long overdue. It was time for the Borough to serve all of its residents.

She explained that the ADA Committee was going to become a sub-committee of the 501(c)3 for the Community Center to give the Committee a vehicle to conduct fundraising for the playground and other events. Deputy Mayor Cosgrove stated that they met with Frank Covelli, who reviewed all the insurance requirements. The 501(c)3 Committee will go under a quasi agreement with the MEL and will be insured with them as well. The sub-committee was also approved by the accountants for the Community Center, who have stated that the ADA Committee can set up a separate account within the 501(c)3 Committee. A few members of the ADA Committee will serve as liaisons to the Community Center Committee.

Attorney Mondello asked if the ADA Committee would be reporting to the 501(c)3 or to the Council. Councilmember Swain stated that members would remain the same and the meetings would still be separate. Deputy Mayor Cosgrove will be the Community Center liaison to the ADA Committee and she will attend as Council liaison. Deputy Mayor Cosgrove stated Frank Covelli felt there should still be a Borough ADA Committee, as they may need to address issues besides fundraising, such as ramps, that would not be handled through the 501(c)3 Committee. The Committee and their liaisons will become a sub-

committee of the 501(c)3 Committee. Attorney Mondello stated that if the ADA Committee is becoming a sub-committee of a not-for-profit no Council action is required.

Manager Metzler stated that the Committee would need to introduce By-laws within the 501(c)3 Committee stating that the members of the sub-committee will be the same members as those appointed to Committee by the Borough. Becoming a sub-committee of the 501(c)3 will enable the Committee to fundraise without having to go through the purchasing laws that apply to the Borough. Deputy Mayor Cosgrove noted that this will also allow the Committee to apply for private grants. Attorney Mondello stated that the ADA Committee members will be part of the Borough and a sub-committee of the 501(c)3 Committee of the Community Center.

Deputy Mayor Trawinski stated that he was on board conceptually, but felt they should review the Borough's bond for the Community Center to make sure that taking a committee of the Borough and making it a sub-committee of the 501(c)3 and the corresponding amendment of the By-laws does not violate any of the bond covenant. Attorney Mondello stated that was not what they were doing. The By-laws of the 501(c)3 is creating a sub-committee and all of the members of that sub-committee were coming from the ADA Committee. Deputy Mayor Trawinski stated that they were changing their by-laws to do so. He reiterated his request that the bond covenant be checked to see whether it required the approval of the bond holders to amend the by-laws.

He suggested the ADA Committee make sure that the original filings with the IRS creating the not-for-profit would allow it to serve as a fundraising mechanism for the ADA Committee. Deputy Mayor Cosgrove stated that Stuart Liebman confirmed that it did.

Councilmember Swain stated that the \$454,000 price quote for the playground was the maximum. There are items that can be changed based on the grant funding received and the success of the Committee's fundraising. The tile surface is a big ticket item.

She asked Manager Metzler if he had spoken to Superintendent Graff. Manager Metzler stated Superintendent Graff visited Votee Park in Teaneck as well as a playground in Westwood. One park utilized a concrete base under the tile and the other used stone. Should they go this route, Superintendent Graff's recommendation was that they use a concrete base as there was a noticeable difference.

Councilmember Swain asked if Superintendent Graff was able to change the surface at Brookdale. Manager Metzler confirmed that they were able to change to the wood base. Councilmember Swain explained the flat wood chip

surface allows strollers and wheel chairs to glide along, unlike the rubber mulch that causes wheels to get stuck. They would like to try this surface at Brookdale to see how it well it wears. Mayor Baratta asked if it lasts as long as the rubber mulch. Manager Metzler stated that it did not; that is why they were testing it. Superintendent Graff was very supportive of the flexible tile surface, which is about one third of the total cost, and feels it is money well spent. Using stone instead of concrete would save \$30,000, but both he and Superintendent Graff recommend using a concrete base. Deputy Mayor Cosgrove noted that a young man had advised the Committee that his wheelchair got stuck in the rubber mulch and it was not a nice experience.

Deputy Mayor Trawinski stated that funding was tight. He suggested asking neighboring towns if they would like to do a joint application with them, which would enhance their probability of getting funds. Manager Metzler stated that there was not enough time to pursue this. Deputy Mayor Cosgrove stated that the Committee could pursue this route with their fundraising efforts.

Councilmember Peluso stated that he attended Dancing in the Street, which was well attended. He thanked the Police Department and the Recreation Department for putting National Night Out together and Columbia Savings Bank for handing out free Frisbees.

Deputy Mayor Cosgrove stated that he attended the Shade Tree meeting. There is a lot of progress and the Committee is working very hard on the arboretum. They are still reviewing the ordinance.

The Community Center will be hosting a dinner dance with the Cameos on October 12<sup>th</sup>.

Deputy Mayor Trawinski stated that the Planning Board held its seventh meeting regarding the Landmark application. The applicant has agreed to reduce the width of the pavement on Plaza Road, install some striping and rearrange the curbing at Ramsey Terrace, which will enhance the site visibility. The applicant will pay the cost if the Council agrees to the reduction. There have been preliminary conversations with Engineer Garrison. It does not change signalization recommendation on the left hand turn lane, particularly onto the Route 208 ramp.

The applicant has eliminated all the variances they requested. They have also eliminated two of the three design waivers. They now have a conforming site plan application and one design waiver, which they will forego if asked to do so by the Board.

The environmental issues are legally of no consequences since the DEP and not the Board make the final determination. Malcolm Pirnie will come as the

Board's expert and testify as to the accuracy or inaccuracy of the information. It was argued in the Builder's Remedy case that they already had some DEP approvals. He did not know where they were on remediation, but Health Officer Wagner will be brought in to testify as well. Some of the neighbors represented by Attorney Joel Rosen have delivered an environmental report to the Board presumably to persuade them not to grant the application based upon an environmental concern. However, even if the Board wanted to do so they would lose in court as it was not within their purview. He felt the Board will vote in October or November.

He concluded by stating that the Board will be scheduling a special meeting since there are two backed up applications pending before the Board.

Attorney Mondello stated that the Special Master has said that even though Landmark has reduced the number of units from 200 to 165, they still are required to provide 40 affordable units instead of the 33 proposed units. The Borough will have to make up the difference of seven units somewhere in the Borough. As part of his motion to amend the Fair Share Housing Plan he will be asking Judge Martinotti to amend the Judgment of Compliance. Deputy Mayor Trawinski stated that although the revised plan represents a significant improvement over the plan originally approved in Court, it was Landmark's decision to do so such a revision. The Borough should not be held responsible for the seven units. Attorney Mondello reiterated that he will ask the judge to amend the Judgment of Compliance. Deputy Mayor Trawinski stated that they could also ask the developer to make a contribution towards the cost of making up the seven units.

Mayor Baratta stated that her committees did not meet during the summer.

#### **RESIDENT'S COMPLAINT REGARDING CAMP IROQUOIS**

Deputy Mayor Trawinski withdrew this item as the Manager had already handled the complaint.

#### **INVASIVE BAMBOO**

Deputy Mayor Cosgrove stated that bamboo is a very fast growing, invasive plant that can grow up to 30 feet in height. He was contacted by a resident whose neighbor's bamboo is growing under his fence and into his backyard. Some towns, such as Pequannock have passed ordinances that require a certain type of barrier when planting bamboo to curb invasion. He suggested that Attorney Mondello look into the Pequannock ordinance to try to alleviate this resident's problem.

**NOISE ORDINANCE COMPLAINT**

Councilmember Swain stated that a resident complained about noise from a dumpster pickup that occurred at 6:00 a.m. Councilmember Peluso stated that the Noise Ordinance states that dumpsters can be picked up Monday through Friday from 6:00 a.m. to 10:00 p.m. and 8:00 a.m. and 10:00 p.m. on weekends and holidays. Construction is permitted Monday through Friday from 7:00 a.m. to 6:00 p.m. As a parent of young children who might be wakened up by the noise he understood the resident's concern. He proposed changing the time to 8:00 a.m. for both dumpster pickup and construction hours.

Mayor Baratta asked for confirmation that construction work was not allowed on weekends. Manager Metzler confirmed that residential and commercial construction was not allowed. If the Council was going to change the time he urged them to clarify that they meant the pickup of dumpsters in a residential area, as many commercial sites have contracts for dumpster pickup whose pricing is based on getting the dumpsters picked up early. Cali Carting starts garbage pickup at 6:00 a.m. on busier streets before the morning traffic begins.

Deputy Mayor Trawinski stated that contractors may have no control over what time delivery occurs and a fine would be imposed on the resident undergoing construction. He felt it might be more appropriate to handle this under the general noise ordinance since there have been very few of these complaints. Councilmember Peluso said he would take another look at the dumpster regulations but still felt construction should be restricted until 8:00 a.m. Deputy Mayor Cosgrove noted that some contractors and roofers begin projects early in the morning to avoid the afternoon heat. Manager Metzler stated that the Recycling crews are allowed to start an hour earlier in the summer for the same reason.

Manager Metzler stated that Health Officer Wagner advised him they were unable to enforce some of the violations based on decibels because they were short staffed and did not have the necessary equipment. Deputy Mayor Trawinski stated that the County supplies trained personnel to help out municipalities. Many of the haulers have regulations with the BPU that might supersede the Borough's time limits. Councilmember Peluso stated that he would like to review this further.

**RESOLUTION OPPOSING PSE&G RATE INCREASE TO SUBSIDIZE SOLAR PROGRAMS**

Councilmember Swain stated that although she supports solar energy she did not feel that the taxpayers should be subsidizing PSE&G's efforts. She proposed doing a resolution opposing a rate increase subsidizing the solar programs.

There was consensus to adopt a resolution opposing a PSE&G rate increase to subsidize solar programs.

### **AMBULANCE AND THIRD PARTY BILLING**

Councilmember Peluso stated that he spoke with several Ambulance Corps volunteers, who discussed the extra work involved with the third party billing. Some were upset that they never received a thank you or recognition from the Council. He suggested sending a letter from the Council thanking the volunteers for their extra efforts and for serving as a member of the Ambulance Corps.

Deputy Mayor Trawinski did not have a problem doing this but clarified the Ambulance Corps did receive recognition when he and former Mayor Weinstein attended two Ambulance Corps meetings. Mayor Weinstein thanked them for their cooperation and asked that his thanks be conveyed to members who were not present.

Deputy Mayor Cosgrove stated that the Council had asked for a quarterly report from the Ambulance Corps as to how things were proceeding. In addition to the president's comments he would also like to see comments from the volunteers, as he felt some members were not happy. Manager Metzler stated that the report submitted by the president stated that the Corps had yet to receive an acknowledgement from the Council regarding the third party billing and the transition efforts made by the Corps. He felt the president provided both positive and negative feedback.

### **OPPOSING S96/A2217 UNLAWFUL CONDUCT**

Attorney Mondello stated that the State wants to create a civil statute akin to their Borough ordinances. When a prosecutor sees fit to amend something to a Borough ordinance, the Borough gets the fine. The State now wants to have something so that if a prosecutor amends a violation to the State ordinance the State would get to keep the fine.

There was consensus for a resolution opposing S96/A2217 Unlawful Conduct.

### **WATER BILL: 5-06 RIVER ROAD**

Manager Metzler stated that a resident received an excessive water bill in the amount of \$4,734.50, which was equivalent to using 907,000 gallons of water. The Water Department investigated and discovered that the gun they use to read the meter picked up an extra zero. They actually used 90,700 gallons for a cost of \$235. He did not want to credit such a large amount without bringing it to the Council's attention first.

There was consensus to authorize the Manager to rectify the situation with the Borough's apology.

### **BERGEN COUNTY FLOOD COMMITTEE REPRESENTATIVE**

There was consensus to appointment Councilmember Peluso as the Borough's representative to the Bergen County Flood Committee.

### **FAIR LAWN DISPATCHERS**

Councilmember Swain felt it was important for the Council to show they supported the Dispatchers and wanted to keep them in Fair Lawn. Continuity is very important. Mayor Baratta did not recall any discussion about removing the Dispatchers. Councilmember Peluso stated there seemed to be a feeling among the dispatchers that they were on the edge, especially since the Manager was always looking for places to cut. Since he seeks direction from the Council, he felt they could say this was not an area they were looking to cut. Mayor Baratta reiterated that this wasn't even anything they discussed. They should also be telling the Recycling and Library employees that they weren't looking to cut anything there as well.

Manager Metzler stated he was going to continue to operate the amenities the Borough offers to its fullest potential within the budget until he hears otherwise from the Council or finds something blatant that must be brought to their attention. The per diem dispatchers were approved to supplement the group. They are going to maintain the services they have with the goal of a shared service with a neighboring town. Deputy Mayor Cosgrove stated that as a former Fire Chief he did not see any reason for sending their dispatch calls anywhere else. This is a dead issue.

Manager Metzler asked for a clarification on the hiring freeze. There is a vacancy open for a Police officer and a Dispatcher as a result of resignations. He would like to fill both positions, which are budgeted. He advised the Council that he did not realize he needed permission to do so, but he hired two part time animal wardens at \$19.00 per hour instead of the \$100 per hour and \$85 per hour rate charged by two outside services. At the next Work Session he will discuss possible shared animal control services with two towns that have approached them.

There was consensus to authorize Manager Metzler to hire a Police officer and Dispatcher.

**MISCELLANEOUS PUBLIC COMMENTS**

There were no comments from the public.

**ADJOURNMENT**

Upon motion by Deputy Mayor Trawinski and a second by Deputy Mayor Cosgrove, the Work Session was adjourned at 9:30 p.m.

Respectfully submitted,

\_\_\_\_\_  
Joanne M. Kwasniewski, RMC/CMC/MMC  
Municipal Clerk

The undersigned have read and approve the foregoing minutes.

\_\_\_\_\_  
Mayor Jeanne Baratta

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Deputy Mayor John Cosgrove

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Councilman Kurt Peluso

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Councilwoman Lisa Swain

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Deputy Mayor Ed Trawinski