

## **REGULAR MEETING OF JUNE 30, 2009**

Mayor Weinstein called the meeting to order at 9:08 p.m.

**PRESENT:** Deputy Mayor Swain, Deputy Mayor Tedeschi, Councilmember Baratta and Councilmember Trawinski

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

### **MANAGER'S REPORT:**

Acting Manager Kwasniewski stated that the July 4<sup>th</sup> Fireworks were scheduled for tomorrow evening, weather permitting. Gates open at 7:00 p.m. The rain date is Thursday, July 2<sup>nd</sup>. Tickets are available at the gate.

### **RECOGNITION OF CHAMP THE THERAPY DOG:**

Mayor Weinstein read an article from Parade Magazine dated May 24, 2009 regarding Michael and Janice Martin who adopted and cared for a 3 month old puppy, Champ, that was severely burned by caustic chemicals in Paterson. After he healed, Champ became a certified Therapy dog. Mr. Martin, Chief John DeCando of Paterson and Champ now visit schools, hospitals and nursing homes to speak about the prevention of animal abuse.

Mayor Weinstein read the proclamation honoring Mr. and Mrs. Martin and Champ. Mr. Martin thanked the Council for recognizing the work they do to help animals. He appreciates being in Fair Lawn and enjoys serving the people in his community.

### **COUNCIL COMMENTS:**

Mayor Weinstein stated there was a serious accident on Howard Avenue last night. He reminded everyone to do things in moderation, not drive too fast and watch out for each other, especially during the summer months.

Councilmember Baratta stated there will be a Farmers' Market every Wednesday, beginning July 8<sup>th</sup> through October 28<sup>th</sup>, 11:00 a.m. to 6:00 p.m. She thanked Jane Spindel and the Garden Committee for their efforts. There will be fresh produce and flowers from Silver Lake Farms, homemade breads and cakes from the Baker's Bounty, pickles, relishes and condiments from Pickeliscious, and mozzarella and marinated vegetables from Bella Mozzarella. She thanked the New Song Church for allowing the market to use their parking lot. She suggested patrons bring reusable bags for their purchases. She thanked Attorney Rosenberg for his legal help.

She echoed Mayor Weinstein's comments about being careful in the summer months. During the July 4<sup>th</sup> holiday, she asked that residents remember our soldiers who were fighting for the freedoms that we take for granted.

Deputy Mayor Tedeschi congratulated all high school and college graduates living in Fair Lawn. He encouraged college graduates not to give up hope in finding a job during these difficult times, and cautioned high school students to have fun in a safe manner.

Deputy Mayor Swain stated that she attended a grand opening for J & M Flooring on Broadway. They have a great selection of floors.

The Council is forming a Green Team, comprised of Borough employees, representatives from Borough committees and residents that will look at ways to make Fair Lawn more sustainable. Interested individuals should contact her by email through the Borough website or contact Acting Manager Kwasniewski.

Councilmember Trawinski complimented Champ and his rescuers. He reminded residents that the RBARI animal shelter in Oakland is a "no kill" shelter that accepts dogs and places them for adoption. Residents can call them if they see an animal in distress.

He extended his heartfelt prayers to the victims involved in the car accident on Howard Avenue and their families. It is every parent's worst nightmare to receive this type of call. The victims have a long road to recovery. He encouraged residents to remember them in their prayers.

He attended a grand opening for Mark Berman Law Offices on River Road. He welcomed Mr. Berman to Fair Lawn.

He thanked PSE & G for replacing 576 mercury vapor street lights with induction street lights. This will save the Borough \$3,400 a year.

Mayor Weinstein thanked the Rescue Squad, Fire Department and Police for rescuing the children in last night's accident. They always do a tremendous job.

#### **ORDINANCES ON FIRST READING:**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, it was unanimously agreed to read the following ordinance by title.

#### **ORDINANCE NO. 2159-2009**

**BOND ORDINANCE APPROPRIATING \$1,701,000, AND  
AUTHORIZING THE ISSUANCE OF \$1,619,500 BONDS  
OR NOTES OF THE BOROUGH, FOR VARIOUS  
IMPROVEMENTS OR PURPOSES AUTHORIZED TO BE  
UNDERTAKEN BY THE BOROUGH OF FAIR LAWN, IN  
THE COUNTY OF BERGEN, NEW JERSEY.**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 242-2009 introducing Ordinance No. 2159-2009 was discussed.

Mayor Weinstein stated this ordinance authorized improvements passed in the Capital Budget for the Library, DPW, Roads, Water Drainage System, Parks Department and a Borough-wide computer system.

Councilmember Trawinski stated that fifteen or twenty years ago prior Councils stopped all capital improvements, forcing them to start playing catch up in 1995. It is good municipal management to keep capital improvements in order. He is pleased to see that this is being kept within the parameters they established, roughly \$2 million dollars. He supported this ordinance.

There being no further discussion, Resolution No. 242-2009 introducing Ordinance No. 2159- 2009 was unanimously passed.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to read the following ordinance by title.

**ORDINANCE NO. 2160-2009**

**BOND ORDINANCE APPROPRIATING \$294,000, AND AUTHORIZING THE ISSUANCE OF \$280,000 BONDS OR NOTES OF THE BOROUGH, FOR VARIOUS WATER SUPPLY AND DISTRIBUTION SYSTEM IMPROVEMENTS OR PURPOSES AUTHORIZED TO BE UNDERTAKEN BY THE BOROUGH OF FAIR LAWN, IN THE COUNTY OF BERGEN, NEW JERSEY.**

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi, Resolution No. 243-2009 introducing Ordinance No. 2160-2009 was discussed.

Mayor Weinstein stated this would authorize \$280,000 for improvements to the water distribution system.

There being no further discussion, Resolution No. 243-2009 introducing Ordinance No. 2160-2009 was unanimously passed.

Upon motion by Deputy Mayor Tedeschi and a second by Councilmember Trawinski, it was unanimously agreed to read the following ordinance by title.

**ORDINANCE NO. 2161-2009**

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN, 2000 BY AMENDING AND SUPPLEMENTING VARIOUS CHAPTERS TO REVISE FEES AND PENALTIES**

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain, Resolution No. 244-2009 introducing Ordinance No. 2161-2009 was discussed.

Acting Manager Kwasniewski stated that they were required by the State to change their fees for copies of floppy disks, audio cassettes, CDs and DVDs to \$5.00.

There being no further discussion, Resolution No. 244 -2009 introducing Ordinance No. 2161- 2009 was unanimously passed.

**ORDINANCES ON SECOND READING:**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta it was unanimously agreed to read the following ordinance by title and open the time for public comments.

**ORDINANCE NO. 2158-2009****AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 150 ENTITLED "NOISE" REGARDING HOURS OF OPERATION FOR CONSTRUCTION ACTIVITIES OCCURRING ON FAIR LAWN BOARD OF EDUCATION PROPERTY.**

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

Upon motion by Councilmember Trawinski and Councilmember Baratta, Resolution No. 245-2009 adopting Ordinance No. 2158-2009 was discussed.

Attorney Rosenberg stated that this will amend the Code to allow the Board of Education to do Saturday construction through December 31, 2009, instead of the original cutoff date of August 31, 2009. Mayor Weinstein stated that at that time they will review the ordinance to determine its impact on the neighborhood and decided whether or not it will be continued in the future.

There being no further discussion, Resolution No. 245-2009 adopting Ordinance No. 2158-2009 was passed, with Deputy Mayor Swain dissenting.

**PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY:**

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi, the time for public comments on Agenda items only was opened.

Harvey Rubenstein, 17-38 Chandler Drive inquired if the property owner in Item D was on active military duty and unable to pay the taxes. Acting Manager Kwasniewski confirmed that the soldier was on active duty. They removed the property from tax sale two weeks ago to give them an opportunity to pay the taxes. They were required by State statute to charge 6% interest. Mr. Rubenstein asked if they could appeal this to the State on the soldier's behalf. He did not think it was right to charge him interest. Mayor Weinstein stated that they needed to pass this resolution tonight, but that they would research this further during the week.

Mr. Rubenstein stated that the Emergency Medical Technician Training in Item G was important. He inquired if other towns were also involved. Mayor Weinstein stated that other towns were also supporting this resolution.

Mr. Rubenstein inquired about Item H, which referred to a Cooperative Pricing Agreement with the Cranford Police. He wondered if Fair Lawn was the main purchaser. Acting Manager Kwasniewski stated that Cranford was the lead agency. They have agreed to allow Fair Lawn to make purchases from their extensive list of items at lower prices.

Mr. Rubenstein stated that Item J did not identify the property being acquired. Attorney Rosenberg stated that it was the Daly Field lot. He complimented the historic pictures that were placed in Council Chambers.

There being no further comments from the public, upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the time for public comments was unanimously closed.

### **RESOLUTIONS BY CONSENT #19-2009**

Upon motion by Councilmember Baratta and a second by Deputy Mayor Tedeschi, Consent Agenda 19-2009 containing the following items was unanimously passed.

- a. Resol. #246-2009 - Approval of Minutes:
  - Budget/Work Session – 3/3/09
  - Closed Session – 3/3/09
  - Work Session – 3/10/09
  - Regular Meeting – 3/10/09
  - Closed Session – 3/10/09
- b. Resol. #247-2009 - Approving Fire Board Actions
- c. Resol. #248-2009 - Supporting the Over the Limit Under Arrest 2009 Statewide Crackdown
- d. Resol. #249-2009 - Authorizing Tax Collector to Charge Interest on Delinquent Taxes (Block 5816, Lot 42)
- e. Resol. #250-2009 - Refund of Overpayment of Taxes
- f. Resol. #251-2009 - Renewal of Liquor License 2009 – 2010
- g. Resol. #252-2009 - Opposing to a Proposed Diversion of Funds from the Emergency Medical Technician Training Fund
- h. Resol. #253-2009 - Authorizing Entering Into a Cooperative Pricing Agreement with the Cranford Police Cooperative Pricing System
- i. Resol. #254-2009 - Appointment to the Fair Lawn Borough Gardens Committee
- j. Resol. #255-2009 - Authorizing Cheryl Bergailo to File Application to the State's Historic Preservation Office for Lot 2, Block 3610

### **PUBLIC COMMENTS:**

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

Bob Gulack, 4 Bancroft Place stated that the June 1, 2009 Special Master's report raised serious questions concerning Fair Lawn's conduct at the litigation, and their handling of the trial defense last week has raised additional issues. He questioned why an expert traffic report was not submitted to the Special Master of the court, since the Borough's Special Counsel Lustgarten tried to illicit testimony from a Landmark partner that the proposed development would create traffic problems. Clearly, the Special Counsel Lustgarten believed this to be a significant issue. Since the Special Counsel Lustgarten attempted to illicit testimony from Landmark that the proposed development would interfere with Radburn's design, he questioned why Fair Lawn did not submit an expert report regarding the impact the development would have on Radburn's design. Clearly the counsel felt this was a serious issue, yet he failed to submit testimony.

Mr. Gulack felt it was risky strategy to bank everything on your opponent. Special Counsel Lustgarten had every opportunity to submit expert reports making these points in an authoritative manner, yet he neglected to do so. The tax payers have paid huge sums to finance this defense. They have a right to know why no money was expended to pay for these expert reports, which may have made a difference. Since the other side submitted expert reports and we didn't, our Special Counsel Lustgarten was put in a position where he could not make a strong case for Fair Lawn based on expert testimony.

Special Counsel Lustgarten's handling of the trial has done nothing to clarify the other points made by the Special Master. Prior to the Special Master's report, Fair Lawn had the option of seeking eminent domain against the Hayward property. Failing to do that, they went for the Daly Field property. The defense was given on the record by Special Counsel Lustgarten that if a non-commercial municipal housing authority put 40 COAH units on the Hayward property, COAH regulations would require 200 units total be built on the Hayward property. Since that is not practical, the whole approach of eminent domain against Hayward wasn't practical. This is the argument made by Special Counsel Lustgarten on the record. He has contested that argument on many occasions. He has checked with professionals who deal with COAH regulations on a regular basis who have said it is not true; COAH regulations don't require any kind of integration, although they suggest and encourage it.

Mr. Gulack stated that they have not heard from anyone connected with the Council, least of all Special Counsel Lustgarten with an actual citation to COAH regulations that would back up what he said on the record. All they have is the claim by Mayor Weinstein two weeks ago that there was nothing misleading about the characterization of the law by Special Counsel Lustgarten. The voters have the right to hear the actual citation to the regulations. He challenged Special Counsel Lustgarten to give them the citation.

The Special Master's report raises a large number of issues about Special Counsel Lustgarten's submissions, his failure to submit evidence on traffic issues, his failure to provide evidence contesting housing density, his failure to submit an expert report by Ms. Bergailo, his failure to submit a deposition in the other matter that was rejected by the Special Master as not being on the appropriate subject matter, his failure to submit evidence on the Federal landmark, and his selection of a trial strategy which involved proposing a 162 unit development, which then caused the Special Master to say 200

units isn't that much more. By proposing 162 units, Special Counsel Lustgarten was conceding the only legal issue remaining in the case.

He was told two weeks ago that there would be an opportunity to hear from Special Counsel Lustgarten in response to these very serious allegations made against him by the Special Master. He does not, however, see him here tonight.

Mario Lepore, 2-02 Fair Lawn Avenue stated that he received a summons for parking on his lawn. There is a problem with the footprint of the house and he needs four additional feet. He was told he needed a variance, but one was obtained when he built the house in 2002. The lots are small. When he went to the Building Department, Ms. Peck advised him that he needed a variance. The first few houses near the Fair Lawn Avenue Bridge do not have paved driveways. His house is the only one with a paved driveway. He felt they should look into this situation. Acting Manager Kwasniewski stated that she would look into this matter tomorrow and get back to him.

Harvey Rubenstein, 17-38 Chandler Drive stated that at the last public meeting his wife had stated that Deputy Mayor Tedeschi had a conflict of interest. Attorney Rosenberg was asked if he remembered discussing conflict of interest. He suggested they read the minutes for the May 1, 2007 Work Session entitled "High School/Community Center Parking Issue", wherein Attorney Rosenberg was asked his opinion by Councilmember Baratta. The transcript stated that "Attorney Rosenberg felt it was an issue of propriety and recommended Councilmember Baratta go forward on the parking issue as Council liaison to the Community Center. He also suggested that either Mayor Weinstein or Councilmember Trawinski step down from the Shared Services meeting so that the Community Center liaison could attend instead".

He asked Mayor Weinstein what transpired at last week's work session, as it did not start until 10:00 p.m. Mayor Weinstein stated there was a very long closed session on serious issue. The work session did not begin until 9:30 p.m. Mr. Rubenstein stated that it was his understanding that they discussed the fact that Green Acres funding could not be used to purchase Daly Field. Mayor Weinstein stated that about a month ago they found out through their consultant that Green Acres Open Space money could not be used for a COAH site. It did not mean, however, that if the COAH delineation was removed that the money couldn't be used. Currently, they cannot use the Green Acres Grant for Daly Field because it is considered a COAH site. Mr. Rubenstein asked how this would impact on the Bond issue. Mayor Weinstein stated it didn't affect it at all. They have the ability and money based on the plan for the 5.5 acres. They have the ability to use the Open Space Trust Fund that has accumulated \$600,000 - \$700,000 plus the annual Open Space Tax, which is close to \$250,000 each year. They still have the ability to use their money and open space money for the open space portion of Daly Field.

Mr. Rubenstein was upset about overdevelopment. They made \$3 million dollars into \$12 million dollars of debt. They have already spent \$500,000 of taxpayer money in legal fees. When the application comes before the Planning and Zoning Board they should deny the application without prejudice if they haven't dotted every i and crossed every t and tie them up in court. The developer may tire of the court costs or the Appellate courts may finally rule in Fair Lawn's favor.

Mayor Weinstein stated that it sounded like Mr. Rubenstein contradicted himself. He suggested they "tie Landmark up in Court" and yet they have been tied up in court. Mr. Rubenstein stated it will then be at their expense. By Deputy Mayor Tedeschi stating "there won't be a shovel put into the ground" in the newspaper article, he was tying the Council to a pre-disposed position with respect to Daly Field. Deputy Mayor Tedeschi stated those were his personal comments; he does not speak for the Council.

Mr. Rubenstein inquired if they had followed up on his previous request concerning signs in the parking area across from the Radburn Station that stated parking with a permit was allowed from 4:00 p.m. to 9:00 a.m. even though parking isn't allowed from 2:00 a.m. to 5:00 a.m. Mayor Weinstein stated it was on their list; they will get to it.

Harry Poster, 13-10 2<sup>nd</sup> Street stated that the property owner at 2-02 Fair Lawn Avenue built an oversized house on a small piece of property. There is a two-car garage, but there are no cars parked in the driveway; they are parked on the grass. He felt a simple resolution would be to put one car into the garage. It seems like the house is already 99% impervious coverage with only a small portion of grass.

He stated there was a large stack of televisions and similar items at the Recycling Center. He wondered if there was any way to salvage these items instead of having them destroyed. Acting Manager Kwasniewski stated that they pay to have the items recycled. Mr. Poster wondered if he would be allowed to take any usable items. He will discuss this Acting Manager Kwasniewski.

Walter Weglein, 18 Ramsey Terrace stated that the comment they always hear from Council when asking about Daly Field is that the Borough Attorney has advised them not to comment. There is a 19 page public report from the Special Master and stories in the newspaper. He asked if they were still prevented from commenting. Mayor Weinstein stated that at this time they need to protect the 32,000 people in Fair Lawn. Although there are public documents and articles in The Record they still cannot comment, based on the Borough Attorney's advice, because they are still in litigation. Mr. Weglein inquired why comments could be made in public court but yet they could not get answers here.

Attorney Rosenberg stated the simple answer is that the matter remains in litigation. The response by the Council, which is the representative body with respect to litigation, is not appropriate. Mayor Weinstein stated that they would all like to say something, but they cannot based on the Borough Attorney's advice that it is in Fair Lawn's best interest for them not to comment at this point in time.

Councilmember Trawinski stated that the rules of evidence seriously hamper them. There are a series of rules, not including those that fall within exceptions to the hearsay rules, that are called Declarations Against Interest. If they made a statement to duly authorize representatives of the Borough of Fair Lawn, those statements could be used in court proceedings against the Borough. If Special Counsel Lustgarten or Attorney Rosenberg advised the Council that they should respond, the first thing he would do is ask the Council to fire them because that would be terrible advice. He assured Mr. Weglein that there were many things he wanted to say. Once the litigation is over he

will say them. Since they are looking out for the interests of Fair Lawn residents, they are constrained from commenting.

Mr. Weglein inquired what Deputy Mayor Tedeschi's quote in the newspaper that stated "any victory Landmark has in Judge Harris' court will be a hollow victory. It will be a long time before Landmark puts a shovel on the ground in Daly Field" meant. Deputy Mayor Tedeschi stated that he will try to answer the question while following Attorney Rosenberg's and Councilmember Trawinski's advice. He stated that Councilmember Trawinski had represented him in the past, so he does follow his advice, too. Those comments were made because those are his personal beliefs. He does not believe that this case is going to end in Judge Harris' office. That's why it is "hollow" victory. This Council has indicated that it believes very strongly in what it is doing. If they get to the first court and Judge Harris says "here's what we're going to do", should we do it?

Mr. Weglein inquired if they intended to pursue eminent domain. Mayor Weinstein stated that his only response was that they voted to implement eminent domain, if necessary.

Craig Miller, 5 Ramapo Terrace felt that if a Councilmember speaks to the press and the quote is printed, the public would interpret that as the Council's comment and not that councilmember's personal opinion. Mayor Weinstein stated that is also depends on how they are quoted in the paper. Things could be taken out of context. Mr. Miller felt that individual Councilmembers speaking to the press should make it clear that it is their personal opinion.

Mr. Gulack, 4 Bancroft Place stated there is a doctrine called "waiver". When Special Counsel Lustgarten was asked by a number of people why Hayward Property couldn't be used with eminent domain, and he gave his answer, the doctrine of waiver came in. Now further questions have been put to him, and he felt Special Counsel Lustgarten should provide them with the citation and regulations that back up his statements. Attorney Rosenberg says "No, I'm claiming privilege. No one should answer that question". Even a lay person can see this is unfair. Special Counsel Lustgarten made an argument; he opened the door. He took a position. He is simply being asked to back up the position with a citation. Once he does that, he really has to answer the question. Attorney Rosenberg should not be running interference so that the voters of Fair Lawn are deprived of a simple, factual answer.

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

#### **CLOSED SESSION:**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the meeting was adjourned to Closed Session at 8:34 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 Contract Negotiations – PBS/SOA;

**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.

**ADJOURNMENT TO CLOSED SESSION:**

Upon motion by Councilmember Baratta and Deputy Mayor Swain the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC  
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

\_\_\_\_\_  
Mayor Steven Weinstein

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Councilmember Jeanne Baratta

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Deputy Mayor Lisa Swain

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Deputy Mayor Joseph Tedeschi

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Councilmember Ed Trawinski