

REGULAR MEETING OF FEBRUARY 23, 2010

Mayor Tedeschi called the meeting to order at 7:31 P.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 Mayor Swain, Deputy Mayor Weinstein, Councilmembers Baratta and Councilmember Trawinski (7:35 P.M.).

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

PRESENTATION: NEW SONG CHURCH

The Clerk read a proclamation to New Song Church, recognizing the Church's support of the Fair Lawn Farmers Market.

Councilmember Baratta stated that the B Street Band will be appearing at the Community Center on February 27th at 3 p.m. and 8 p.m. There are tickets available at the Community Center itself or through the Community Center website.

Councilmember Baratta noted another upcoming concert sponsored by the Hurdy Gurdy Folk Music Club featuring Tom Chapin on March 6th at 3 p.m. and 8 p.m. Tickets are available on line or at the Community Center. There is also an Evening of Dinner and Dancing featuring the Cameos which is sponsored by the 501C3 Committee on Saturday March 13th at the Community Center. The event is being catered by Giovanni's and begins at 6:30 p.m.

Mayor Tedeschi referred back to New Song Church and thanked them for allowing the Farmer's Market to be held at their location over the summer and fall months of 2009. He stated that the market was quite successful and is a wonderful place to get locally grown fruits and vegetables.

PROCLAMATION: READ ACROSS AMERICA

The Clerk read the proclamation for Read Across America which promotes academic success through reading.

COUNCIL COMMENTS

Deputy Mayor Swain congratulated Officer Messina for averting what could have been a terrible situation on Route 208. She stated that the Borough of Fair Lawn has received an honor roll mention certificate in the 49th Annual Municipal Public Information Contest sponsored by the Center for Government Services.

Deputy Mayor Weinstein cautioned everyone to be safe in this brutal winter weather.

Mayor Tedeschi echoed Deputy Mayor Swain's comments regarding Officer Messina. Much is written about police officers who do things wrong and it is wonderful to read about an officer who did things right. He commended Officer Messina on the great job he did and for putting his own safety aside.

Mayor Tedeschi stated that the winter weather has been challenging this year and he encouraged people to help their neighbors who may not be able or who may not have the equipment on hand to clear their sidewalks and driveways. He thanked the person who shoveled his sidewalk when he was at last week's Council meeting.

Mayor Tedeschi asked for a motion to authorize Michael Hakim to appear on behalf of the Borough, for not more than \$500, at the Bergen County Trust Fund Public Advisory Committee's Public Hearing on March 1st. The Borough is trying to get \$509,000 to purchase the Nagle House in order to save the tax payers money and to preserve a historic piece of property. Deputy Mayor Weinstein made the motion which was seconded by Councilwoman Baratta. On roll call, Councilmembers responded unanimously in favor of the motion.

Councilman Trawinski also commended Officer Messina who has exhibited quick thinking throughout his career. He also thanked that PBA and the SOA for getting out the message that they can no longer continue the practice of business as usual. He also thanked the PBA president for indicating that they would like to continue negotiations with the Borough in lieu of arbitration and he looks forward to a settlement in the near future. He also recognized the Supervisors for accepting the fact that the time has come for municipal workers to contribute towards their health coverage.

MANAGER'S REPORT

Acting Manager Kwasniewski indicated that the report was on the table. She thanked all the employees of the Department of Public Works (DPW) and Department of Recreation, along with the Animal Control Officer and the mini bus drivers who plowed and shoveled the snow on Wednesday. She also thanked the residents for moving their cars off the street to make plowing easier and the dispatchers who were also on the streets from time to time. Acting Manager Kwasniewski said that everyone will continue to do their best to deal with the next storm that is coming at the end of this week. Mayor Tedeschi asked about the reserves of salt and Acting Manager Kwasniewski reported that the Borough had to purchase and additional 50 tons of salt today.

ORDINANCES ON SECOND READING:

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Weinstein, it was unanimously agreed to read the following ordinance by title and open the time for public comments. Deputy Mayor Swain recused herself from this portion of the meeting.

ORDINANCE NO. 2179-2010

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 49 ENTITLED "AFFORDABLE HOUSNG" AND CHAPTER 125 ENTITLED "LAND DEVELOPMENT" TO CREATE A NEW AFFORDABLE HOUSING DISTRICT AT 49-14 ENTITLED "R-6 INCLUSIONARY MULTI-FAMILY RESIDENTIAL" FOR BLOCK 3610, LOTS 1 AND 2 AND BLOCK 3609, LOT 1, KNOWN AS THE LANDMARK SITE, DALY FIELD AND ARCHERY PLAZA

Kathy Moore, 13-16 Plaza Road, thanked the Council for doing everything possible to prevent the ruination of the center of Fair Lawn. Ms. Moore reported that at a recent Radburn meeting she spoke to a current Board Trustee about the prospect of destroying the current contract. The trustee commented that this would never happen and Ms. Moore stated that this illustrates that there is no democracy in the Radburn's Homeowners Association and she thanked Councilmembers for their support.

Robert Gulack, 4 Bancroft Place, noted that Gov. Christie has announced a three month moratorium on COAH and he asked if the Council filed a request for a stay of the Court's order requiring that Fair Lawn comply with COAH. Attorney Rosenberg stated that an appeal of the Executive Order has been filed and the Appellate Division has upheld the 90 day stay provision which was part of the Executive order. At this time, in light of where the Borough is with Judge Harris and COAH, the Borough has determined that this particular executive order will not help the situation.

Mr. Gulack pointed out that there was a window of opportunity when the Governor issued his Executive Order before the Appellate Stay. He said that the Appellate Stay is temporary and the situation will be resolved during the full hearing. Mr. Gulack said that there is an opportunity here for Fair Lawn to make something of the situation, however, Attorney Rosenberg doesn't think there is anything for him to work with.

Council Trawinski remarked that this was not only Mr. Rosenberg's opinion but the opinion of the entire Council. He explained that the Executive Order issued by Gov. Christie regarding the stay of COAH actions was applied to the Submission for Substantive Certification from COAH or applications to COAH for Substantive Certification. Fair Lawn is not in that administrative position having been tossed out of COAH some time ago because COAH refused to consider the Borough's case. This was one of the decisions that Fair Lawn appealed to the Appellate Division. Mayor Tedeschi stated that Fair Lawn is in Superior Court dealing with a Builder's Remedy

Action to which this Executive Order does not apply. There is legislation in the form of S-1 which would transfer COAH to the New Jersey State Planning Commission and the last section of that bill, if enacted, would give Fair Lawn a reason to go back to Superior Court asking them to set aside the entire Builders Remedy Action.

Councilmember Trawinski stated that both Attorney Rosenberg and the entire Council are very aware of this and will continue to fight this until the Supreme Court of New Jersey decides that Fair Lawn has to or doesn't have to comply with the Builder's Remedy. The Council is only adopting this ordinance because of a Court Order.

Maria Gesthalter, 16 Garwood Road, stated that she is an attorney and does not agree that Fair Lawn should become an affordable housing district.

Robert Landzellel, President of the River Road Improvement Corporation, 65 Cummings Court, Mahwah, New Jersey, came forward. Mr. Landzellel recognized what the Council has gone through under Court Order to resolve this issue including plans for the Daly Field property. He asked if this situation was a result of what the Master would accept as suitable for this application. Attorney Rosenberg stated that the Master acted in the role of referee during the process of the drafting and presentation of the ordinance that is up for discussion. The Master will have the opportunity to discuss the nature of this ordinance with Judge Martinotti at a later date. Attorney Rosenberg said that Landmark has not accepted this ordinance and disputes over the property will continue.

Mr. Landzellel stated that ordinances concerning Kodak and Clariant were also introduced at the prior meeting and he asked if the Master had the same position in these cases. Attorney Rosenberg said that this was the case and there was litigation involved. Mr. Landzellel pointed out that there seem to be parameters regarding the development of the properties which are quite diverse for properties of a similar size. He recommended some consistency in these matters and he noted that this ordinance mentions a minimum tract area of 10 acres and maximum density of 20 units per acre. The Kodak case was similar with 9 acres and 20 units per acre. The Clariant property specifies 12 acres with 10 units per acre which is inconsistent in the zoning application for industrial space that is in need of redevelopment. This is quite different from what was proposed for Landmark. This ordinance shows Landmark at 13% for very low income, low income at 37% and moderate income at 50%. Kodak had the same requirements. For Clariant the requirements are 20% for very low income, 30% for low income and 50% for moderate income which seems inconsistent. He suggested consistency in treating these sites.

Cheryl Bergallio, Planner for the Borough, stated that Clariant, Kodak and Landmark are all very different sites. The ordinance regarding Landmark was based on what Landmark submitted to the Court who requested that it be formulated into an ordinance that must be adopted by the Borough. The zoning parameters for landmark were not selected by the Borough. The density ordered by the Court is very high which is not something that the Borough planned for the setbacks, density and building height do not comply with current zoning ordinance in the Borough.

Ms. Bergallio explained that the Promenade on the former Kodak property is a mixed use concept that is within walking distance to the Radburn Train Station. This density is only 15 units per acre with a total cap of 150 units. The intent of this project is a walkable Village with retail, office and the train station in close proximity. This site merits a higher density and was given a density of 15 units per acre.

Regarding the Clariant property, Ms. Bergailo stated that this site is not within walking distance to the train station and is perceived as strictly residential. The minimum density for this area of the State, according to COAH, is 8 units per acre and it has been zoned at 10 units per acre which exceeds the minimum COAH requirement. The set asides were chosen in order for the Borough to meet its affordable housing obligations as set forth by COAH. Two more very low density units are required on the Clariant property and these units will be assisted with the money from the Affordable Unit Trust Fund if there is money available. Providing these two additional units will be a burden and money from the trust fund will be used to assist the developer in accomplishing this.

Mayor Tedeschi explained that the Council was hand cuffed regarding these ordinances. Mr. Landzellel said that he looks forward to some sort of a conclusion under Gov. Christie. The system needs reforming into a level playing field so that each town can act accordingly. There is also a need for senior housing and some seniors fall into the Affordable Housing category. Mr. Landzellel stated that the public transportation into New York from the Fair Lawn Avenue and River Road area provides access to many other areas as well.

Attorney Rosenberg noted that the Kodak ordinance was crafted with input from the developer and was worked on for quite some time before going to the Master. Mr. Landzellel said that he is involved with the EDC along with the Route 208 Master Plan and the ordinance on the Kodak site was substantially in conformance with what the EDC's recommended to the Borough Council.

Mayor Tedeschi recalled that on February 1st, 2007, at the direction of the Council, the Borough Attorney told the DEP that the Clariant property would be developed when it meets the residential standards and this hasn't changed. Mr. Landzellel said that he understands that any project has to meet the state standards and Clariant is continuing to work on it.

Deputy Mayor Swain commented that the Council was handcuffed into making certain decisions on COAH, however, she feels that affordable housing is very important so that people of all income levels are able to live in the community.

Robert Gulack, 4 Bancroft Place, referred to Councilmember Trawinski's comment that no lawyer can guarantee a win. Mr. Gulack said that the community is spending a quarter of a million dollars annually in legal fees and should not hear that it is not worth the lawyer's time to submit an expert report on traffic. When questioned by Mayor Tedeschi about specifics, Mr. Gulack stated in previous months, Councilmember Trawinski remarked that this wouldn't go anywhere and the Judge wouldn't listen to it.

The people of Fair Lawn have paid dearly for legal representation and they deserve to have an expert report on traffic conditions. They also deserve a report on the design impact of Radburn. Mr. Gulack said that it would be worth trying to explore the wider implications of the Governor's moratorium and not simply look at the language, as Councilmember Trawinski has done, and concluding that the Borough would lose.

Deputy Mayor Weinstein asked what the legal fees should be for a population of 32,000 people. The Council has confidence in their attorneys they have hired.

Councilmember Trawinski said that he has listened to the tapes and he said that this is not relevant to the issue in a Builder's Remedy Action. He did not say that it wasn't worth it. Judge Harris went beyond what a Builders Remedy is about in reaching his conclusion. Councilmember Trawinski stated that he has no problem spending taxpayer money on realistically defending or pursuing an action to try to stop completely unjustified development in the center of Fair Lawn. He will not spend money on legal fees that go after things where the Borough has no chance. There is nothing in Gov. Christie's Executive Order that would provide a rational legal basis for the Council to have Judge Harris' decision set aside. The order only stops COAH from acting and this would only incur the wrath of Judge Martinotti because Fair Lawn has acted in bad faith. Councilmember Trawinski commented that Fair Lawn is a long way from the resolution of this issue.

Maria Gesthalter, 16 Garwood Place, suggested that she and Mr. Gulack work together as a team along with Councilmember Trawinski because everyone is in this together. She recommended doing this pro bono on behalf of the Borough. Mr. Gulack stated that he couldn't participate since he is not a member of the New Jersey bar.

Pamela Coles, 13-34 George Street, questioned whether Judge Harris' order was based on the contract between Landmark Development Corporation and the Landmark Trustees. Councilmember Trawinski said that, in his opinion, it was not based on a contract because, in the contract, Landmark agreed not to pursue affordable housing on Daly Field. Judge Harris chose to ignore that provision of the existing contract.

Mayor Tedeschi explained that there was an agreement with Radburn that Landmark would not pursue affordable housing unless absolutely necessary. Landmark argued that people of Fair Lawn need affordable housing and therefore they should be allowed to provide it. Ms. Coles concluded that COAH doesn't come into play regarding the affordable housing issue based on what Landmark is saying. Councilmember Trawinski said that COAH rejected doing its job in this instance and never looked at the Borough's plan to satisfy their obligation to provide affordable housing which met Round Three obligations and prior unmet needs without taking the Landmark site into consideration.

Councilmember Trawinski stated that now Landmark wants to go beyond what they represented to Judge Harris which is to build 200 units on the Daly Field site. They are proposing to build as high as 70 ft. which was never disclosed to Judge Harris. The Council will only allow Landmark to do what was agreed to by Judge Harris.

Ms. Coles asked if the Court Order by Judge Harris would go forward if the contract were cancelled by the Radburn Trustees. Councilmember Trawinski said that a cancellation would be a basis for the Borough to do what Mr. Gulack is suggesting and go back to the Court for reconsideration of the entire decision. If Landmark no longer has the rights to one site they would have to start all over again. Ms. Coles said that the Radburn Trustees could choose to do the right thing and cancel the contract with Landmark. Therefore, it is the Trustees who are holding the Borough hostage and not Judge Harris.

Cassidy Sichere, 23-01 Radburn Road, said that last year she graduated from Radburn School along with 87 children and if these buildings are constructed there will be a much higher number of graduates. This would result in too many children attending the high school and much larger class sizes.

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

Attorney Rosenberg stated that Councilmembers have been provided with a letter from the Planning Board. He noted that the Planning Board's role is to review the ordinance and determine whether it is substantially consistent with the Master Plan. The Planning Board does not feel that it has enough information from the ordinance or a plan to make the consistency determination. This resolution will state that if there is a zoning ordinance or an amendment that is proposed where the Planning Board has not made a finding consistent with the Master Plan, the vote must have an affirmative vote of the full Council. There must also be a rationale as to why the Council is voting the way it is in light of the fact that the Planning Board has not elected to find it consistent with the Master Plan.

Deputy Mayor Weinstein made a motion to approve Resolution No. 123-2010 adopting Ordinance No. 2179-2010. Councilmember Trawinski seconded the motion.

Councilmember Trawinski asked that the memo of February 23, 2010, from the Planning Board Secretary to the Acting Manager be attached to the minutes of this meeting. He reiterated that the Planning Board is not in a position to determine whether this ordinance is consistent with the Borough Master Plan. Therefore, the Council resolution has to state the reasons why the Council is adopting an ordinance that is inconsistent with the Master Plan. The reason is because the Borough has been ordered by Judge Harris to do so and Councilmember Trawinski doesn't believe that there are any valid reasons from a planning perspective to adopt a resolution that is inconsistent with the Borough's Master Plan. The Borough can satisfy the obligation to supply affordable housing without being subjected to the Builder's Remedy and he hopes that the Supreme Court of New Jersey will reverse this travesty one day and that the units will never be built. Because he took an oath to uphold the law, he will vote in favor of the ordinance.

Councilmembers unanimously voted in favor of the ordinance under protest.

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 were no comments from the public, and upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain, the time for public comments was unanimously closed.

RESOLUTION BY CONSENT #5-2010

Upon motion by Councilman Tedeschi and second by Deputy Mayor Swain, Consent Agenda 5-2010 containing the following items was unanimously passed.

- a. Resol. #124-2010 –Renewal of Massagist License – Oleg Alekseev
- b. Resol. #125-2010 – Award of Bid: Project #2163 – Berdan Avenue Storm Drain Improvements
- c. Resol. #126-2010 – Award of Bid: Uniforms: Police, Auxiliary Police, School Guard
- d. Resol. #127-2010 – Amendment to the Housing Element and Fair Share Plan

PUBLIC COMMENTS

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

There being no comments from the public, upon motion by Councilman Trawinski and a second by Deputy Mayor Weinstein, the time for public comments was unanimously closed.

Councilman Trawinski stated that Cassidy Sichere who spoke earlier was wonderful in terms of her composure and her delivery and her parents and teachers should be complimented.

ADJOURNMENT

Upon a motion by Councilman Trawinski and a second by Councilmember Baratta, the meeting was adjourned at 8:30 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