

REGULAR MEETING OF DECEMBER 8, 2009

Mayor Weinstein called the meeting to order at 7:03 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 issue of December 16, 2008. 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 Weinstein, Deputy Mayors Swain and Tedeschi and Councilmembers Baratta and Trawinski.

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

MANAGER'S REPORT

There were no changes or additions to the Manager's Report. Acting Manager Kwasniewski announced that there had been a note sale earlier in the day and the bid was awarded at a net interest rate of 0.8530% to Jefferies and Company. This is an extremely low interest rate which will result in significant savings on the interest paid by the Borough.

COUNCIL COMMENTS

Mayor Weinstein wished everyone a happy and healthy holiday. The holiday tree lighting took place last Tuesday and the Lighting of the Menorah will take place on Sunday night on the front lawn of Borough Hall.

Councilmember Baratta reported that for the third year in a row the Fair Lawn Rescue Squad will be working with the U.S. Marines on the annual Toys for Tots program for children in northern New Jersey. Collection boxes are located throughout the Borough and last year 2,200 toys were collected.

Councilmember Baratta stated that Bergen County is holding various H1N1 clinics. Registration is necessary for the clinic to be held on Thursday, December 17th from 4:30 p.m. to 8:30 p.m. for priority groups and registration is via the website BergenHealth.org or by phone at 634-2600.

Councilmember Baratta reported that she went to Trenton yesterday to testify before the Senate sub committee on Senator Gordon's bill S2349 which would provide an exemption from the cap for municipalities and counties in order to purchase hybrid vehicles. The bill successfully passed the subcommittee and is headed to the Assembly.

Councilmember Baratta wished everyone Merry Christmas, Happy Hanukah and Happy New Year.

Deputy Mayor Tedeschi wished everyone Seasons Greetings and encouraged residents to help those in need.

Councilmember Trawinski also thanked Senator Gordon and the former Borough Manager for their efforts in moving legislation forward that will enable the Borough to buy hybrid and environmentally responsible vehicles. He also thanked Councilwoman Baratta for taking the time to testify in Trenton.

Councilmember Trawinski referred to the skate park that a young man had spoken to the Council about some time ago. The Borough Manager advised them that the County Open Space Program has approved and will recommend the Borough's application for \$30,000 for that skate park. Councilmember Trawinski noted that skateboarding is a problem in various parts of the Borough and this means that a skate park will eventually be provided for those wanting to use it. Councilmember Trawinski also advised that the \$25,000 of funding for the playground at Westmoreland has been recommended to the Freeholders by the Board of Education. He thanked Fair Lawn's representative to the County for a job well done.

Councilmember Trawinski also wished everyone a happy holiday season and a healthy new year.

Deputy Mayor Swain noted that there are coat collection bins in the area and she urged people to drop off coats that they are no longer using. She stated that a resident had recently voiced concerned about a tree on a neighboring property that the resident thought may have been unnecessarily removed. After checking records kept by the Borough's Shade Tree Commission, Deputy Mayor Swain learned that the tree was almost dead.

Deputy Mayor Swain stressed the importance of crossing the street in designated crosswalks particularly at night. She wished happy holidays to everyone along with a safe and peaceful New Year.

PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY

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

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

RESOLUTIONS BY CONSENT #32-2009

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi, Consent Agenda #32-2009 containing the following items was unanimously passed.

- a. Resol. #375-2009 - Confirmation of Fire Board Actions
- b. Resol. #376-2009 - Fair Lawn Cops in Shops

- c. Resol. #377-2009 - Refund of Overpayment of Taxes
- d. Resol. #378-2009 – Requesting Approval of a Special Item of Revenue – Local Law Enforcement Block Grant
- e. Resol. #379-2009 - Approval of Minutes:
 - Special Meeting 8/18/09
 - Closed Session 8/18/09
 - Regular Meeting 8/18/09
- f. Resol. #380-2009 - Award of Bid: Storm and Sanitary Sewer Cleaning And TV Inspection
- g. Resol. #381-2009 - Authorizing Renewal of Massage Establishment and Massagist License – Massage / Spa Inc.

PUBLIC COMMENTS

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

Harvey Rubenstein, 17-38 Chandler Drive, encouraged the public to attend the Mayor and Council meetings along with Planning Board and Zoning Board meetings. He stated that at the Planning Board Work Session last night he learned that Honey Morgenstern has resigned. He noted that Ms. Morgenstern has protected the Borough's interests over the years. He learned that Mr. Shamanowitz, the attorney for Landmark, has prepared an ordinance on behalf of the Borough and presented it to Judge Martinetti and Mr. Rubenstein asked that the Borough object to Mr. Shamanowitz's initiative. Mr. Rubenstein said that the filing of resolutions with the County was also discussed and he said that this needs to be reviewed because there should be a better trigger in the case of a resolution that will run with the land.

Mr. Rubenstein referred to the two slabs of concrete on 20th Street that he brought to the attention of the Borough two years ago. He said that this area was fixed so that there is a path available for people to walk to the Recreation Center and he suggested creating a sidewalk on the other side. Mr. Rubenstein spoke regarding Bellair Avenue, on the football field side and said that an overlay could be added here to smooth out the entire area including the sidewalk. He said that in the area of Morlot Avenue from John Street to TJ is in poor condition and he suggested the installation of two handicapped curbs.

Mr. Rubenstein congratulated Councilmembers Baratta and Trawinski on their re-election. He pointed out that Fair Lawn renters, homeowners and business owners who go before the Council, the Planning Board or Zoning Board may not be experts or certified by the State but they should be respected and he hopes that the five minute rule will be eliminated next year.

Mayor Weinstein said that although they may not have always agreed, he always appreciated Mr. Rubenstein's input. He wished Mr. Rubenstein all the best in his move out west. Councilmember Baratta agreed with Mayor Weinstein and thanked Mr. Rubenstein for being a watch dog for the community.

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

SWEARING IN OF AUXILIARY POLICE OFFICERS

The following Auxiliary Police Officers were promoted and sworn in by Mayor Weinstein:

Lieutenant Stuart Alpart was promoted to Captain, Sergeant Paul Fucci was promoted to Lieutenant and Patrol Officer Steven Milnes was promoted to Sergeant.

Mayor Weinstein thanked the officers for their service to the Borough.

The following were sworn as Auxiliary Police Officers by Mayor Weinstein: Sergey Kislenco, Alessandro Calabrese, James Tyminski, Steven Tyminski and Daniel Kissane.

PUBLIC COMMENTS

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

Taina Stremmer, 3-06 Legion Place, said that there is an unbearable noise problem in her neighborhood caused by the Tanis Rock Co. The noise of the smashing rocks can begin as early as 4 A.M. accompanied by other shrill noises. When she moved to Fair Lawn, thirty four years ago, a large forested area existed which provided a buffer, however, the vegetation has now been removed. There is also a thick white cloud of cement dust that settles on neighborhood yards. Ms. Stremmer said that this is not a healthy environmental condition. These decibels levels are a health hazard and exceed what is allowed in the Borough ordinances. She said that there are trucks coming in and out and other activity going on at 5 A.M. At times, her house is shaking. The Tanis Co. has created a 25 ft. or 30 ft. high cliff where she is able to stand and observe the work that is going on.

Ms. Stremmer asked that the hours at this operation be restricted. She has called the police asking them to make the Tanis Rock Co. comply with the noise ordinance. The Police indicated they can't do anything unless a complaint is filed. She asked whether the noise ordinance prohibits making noise at 2:30 A.M.

Mayor Weinstein asked Acting Manager Kwasniewski to focus on this area and Acting Manager Kwasniewski said she is awaiting a report from the Police Department. She stated that a representative from Community Policing was going to meet with Tanis. Acting Manager Kwasniewski said that a complaint needs to be filed and the County will have to determine the decibel levels because this is the way the ordinance is set up.

Mayor Weinstein asked Attorney Rosenberg if it is legal for this work to be going on at 2:30 A.M. and he said it was not. Attorney Rosenberg reiterated that a violation of the noise ordinance requires that readings be taken from a certain vicinity. Mayor Weinstein asked if

it is permissible to have activity going on at 2:30 A.M. Attorney Rosenberg said he would have to look into that.

Deputy Mayor Tedeschi asked if the ordinance indicates that someone has to complain before it is enforceable. Attorney Rosenberg explained that a summons in municipal court has to be the result of a complaint that has been filed.

Ms. Stremmer questioned the hours and the decibel level of the noise ordinance in Fair Lawn. Councilmember Trawinski said that there is an exception in the ordinance regarding commercial properties. Mayor Weinstein suggested re-examining the ordinance because it isn't fair to the people in this neighborhood.

Ms. Stremmer said that Tanis is smashing rocks at 11:30 P.M. which is extremely unfair. She has contacted the company about this and the representative she spoke to said that there was no one there until 8 A.M. She told him that there was noise and trucks going up and down at 2:30 A.M. She again asked that the Mayor and Council consider this dilemma and have the work hours limited to 40 hours per week with no Saturdays and Sundays. Deputy Mayor Tedeschi asked if Tanis was quarrying and Mayor Weinstein said they will look into this also.

Aniello Scelzo, 15-27 4th Street, said that he has taken noise readings dating back as far as one year and as recent as three months ago. He played a recording he had taken of the noise caused by a bulldozer that took place on November 23rd at 2 A.M. He said that the bulldozers are working at the side of a hill where there used to be trees and another 30 ft. barrier. He played another recording taken 185 ft. from his house taken on November 30th at 3 A.M. of trucks dumping dirt.

When Mr. Scelzo calls the police he hears laughing in the background and he commented that he blames the Police Chief for allowing this behavior to take place. On another day when he went over to ask some questions, Mr. Scelzo was confronted by a Tanis employee. He said he wanted to speak to someone in authority and he waited for ten minutes while this person talked to various individuals. Finally he spoke to the secretary who took his name and phone number and said she would pass the message on. Mr. Scelzo told her about the tape recordings and video he had made and he was contacted by Jim from Tanis as soon as he returned home. Jim told Mr. Scelzo that he wanted to be a good neighbor, however, the schedule at Tanis was the same as it had always been. Mr. Scelzo said he had lived in Fair Lawn for over 40 years and what is going on now is not the same as it had always been. He asked Jim why they were digging into the side of the hill at 2:30 A.M. Jim explained that construction workers have emergencies early in the morning and need gravel for concrete.

Mr. Scelzo said that he and his neighbors deserve better and he asked the Council for help. He realizes that his neighborhood is on the other side of the tracks and they have been ignored in the past particularly by the police. Mr. Scelzo said that he helped vote each individual Councilmember in and he demanded that this matter be addressed. He is ashamed at what is taking place in his backyard with nothing being done about it.

Mayor Weinstein stated that this issue will be on next week's work session. Acting Manager Kwasniewski said that Deputy Mayor Swain had sent an email which she forwarded to the Police Department. The residents were told that they had to call the police when these things are happening and a Community Management Policing Officer was supposed to meet with the management of Tanis to attempt to work things out and make Tanis aware that the ordinance does not allow for this work to go on at 2 A.M. She will check with the Police Chief tomorrow to see if Tanis has agreed to work with the town. As noted before, the noise ordinance has certain exceptions and Tanis has been in operation for a long time and may be part of the exemption, however, Acting Manager Kwasniewski agreed that something must be done to give the residents relief.

Deputy Mayor Tedeschi asked how long this matter had been with the Community Police. Deputy Mayor Swain said it had been ten days since she received the complaint.

Councilmember Trawinski said that this is the first time he has heard about this and he is disappointed that his fellow Councilmember didn't make him aware of the complaint and the situation. He added that Councilmembers have an obligation to each other to be responsible and responsive to the people who have elected them.

Mayor Weinstein interrupted Councilmember Trawinski who said that he wasn't finished talking and insisted that Robert Rules allow him to continue. Deputy Mayor Tedeschi said that the Council must focus on the issue to try to solve the problem and Mayor Weinstein agreed. Councilmember Trawinski asked Attorney Rosenberg for a ruling.

Attorney Rosenberg said that Councilmember Trawinski did have the floor and could continue. Councilmember Trawinski said that there are people doing things behind the scenes who are not alerting the Council. He thanked the residents for bringing this to their attention and the residents will now get the attention and response that they deserve.

Mayor Weinstein said he totally agreed with Councilmember Trawinski. He noted that Mr. Scelzo also mentioned that the Board of Education and the Clarion site had been swept under the rug and he indicated that they would attempt to resolve all of these issues.

Deputy Mayor Swain stated that she was elected to represent all of the citizens and when a resident contacts her with a complaint she immediately calls the Acting Manager to begin the process of resolution. She did not feel that her obligation was to Councilmember Trawinski at that moment. The Council needs to move quickly with this matter and it is now time for them to work together to get this resolved.

Councilmember Baratta stated that Mr. Scelzo has every reason to be angry because this has gone on so long. She said that Councilmember Trawinski is only saying that if he and the other Councilmembers had known about it, something would have been done to help. She is shocked by what she has heard and this is the first time she has learned of this as well. Mr. Scelzo thanked the Council for their interest in the matter.

Stan Geissenberber, 15-24 4th Street, asked what type of leeway Tanis would have because they had been in Fair Lawn for a long time. He recalled that in the past when he had used his snow blower at midnight the police came and told about the noise ordinance explaining that he couldn't use this device between midnight and 8 A.M. Acting Manager Kwasniewski said that the noise caused by a snow blower operated in a residential zone falls under a different set of criteria from noise levels allowed in an industrial zone. She said that the County will have to measure the decibel readings and the Borough Attorney will have to determine whether the ordinance needs to be fixed or if there is another way to address the problem.

Attorney Rosenberg said they need to look at both the zoning and the noise aspect and investigate the nature of their use regarding Tanis, their CO, and whether they are or are not grandfathered. Councilmembers agreed that Attorney Rosenberg should look into this before the next meeting.

Mr. Geissenberger said that three years ago he and his neighbors appeared when Lazon wanted to expand their building. Lazon was given permission to add on, however, trucks were not allowed to come in and out in the middle of the night and there had to be a fence on the Legion Avenue side. It is over three years now and there is still no fence. He said that police have responded to their complaints of idling trucks but it still happens. Mayor Weinstein asked Attorney Rosenberg to look into this.

Taina Stremmer, 3-06 Legion Place, said that the Tanis operation has changed over the thirty years that she has lived in the community. The person who is running the business now has changed the face of the operation. Ms. Stremmer said that there are school aged children in the neighborhood whose sleep must be disturbed by the noise of the trucks and the smashing rocks, as well as commuters who get up quite early to catch the bus to go into the City. Peace and quiet in the neighborhood is a thing of the past and this business should not be allowed to operate 24 hours a day.

Councilmember Trawinski said that Ms. Stremmer and Mr. Scelzo have important information on the zoning issue that they should share with the Borough Attorney. The pre-existing rights they spoke about depends on what existed before and whether this has been compounded. Borough ordinances do not allow quarrying or mining operations and the question is whether Tanis did this before the ordinance existed, in which case they would have some protection; or whether they didn't which means they would have no protection. From the zoning aspect, what the Borough can do is determined to a large extent by what the neighbors can attest to. On the other hand, the noise violation is separate and if there is something lacking in the ordinance it will have to be amended.

Ms. Stremmer reiterated that the Tanis operation has changed during the past couple of years and they have suffered in silence long enough. She thanked the Council for another chance to speak.

Marie Scelzo, 15-27 4th Street, stated that the industries surrounding her neighborhood are endangering their lives and emotional well being. The noise from the Tanis operation can

start as early as 2:30 A.M. and last until 6:30 P.M. and has been ongoing for several years. She did reach someone from the River Road Improvement Corporation, who told her to buy ear plugs or consider moving. Tanis has cut down the trees and shrubs resulting in noise being sent through the walls of houses and windows for 8 to 16 hours a day. There is not only the loss of sleep but the anguish that continues as a result of the grinding motors and the beeping, crushing sounds. Ms. Scelzo said that they want their lives and their sleep back as well as a long tall barrier facing Legion Place. They need and deserve a beautification plan for their area. Ms. Scelzo asked that the trucks should be stopped from taking their cargo from River Road to Legion Place at high speeds in order to make short cuts to the bridge.

Harvey Rubenstein, 17-38 Chandler Drive, suggested that a survey of the Tanis property may show that rock and dirt has been removed from property they don't own. He referred to Mr. Geissenberger's comments about Lazon and said that they were actually before the Zoning Board more than three years ago. The Council needs to confirm the conditions of the resolution regarding trucks idling and fencing.

Councilmember Trawinski said that over the last four years he has collected and studied Zoning Board resolutions that, in his opinion, do not follow Borough ordinances along with other instances where applicants stipulated and agreed to conditions which the Zoning Board did not include in their resolutions.

Craig Miller, 5 Ramapo Terrace, said that it was his understanding that the Borough Health Official that has the meter to check sound. Acting Manager Kwasniewski said that the Borough has never had a decibel meter. On another topic, Mr. Miller said that the calendar appearing online does not represent the correct dates of the Borough meetings and he asked that this be amended.

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

CLOSED SESSION – CONTRACT NEGOTIATIONS

Upon motion by Councilmember Baratta and a second by Councilwoman Trawinski, the following closed session resolution was unanimously adopted at 8:26 P.M.

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 Contract Negotiations and Appointments

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 Baratta and second by Deputy Mayor Swain, the meeting was adjourned at 11:10 P.M.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

Mayor Steven Weinstein

Councilmember Jeanne Baratta

Deputy Mayor Lisa Swain

Deputy Mayor Joseph Tedeschi

Councilmember Ed Trawinski
