

WORK SESSION JUNE 1, 2010

Deputy Mayor Swain 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: Deputy Mayors Swain and Weinstein and Councilmembers Baratta and Trawinski. Mayor Tedeschi was absent this evening.

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

Review of Tentative Agenda – 6/15/10

Acting Manager Kwasniewski stated that she would like to add the Recreation Opportunities for Individuals with Disabilities grant to the regular work session agenda. Municipalities must apply for this grant in 2010 to be eligible in 2011.

Council Liaison Reports

Councilwoman Baratta reported that the Alliance for Substance Abuse Prevention is working on new reporting requirements. They will also be providing breakfast for the participants at next week's River Regatta. They have discussed adding the bike rodeo to the River Regatta which may result in a better turn out for next year.

Councilwoman Baratta stated the Property Maintenance Committee met and it was reported that the appearance of the stereo store on Broadway has improved. The sister of the business owner has become involved and has been taking better care of the property. Councilmember Baratta said that there had previously been questions regarding fines issues by the Property Maintenance Officer and she has learned that \$16,491.00 has been brought in from January to the present. Acting Manager Kwasniewski indicated that the judge sets these fines at his discretion.

Councilmember Baratta reported that the traffic box on Morlot Avenue has been completely repaired and the sidewalk work was completed several weeks ago.

Councilwoman Baratta stated that the Garden Committee wants to send a letter out regarding the Community Garden and she told the Committee that Council approval is required. She advised the group that there are no funds available for mailings but they could deliver the letters by hand. The Garden Committee wants to notify the residents in the apartments of the next meeting of the Community Garden and she asked for the Council's permission to go ahead with the letter. Councilmember's agreed to the hand delivery of these notifications.

Attorney Rosenberg stated that he would be prepared to discuss the issue of possible fencing around dumpsters at the next meeting.

Deputy Mayor Weinstein reported that the ADA Committee met and discussed many ideas. The Committee suggested a type of awareness symposium to be held on a weekend. Acting Manager Kwasniewski said that Fort Lee had run this type of a program awhile ago and she suggested they reach out to them for ideas and advice. The Committee also suggested looking at the scheduling and route of the mini bus to see if more could be done to help the senior citizens as well as the disabled. Deputy Mayor Weinstein asked for Council approval to contact the person at the High School who is involved with their program on Community Service to help disabled and senior residents with leaf pick up and snow removal. The Council concurred.

Deputy Mayor Weinstein stated that he is going to look into the Glen Rock Community Shuttle which is not the same as the mini-bus and he hopes to report back with more information. This is a paid service but it could be a possible alternative.

Deputy Mayor Swain stated that she read a proclamation on Saturday for Lance Corporal Jordan Seibel who has recently returned from Afghanistan.

Deputy Mayor Swain reported that the Green Team met on May 17th. They selected twelve pictures that had been drawn by fourth graders on what they think it means to be green and have a sustainable community. These pictures will appear in next year's Borough calendar. The next meeting is Thursday, June 17th.

Parameters of the Open Public Meetings Act

Attorney Rosenberg stated that on May 17th the Supreme Court considered a case from the Appellate Division which involved an individual appearing at a Public Meeting of the Board of Education in the West Windsor School District. At this meeting, a presiding officer of the School Board told the individual that he would not be able to speak because the issues that he wanted to discuss would be disruptive and dealt with personnel issues. The Board Chairman anticipated that the speaker was going to be critical of a school coach since the speaker had appeared at several Council meetings to try to get the School Board to recognize and acknowledge that this Coach was harassing and abusing his daughter. Mr. Bessler, the plaintiff in the case, claimed that the decision of the Board Chairman prohibited him from exercising his First Amendment rights.

Attorney Rosenberg said that the case went to a jury who awarded Mr. Bessler \$100,000 and found that the actions of the Board Chairman were representative of the actions of the Board itself. This ruling was upheld on appeal and the Supreme Court dealt with the parameters of the open public portion of any Borough meeting.

Attorney Rosenberg stressed that the Council should be aware of the actions of the Mayor, who is the presiding officer during a Council meeting, and the policies that he sets. There was an additional issue of whether or not the jury was awarding \$100,000 for the violation of this individual's First Amendment rights or as a result of the emotional stress felt by his daughter. The Supreme Court reaffirmed the absolute right of any individual to speak about any issue during the Open Public portion of the Council's meetings. The Supreme Court recognized that someone who is going to obstruct or hijack the meeting can be stopped, however, no member of the public can be stopped from speaking because the Mayor or the presiding officer, doesn't like what they are going to say. This ruling would apply to any type of meeting

affiliated with the Borough.

Acting Manager Kwasniewski asked if limiting the time for individual speakers is permissible. Attorney Rosenberg said that limiting time was not an issue and he pointed out that the Supreme Court noted that there was nothing that would limit the Council from setting a standard time for public comment. He stated that from his recollection as Borough Attorney there has never been a time when any Councilmember or the Mayor has ever stopped a speaker from saying what they want to say. In the case before the Supreme Court, the School Board tried to argue that since this was a personnel matter involving litigation they could stop this individual from making public comments at the meeting. The Supreme Court ruled that the speaker has the right to make comments, as a member of the public, regarding personnel, however, the Board Members are not obligated to respond.

Councilmember Trawinski explained that the Supreme Court has changed the ground rules slightly and if the governing body doesn't want to hear from a member of the public it is now actionable and could expose the taxpayers of the Borough to liability.

Discussion of Invalidity of Motion for Reconsideration to Change Health Care Coverage from Horizon to IDS Self-Insurance in Closed Session on Tuesday, May 25, 2010

Councilmember Trawinski spoke about the action to reconsider the change of the health care coverage from Horizon to IDA. He said that it was improper and he disagreed with Mayor Tedeschi's memo stating the Deputy Mayor Swain made a motion for reconsideration. He asked what Acting Manager Kwasniewski's notes showed, however, they were inconclusive. Councilmember Trawinski said that he recalled Deputy Mayor Weinstein making a motion for reconsideration and Deputy Mayor Weinstein confirmed this.

Councilmember Trawinski stated that in either case, there is another more compelling reason to invalidate that action which is that the action was taken in Closed Session. The Open Public Meetings Act would prohibit the Council from taking this action in Closed Session. Mayor Tedeschi's memo acknowledged that this was a motion for reconsideration but it was not a consensus vote. The Council is allowed to take a consensus vote in Closed Session but does not have the right to take formal action. This invalid action must be corrected or it could be subject to a suit by any member of the public,

Deputy Mayor Swain said that although Deputy Mayor Weinstein was discussing this issue, she remembers making the motion. She stated that she asked Attorney Rosenberg about the correct procedure and he told her she had to make a motion to reconsider a change the health plan.

Councilmember Trawinski stated that this bolsters the argument he just made on the violation of the Open Public Meetings Act because it was not a request for a consensus vote. It was an actual motion for reconsideration which is invalid under the Open Public Meeting Act and Statute.

Councilmember Baratta indicated that she couldn't remember who made the motion but nevertheless it was invalid. Deputy Mayor Weinstein said that he made the motion. He asked Attorney Rosenberg about the process. Attorney Rosenberg said that, in his opinion, the process was proper and appropriate.

Acting Manager Kwasniewski stated that the two resolutions that were tabled in February are listed on the tentative agenda and action will be taken during the public meeting on these resolutions. Councilmember Trawinski said that he is concerned with the actions taken between now and whenever the action is taken based upon the vote of the Council. He asked Attorney Rosenberg which section of the Open Public Meetings Act allows the Council to take formal action in Closed Session. Attorney Rosenberg recalled that the first vote was in Closed Session also and all that this did was change the action which had been done in Closed Session. Councilmember Trawinski said that this action didn't need to be changed because it had been a formal action which was tabled. He believes he made a consensus vote.

Deputy Mayor Swain recalled discussing this in Closed Session in February and it was a different vote. Councilmember Trawinski said that it was not a vote but a consensus which is allowed by the Court because it is not a formal action. Deputy Mayor Swain said that this does not seem any different from other Closed Session discussions about the insurance. Councilmember Trawinski explained that the consensus vote taken by the Council was the formal vote to change to IDA and that the resolution hadn't been voted on when it was tabled. This action was never taken in the sense which the law allows and no subsequent action has been taken since Councilmember Trawinski called for a consensus vote two weeks ago. According to Mayor Tedeschi's memo and what Deputy Mayor Swain had indicated, this is a formal motion to reconsider and Councilmember Trawinski said that this can't be done without having done it in public. A consensus vote to put it on the agenda could have been taken but no further action could be taken. Councilmember Trawinski stated that because of this Acting Manager Kwasniewski would not be able to respond to an action that the Council could not lawfully take.

Deputy Mayor Weinstein said that when the original vote took place, during a consensus in Closed Session in January or February, the action would not have taken place until it was done in public as a resolution. He indicated that the resolution was tabled at that time.

Councilmember Trawinski recognized that the Acting Manager is in an awkward position because if his view is correct she can't move forward until the Council takes formal legal action. Acting Manager Kwasniewski explained that she needs direction to ensure that everything is being done correctly. She pointed out that this matter is on the June 15th agenda, however, she understands Councilmember Trawinski to say that she is not supposed to be talking to IDA or directing them to begin because the actual vote has not taken place. If this is the case, the Council will be looking at a date of August 1st.

Councilmember Trawinski stated that it appears that either the governing body or the Borough will be sued by one or more of the unions so he stressed the importance of dotting all the "i"s and crossing the all the "t"s. Deputy Mayor Weinstein agreed that this must be done properly. Deputy Mayor Weinstein said that even though the last meeting was extremely emotional he wished he had thought of this at that time.

Acting Manager Kwasniewski did not wait until June 15th because she understood that there had been a legal consensus. She will call IDA and advise them that they are not moving ahead on July 1st and the memo containing enrollment forms will not go out tomorrow. Everything will be redone after the 15th of June.

Request to Vacate Utility Easement – 12-65 Burbank Street

Attorney Rosenberg said that he has received a letter from an attorney who is representing a purchaser of property on Burbank Street. He explained that there is a 10 ft. wide water easement across the property and Mr. Malouf is requesting that the Council vacate this utility easement. Engineer Garrison indicated that the easement was abandoned some time ago and is no longer needed by the Borough and he would have no objections to this vacation. Attorney Rosenberg pointed out that the easement takes up 10 ft. which is the side yard property and this purchaser probably intends to buy this lot and subdivide it.

Councilmember Trawinski said he would like to see the lot configuration to the west before the Council votes. Attorney Rosenberg said this is the R 1-3 Zone which requires that a lot be at least 65 ft. by 100 ft. Councilmember Trawinski asked if this is a potential variance situation. Attorney Rosenberg said that this could be the case and he will contact the purchaser's attorney regarding the intent in this situation. Councilmember Trawinski said that a conforming lot is not an issue, however, if this becomes a variance situation he did not want the purchaser or applicant to state before the Zoning Board that the Council should have realized the situation they were creating. Attorney Rosenberg reiterated that he would find out the intent of the contract purchaser. Deputy Mayor Swain stated that the Council needs to know the impact on the properties to the south facing west on Burbank Street.

After more discussion and a further examination of the map, Councilmembers were confused and thought that they were looking at old map with outdated lot numbers. Acting Manager Kwasniewski said she would get a current tax map. Councilmember Trawinski asked if the easement had been vacated further back from Burbank Street and Attorney Rosenberg will look into that possibility.

Councilmember Trawinski noted a telephone pole and he asked if this easement runs in favor of the Borough. Attorney Rosenberg stated that Mr. Garrison indicated that there have been no utilities in this area for 40 years and he wasn't sure whether the telephone company had an easement in this area. Councilmember Trawinski said he would support looking into this further and Acting Manager Kwasniewski said that they should have the requested information for the next work session in three weeks.

Request to Use Fair Lawn PD Photo

Acting Manager Kwasniewski referred to her May 14th memo referencing a photo from the 1960s that was taken at the Fair Lawn Range which included Fair Lawn police officers. Attorney Rosenberg said that he didn't think the Police Department had the right to decide whether or not to allow British Aerospace or BAE to use the image. Acting Manager Kwasniewski said that BAE markets defense technology and they took the photos from the Fair Lawn Police website to show their rich historical background.

Deputy Mayor Swain said that she would be concerned about whether this photo is used negatively or for something that doesn't reflect the spirit of Fair Lawn. Acting Manager Kwasniewski stated that BAE acted appropriately by seeking the Borough's permission to use the photo, however, the Council can simply reject their request.

Councilmember Trawinski asked Jane Dipeveen, the Borough Historian, to comment. Ms. Dipeveen said that she isn't sure whether or not any of the people in the photo are still alive. Councilmember Trawinski agreed with Deputy Mayor Swain that the photo could be used if done tastefully. Attorney Rosenberg agreed and added that the Council could request to see BAE's proposal and how the photo is going to be used. After more discussion, the Council agreed to the use of the photo contingent upon the restrictions consistent with the sense of the Council. Councilmember Trawinski asked that Acting Manager Kwasniewski thank BAE for asking for permission to use the photo.

COPS Hiring Recovery Program

Acting Manager Kwasniewski recalled that the Borough had unsuccessfully submitted an application for the COPS grant. New Jersey has recently redone the grant for municipalities that had filed the grant but had been denied and the grant will now cover newly hired employees as well as police officer who had been rehired after being laid off. The supplanting restriction has been removed but the Borough has to prove that the officers had not been laid off in anticipation of this grant. Acting Manager Kwasniewski said that there are minutes to back up these lay offs as well as the lay off plan that went to civil service and documentation of meetings with the union and other back up to demonstrate that lay offs were being discussed well in advance of information on this amended grant. An application can be supplemented and amended to replace an officer that is going to be laid off. Acting Manager Kwasniewski anticipates approximately \$290,000 over three years. The Borough would be looking at spending only \$99,000 over three years as opposed to three years worth of salary.

Deputy Mayor Weinstein asked if they could back out if the Council decided that the Borough really couldn't do without laying off a police officer. Acting Manager Kwasniewski said that this would be permitted as long as the money hadn't been accepted. Councilmember Trawinski said that he would be in favor of applying for the grant as long as this doesn't back them into a corner. Acting Manager Kwasniewski indicated that she would be in touch with Civil Service tomorrow to find out what would happen if the Borough couldn't afford to keep the officer. She guessed that the Borough would have to pay back the federal grant money which would be a disaster. The deadline for the application is July 1st and only 500 awards will be made. Acting Manager Kwasniewski recommended going forward with the grant application because they have the option to turn down the grant and Councilmembers indicated their agreement.

Request for Use of Memorial Pool – Elmwood Park

Acting Manager Kwasniewski stated that residents of Elmwood Park have been allowed to use the Fair Lawn pool in the past. They usually get a couple of families who want to use the pool and she recommended that they allow this again this year. Councilmembers agreed with the proposal.

Appointment to Community Development

Acting Manager Kwasniewski stated that the appointments of Mayor Tedeschi and Deputy Mayor Weinstein are due to expire. Deputy Mayor Weinstein agreed to stay on and Councilmember Trawinski proposed that Mayor Tedeshi continue on as well. Councilmember unanimously agreed with the appointments.

Grant Requests by Fire Department

Acting Manager Kwasniewski reported that the Fire Department has identified two FEMA grants they would like to pursue. The first is for a \$625,000 grant for a new pumper, however, the Borough's match would be 10% or \$62,500. This would have to be provided in the 2010 budget which would be challenging. CFO Palermo believes this could be done because the Borough only has to put 5% down.

Acting Manager Kwasniewski stated that the other grant is for CAD equipment and software for \$176,748 which would require funding from the Borough in the amount of \$17,674 or \$800 this year. She said that the truck to be replaced is a 1985 open cab truck.

Councilmember Trawinski stated that capital improvement fund surplus could be used for these items if the grant was successful. This opportunity may not present itself in the future and there is no guarantee that the grant application will be successful. Because there is no impact to the operating budget due to the existing capital surplus the Councilmembers agreed that the Fire Department should apply for the grants.

Continuation of Health Services Provider

Acting Manager Kwasniewski said that there was a contract with Valley Health Care for three months that was supposed to be extended. For some reason, the contract was never updated to continue until the end of the year even though Valley Health has been providing services. There are no changes to the contract and Councilmembers agreed to continue until the end of the year.

Grant for Recreation Opportunities for Individuals with Disabilities

Acting Manager Kwasniewski explained that this is a 2011 grant that they need to apply for now and, if granted, it would have no impact on 2010. The grant would enhance Camp Shining Star and every \$5 of grant money would have to be supplemented by \$1 from the Borough. The State would pay \$18,000 and the Borough would be responsible for \$4,700 in 2011. Councilmembers agreed to the grant application and Acting Manager Kwasniewski said that they would have to apply now.

On a different matter, Councilmember Trawinski spoke about capital funding and said that there is a 5% match in this year's operating budget. He asked the Acting Manager to ask CFO Palermo if capital surplus money could be used for that 5% because this would mean one less furlough day for Borough employees.

Miscellaneous Public Comments

John Scalice, 5-22 Second Street, stated that there are disruptive children living at 5-35 First Street which is to the rear of his lot. When they first moved in about a year ago, one of the older children would jump over the fence and run through the yard to play on his street. Mr. Scalice spoke to his father with no result and he reported the situation to Officer Glen who asked Mr. Scalice to give the child another chance because he had been in trouble before. Last November, the drain on his wall was backed up with rocks in a plastic bag resulting in driveway flooding. Another day one of the girls was throwing rocks onto his patio and when he asked her to stop the parents said it wouldn't happen again. Mr. Scalice asked what could be

done about this situation. Acting Manager Kwasniewski said she would speak to the Police Chief about this because it appears that Community Police needs to speak with these residents.

Mr. Scalise spoke about a case similar to the one discussed by Attorney Rosenberg earlier that went to the Supreme Court. Mr. Scalise encountered flooding problems and filed for an appeal with the County in Hackensack. When he finally appeared before the Commissioner, he was told to sit down and, in so many words, to keep quiet. Mr. Scalise said that he now thinks his constitutional rights were being violated. Later, when he consulted an attorney, the attorney advised it would not be cost effective to "fight City Hall". He is often flooded out and wanted Councilmembers to know that the affected residents don't get much from FEMA.

Harry Lopez, 5-16 2nd Street, said that he is a neighbor of Mr. Scalise. Mr. Lopez stated that he recently called the police because the child referred to earlier was building a fire behind a shed on his parent's property. The children in this home are creating many problems for the neighborhood because they are throwing rocks from the middle of the street. He said he recently had to call the police because someone poured oil in his fish pond.

Mr. Lopez also wanted the Council to know that he has recently spotted scavengers driving in trucks around the neighborhood. Deputy Mayor Swain asked Acting Manager Kwasniewski to report back to the Council on these issues.

Craig Miller, 5 Ramapo Terrace, stated that he is aware of the requirement to keep doors open at the Council Meetings as well as at Planning and Zoning Board Meetings. He reported that at a recent Board Meeting the doors were closed. Councilmember Trawinski asked Attorney Rosenberg to speak to the respective attorneys about this. Deputy Mayor Swain, who is a Planning Board Member, commented that the door is always open at those meetings.

Regarding the Fire Department, Mr. Miller said that he understood that the Company 4 truck was going to go to Company 3. He asked if this truck would fit into that fire house. Deputy Mayor Weinstein said he would ask about this at the next liaison meeting.

Allan Caan, 19-62 Chandler Drive, referred to the discussion on insurance and said that he understands that the switch wouldn't take place until July. He asked what half a year's savings would be and Councilmember Trawinski said that there would be no savings this year. Acting Manager Kwasniewski indicated that \$247,000 was removed from the insurance line item because the Council agreed that whether the Borough stayed with Horizon or changed to IDA they would realize a savings of \$247,000.

Deputy Mayor Weinstein explained that the savings come from two sources. The rate would be locked in with a very small increase between July 1st, 2010 and June 30th, 2011. During this same period, Blue Cross rates could increase to \$8 million from \$6.24 million. This is a two year plan which could potentially save not only jobs for next year but also furloughs because the financial situation next year will probably be worse than this year. He added that there is the ability to save money with self insurance.

Mr. Caan stated that it was mentioned that the unions will probably sue and if this happens would the start date for the insurance be pushed back. Attorney Rosenberg said that this would depend on the nature of the litigation. If the litigation arises out of a request for an injunction, the Borough would not be able to proceed.

Mr. Caan brought up the potential cost of a lawsuit and Deputy Mayor Weinstein said that from his research into Oakland where this has been done there was a 13% increase in the cost of health insurance compared to last year in Fair Lawn where the increase started out at 34%.

Mr. Caan said that he was curious as to whether anyone had looked into factoring in the cost of a potential lawsuit. Deputy Mayor Weinstein said that this is why it is important to explore this and Attorney Rosenberg commented that the unions tried to stop the 1.5% going into effect and that litigation only lasted for several days. The injunction was denied, the Appellate Court rendered a decision and it is now on the way to the Supreme Court.

Michael Mullens, 23-17 Arcadia Road, said that there is a dead end drain pipe on Arcadia Road which is causing a mosquito infestation. Acting Manager Kwasniewski reported that she, Mayor Tedeschi and Engineer Garrison went to the County and asked to have this situation corrected. The County indicated that this pipe has to be connected to the other piping that travels through Saddle Brook and Elmwood Park in order to alleviate the situation. She will ask Engineer Garrison if there is anything that can be done in Fair Lawn to stop or restrict the puddling. She expects that it is unlikely that the County will make a quick decision and they will probably get another notice to return to the County in another few weeks.

Councilman Trawinski suggested that Acting Manager Kwasniewski go back to the County and ask them to treat this area. Councilmember Baratta said that there is a terrible smell coming from this area and Acting Manager Kwasniewski will try to get the Mosquito Commission to respond because this is a health issue.

Mr. Mullens stated that there is a house up the street from his that was built recently inhabited by quite a number of people. Councilmember Trawinski said that the Council is awaiting a decision from the Municipal Court Judge due to enforcement proceedings that are pending. Mr. Mullens said that the house has been subdivided to allow three different families to live there.

Councilmember Trawinski asked Acting Manager Kwasniewski to find out the current status of this house and follow up with a report. Mr. Mullen indicated that the address is 23-34 Arcadia Road and he suggested a surprise inspection of the house.

Closed Session

Upon motion by Councilmember Baratta and a second by Deputy Mayor Swain, the following Closed Session resolution was adopted at 8:46 P.M. with one negative vote by Councilmember Trawinski.

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 Personnel – Selection of Borough Manager, Health Department – Assistant Pound Keeper; Attorney Client Privilege – Naugle House; 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.

Adjournment

Upon motion by Councilmember Trawinski, seconded by Councilmember Baratta, the meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approved the foregoing minutes.

ABSENT
Mayor Tedeschi

Councilmember Jeanne Baratta

Deputy Mayor Swain

Deputy Mayor Steven Weinstein

Councilmember Ed Trawinski