

WORK SESSION OF JUNE 17, 2008

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

PRESENT: Mayor Weinstein, Deputy Mayors Swain and Tedeschi, and Councilmember Baratta and Trawinski (late).

ALSO PRESENT: Manager Metzler, Municipal Clerk Kwasniewski and Attorney Rosenberg:

Closed Session:

Upon motion by Councilmember Baratta and a second by Deputy Mayor Swain, the following closed session resolution was unanimously adopted at 7:30 p.m.

WHEREAS; the Open Public Meeting act of the State of New Jersey permits the public to be excluded from certain matters to be discussed by the Governing Body; and

WHEREAS; the Mayor and Council of the Borough of Fair Lawn desire to discuss Pending Litigation – Landmark, Lentini, Naugle House; Anticipated Litigation – CAD System.

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.

Councilmember Trawinski arrived at 7:50 p.m.

Mayor Weinstein reconvened the meeting at 8:40 p.m.

Proposed Ordinance Change by Fire Department:

Tom Carney, Deputy Chief of the Fire Department, introduced former Chief Scott Osback, Chairman of the Reorganization Committee, and former Captain Lou Cicchella, Chairman of the Ordinance Committee. The Committees consist of ex chiefs and captains, with over 20 years of experience. The reorganization allows for two additional chiefs and fosters more continuity between the individual Fire Companies and Chiefs. It allows the Battalion Chief to serve for four years, becoming more involved in the budget process, internal workings of Borough Hall, etc.

Deputy Chief Carney stated all changes were approved by the Fire Board and backed by all 120 members of the Fire Department. The Department would retain the current badges. The changes will reorganize the Fire Department and strengthen the relationship with the Borough.

Manager Metzler inquired about the additional costs. Deputy Chief Carney stated the changes allowed the Fire Department to save on the yearly expense for helmets by using all black helmets for officers. The captain will have a white shield and the line officers' will be red. The estimated total cost with cars, if available, would be \$10,300 a year in 2009. In 2010 the amount will go down to \$8,000. Mayor Weinstein clarified that the amount included two additional cars. Deputy Chief Carney noted that was only if the cars became available.

Deputy Mayor Tedeschi asked what was meant about cars becoming available. Deputy Chief Carney explained that two Police cars could be donated to the Fire Department instead of being sent to auction. Deputy Mayor Tedeschi noted that the vehicles would need to be replaced at some point. Deputy Chief Carney stated that there were two new chief's cars in the capital budget for 2010 and 2011. Their current chiefs' cars would be passed down. Deputy Mayor Tedeschi confirmed that this would add two more vehicles in the Fire Department.

Manager Metzler noticed that the ordinance did not indicate the duties of the three chiefs and suggested they include a job description. Deputy Chief Carney stated it was left vague as the chiefs would oversee the 18 committees, based on areas of expertise. Currently he and the Chief are overseeing all committees by themselves. Ex-Chief Scott Osback stated they felt it should not be structured so that each person could use their expertise. They will get their assignments at the reorganization meeting.

Manager Metzler inquired if they reviewed the pros and cons of a battalion system. Currently when there is a fire alarm, except a car fire, they roll everything they have. Under a battalion system, they would roll battalion chief, an assistant and perhaps one pumper and one truck company. Deputy Chief Carney stated they were light on manpower during the day. It would depend on manpower as to whether they switched the format down the road. Ex-Chief Osback stated that on a first alarm only a certain number of pieces will go unless more are deemed necessary by the incident commander. They needed everyone for the recent house fire on Dalton Place. It was confirmed that they will maintain the same protocol.

Manager Metzler asked if there will be a department policy restricting all four chiefs from responding to a car fire. Ex-Chief Osback stated the goal is to have one chief in the company respond. Manager Metzler inquired if the workload would be distributed equally among the four chiefs. Deputy Chief Carney stated that was the intent. It was more on the administrative side than the firematic side.

Manager Metzler stated that he would support the changes to the ordinances, but had concerns about the additional vehicles. This was a step in the right direction in terms of administrative continuity of the Fire Department.

Ex-Chief Osback stated they discussed keeping two chiefs with two year terms, but the biggest problem that every ex-chief had was continuity. You started a project, but by the time you did the paperwork, obtained grants, and did the budget, your term was over before the project was completed. Now each of the four companies will have a chief and everyone will be in the loop.

Deputy Mayor Tedeschi agreed that the Fire Department was going in the right direction administratively, but he was concerned about the extra vehicles as he felt the cost would be more than \$10,000 on an ongoing basis. Deputy Chief Carney had a projected cost of \$5,000 for gas for both cars, \$300 for maintenance and \$800 to paint both cars red. Deputy Mayor Tedeschi stated that there was the amortization expense of subsequent vehicles. He asked if they were eliminating the position of Fire Clerk. Deputy Chief Carney stated that the old ordinance specified that the Chief appoints the Fire Clerk. It will be changed to the Manager's appointment. Manager Metzler stated the old ordinance was in effect when the clerk was a non civil service position.

Manager Metzler stated that Council was leaning towards a motor pool for other departments. He did not think it was fair for a volunteer to use their personal vehicle to attend meetings all over the County. They talked about having public safety vehicles for the fire inspectors to use during the day and the auxiliary police and OEM to use at night. He asked if that would be a reasonable compromise. They would be newer, energy efficient cars and would still be emergency vehicles. They would be available for use for meetings but would not be assigned to specific individuals. Deputy Chief Carney felt that would be acceptable.

Mayor Weinstein inquired if, pending Council approval, this would go into effect January 1, 2009. Deputy Chief Carney stated that it would if the ordinance was approved before September. Deputy Mayor Swain asked if this administrative model was being used in other towns. Deputy Chief Carney stated that it was used in other volunteer towns such as Paramus, Garfield, Rochelle Park, Maywood and Elmwood Park.

Deputy Mayor Tedeschi expressed concern about the clothing allowance for those who retire. He asked Manager Metzler if their participation in LOSAP reduced the need to have that clause or should that be qualified for people who are not going to receive any LOSAP funds. Ex-Chief Osback stated that everyone does not qualify for LOSAP. Deputy Mayor Tedeschi asked if a person who qualifies for LOSAP would be entitled to the clothing allowance in addition to the LOSAP funding. He noted that the original purpose of the clothing allowance was the absence of a LOSAP or pension.

Councilmember Trawinski stated that the legislation enacted LOSAP to provide an additional benefit. He would not support taking away another benefit because of it. Manager Metzler reminded them that LOSAP was put in place to encourage people to remain in emergency services and encourage younger recruits. Manager Metzler wondered if they should follow what they do with Borough employees and have the ordinance state that fire fighters who join after January 1, 2009 would be eligible for LOSAP only. He added that the Borough's LOSAP was the most restrictive, regulated

and one of the lowest paying in the County. It was emergency services who chose to make it restrictive.

Councilmember Trawinski did not agree with Manager Metzler's suggestion that they include a restriction for those volunteers who join after January 1, 2009, since they are unpaid volunteers and not paid employees. He felt they should do whatever possible to stimulate additional volunteers. If they had to budget for a paid Fire Department, the taxpayers would be unhappy with the cost. He appreciates the desire to save money in the budget but stressed they should provide as many incentives as possible to address the manpower issue.

It was the consensus of Counsel that they proceed with the amended ordinance for the Fire Department.

Deputy Chief Carney stated that a former volunteer fireman from Fair Lawn started a new company in Lake Gaston, Virginia. Mayor Weinstein stated that he would like to sell a fire truck scheduled to go to auction to them for \$1.00. Attorney Rosenberg stated there was a difference donating to another government unit, which is defined by statute as any instrumentality in the United States, any state, any county or any local government. The Borough has the right to sell it for \$1.00. The Council must adopt a resolution authorizing the sale. The recipient entity must acknowledge that they are an authorized government.

Manager Metzler stated there is no trade in value on this particular apparatus as it is obsolete. It is a 1974 design retrofitted in 1994. He reminded Council that they already gave their consensus to offer it to a community in the gulf. Shortly afterwards he received an email from Attorney Rosenberg referencing a tower ladder that was auctioned off for \$54,000. He wanted to clarify that this equipment was not a tower ladder. Councilmember Trawinski inquired as to the worth of the donated equipment.

Deputy Chief Carney noted that a truck ten years newer and with more equipment was sold on EBay for \$5,200. The Fire Department would like to donate this truck to their former volunteer who has now started a new company. The Virginia Fire Company will come to pick up the truck and will be trained by Fair Lawn Fire Company #1.

It was the consensus of Council that the fire truck is sold to the Virginia Fire Company for \$1.00.

Review of Tentative Agenda (6/24/08):

Municipal Clerk Kwasniewski asked to add resolutions approving Council Minutes for April 1st and 8th, and refunding of overpayment of taxes. The deadline for submission of the Open Space Grant for Park Improvements was June 27th. A resolution appointing a representative and one authorizing the application are required. She asked to add a resolution to award the bid for Cleaning Services.

Manager Metzler stated that the Open Space Grant Application would be for replacement of fencing at Vander Plaats field in the amount of \$49,855, new fencing in front of the

Community Center in the amount of \$15,595, and fencing at Memorial Pool in the amount of \$47,550 for a total of \$113,000. He reminded Council that the matching funds for these projects were not in the budget for 2008 and would have to be budgeted for next year. The Borough would be responsible for \$50,000. Deputy Mayor Tedeschi inquired if the funds had to be certified. Manager Metzler stated that they could certify that they have funding, since they have a \$500,000 capital project for park and field improvements.

Mayor Weinstein asked if the representative for the Open Space Grant was a Councilmember. Municipal Clerk Kwasniewski stated that it was Engineer Garrison.

It was the consensus of Council that Municipal Clerk Kwasniewski adds these items to the agenda.

Council Liaison Reports:

Deputy Mayor Swain stated that the Planning Board denied the River House project application. They also spoke about the new congregation in the house across from the Fair Lawn Jewish Center. Attorney Berne will review several issue regarding the future sale of the residence and its implications. She noted that Mr. Rubenstein brought up the issue of circular driveways. She suggested Council discuss enforcement issues at a future meeting.

Councilmember Baratta stated that a resident, Merrill Bernstein was interested in putting together concerts for high school students at the Community Center or outdoors. Mrs. Bernstein was soliciting bands to donate their services. The students would be charged a nominal fee, which would go to a children's charity. The Alliance for Substance Abuse Prevention has agreed to sponsor the concert on July 17th.

She stated that the Garden Committee cleaned out the park area near Sasso Field and the Tree Department remove dead trees with the Board of Education's cooperation. The Committee used \$800 of their budget to put in new plantings. The Board of Education installed soaker hoses.

Councilmember Baratta commended Art Cumming, Property Maintenance Inspector for enforcing the mowing of overgrown lawns.

Councilmember Baratta stated that the Committee was very concerned about contamination by dry cleaners. They would like to receive information from Carol Wagner, Director of Health, so they could continually monitor all the cleaners in town. Mayor Weinstein stated that the Committee could receive information from the Health Department but could not actually monitor the cleaners. Councilmember Baratta stated that dry cleaners were currently being monitored by the State so reports should be available.

Councilmember Trawinski explained that dry cleaners were not monitored by the State. Dry cleaners that have changed hands would be the subject of an ISRA application and may be monitored. The state has pre-empted the monitoring. Municipal Clerk

Kwasniewski stated that many dry cleaner businesses are drop off points only and have no chemicals.

Councilmember Baratta asked where she could find the information so that it could be passed along to the Committee. Councilmember Trawinski stated there was a different type of form that had to be filed with OEM and others if they were using hazardous materials. He suggested she ask Manager Metzler to obtain that information from Ira Marks. He was surprised the Committee was not looking into the appearances of the dry cleaning business, as he felt that was an issue with several of them.

Councilmember Baratta stated the Committee appreciated the clean up of the clothing bins, but noted that the Goodwill bin at the Recycling Center needed to be cleaned up. The Committee and Inspector Cumming are finding that large McMansions purchased at peak are being abandoned and are no longer maintained. He has to deal with lenders. Deputy Mayor Tedeschi stated the Borough has the absolute right to maintain the property and attach a lien. Manager Metzler stated it has been done in the past. There are currently seven properties that will be recommended for a lien.

Councilmember Baratta stated that the Committee asked for follow up regarding the placement of realtors' open house signs. Councilmember Trawinski stated they talked about amending the ordinance, but the draft ordinance was not received from Attorney Rosenberg. Deputy Mayor Tedeschi recalled that Council agreed residents selling their homes needed all the help they could get. Attorney Rosenberg stated he would draft the ordinance. He thought there was an issue about public right of way versus private property, and how they would distinguish the business.

Mayor Weinstein felt they should discuss this again at a future work session. Councilmember Trawinski stated they sent a clear intent not to enforce. Mayor Weinstein stated that other realtors have stated that the signs are not helping or hurting the brokers. There are other ways of getting the word out. Councilmember Trawinski did not agree. Deputy Mayor Tedeschi stated housing purchases in New Jersey are down 17%.

Councilmember Baratta stated that the Tree Committee would like to start adding trees by Yerger Road and West Amsterdam Avenue, which had the pear trees. Many of the trees have come down. Manager Metzler stated that was different because they were not County roads. The Shade Tree Department asked whether they were going to start planting trees where they thought there should be trees or whether residents would have to sign up for trees. They decided to have residents request trees. Councilmember Baratta stated that the Committee wanted to send out letters like they did with the County roads. Mayor Weinstein stated they could do that again. There were a handful of people that did not want a tree. She felt those streets were barren. The Committee would like to do a small section at a time. Manager Metzler reminded her that they were not budget for this year. Councilmember Trawinski agreed that a letter should be sent. Councilmember Baratta will let the Committee know that she received positive feedback from the Council.

Councilmember Trawinski stated that the ADA Committee recruited a new member as a result of the notice that Jim Van Kruiningen ran. Assistant Support Specialist Van Kruiningen will look into the list of items from the Committee and report back. Howard Mark raised some insurance issues for ADA which will be looked into.

Councilmember Trawinski stated that he drove by the high school to confirm that there was no identified handicap parking for the primary election. He felt that put them in serious risk with Federal law, in addition to being the right thing to do. There have been repeated discussions that if you are permanently disabled you get on a permanent absentee ballot list, but there is still a strong personal feeling about casting their ballot at the polling place.

Municipal Clerk Kwasniewski stated that the ADA Committee does not understand that the parking spaces are for anyone. She was told by Traffic Safety Officer Franco that they could not designate spaces for handicap parking as they must meet certain requirements and could not be done on a temporary basis. Councilmember Trawinski stated that the Federal regulations were significantly different from what Traffic Safety Officer Franco reported. They have an obligation under Federal law, both with the ADA Act and the Help America Votes Act to provide accessible handicap parking spaces at polling places during elections.

Municipal Clerk Kwasniewski stated the schools provide handicap parking but the spaces are not in front. They are technically meeting the requirements. If they want to do something else they would have to work on an ordinance. Councilmember Trawinski suggested they put it on the agenda for a July work session. He was not sure that Warren Point had the requisite number of handicap spaces for all their polling districts. Municipal Clerk stated the school put up temporary handicap parking signs on Election Day. A problem occurs when handicapped poll workers park in those spaces all day.

Councilmember Trawinski stated that the EDC has reached out to the business community for input on the proposed third SID. Mayor Weinstein suggested this item be added to a July work session agenda so that they could reach a consensus either for or against a third SID.

Councilmember Trawinski stated that it was reported at the Open Space Meeting that they were now in negotiation for the park. The Committee agreed to apply this year again and recommend to the Council that they apply this year for the discretionary grant program. The Committee discussed the issue of members and the public reporting things that were contrary to what took place at the meeting. Mayor Weinstein stated they also discussed the temporary parking facility on Kipp Street. Michael Hakim addressed the issue of whether or not this was something Green Acres would entertain. He and Councilmember Trawinski will explore this further at a Shared Services Meeting with the Board of Education.

Deputy Mayor Tedeschi stated that the BIC has created a preliminary Broadway vision plan. He received an e-mail from Rich Davis stating the BIC would like to discuss this

plan at an upcoming work session. Municipal Clerk Kwasniewski stated the BIC was having a public meeting on June 26th.

It was the consensus of Council that the BIC plan be placed on the agenda for the work session in August.

Deputy Mayor Tedeschi stated he and Councilmember Trawinski were going to meet with Elmwood Park to discuss several Broadway issues.

It was the consensus of Council that Deputy Mayor Tedeschi and Councilmember Trawinski meet with Elmwood Park.

Mayor Weinstein stated that he attended the IAEM Conference that was arranged by Manager Metzler and Assistant Support Specialist Van Kruiningen. Senator Gordon attended as did speakers from St. John's and Emergency Management representatives from all over the country. The conference took place in the auditorium at the Community Center. There were vendors in the atrium and breakfast and lunch was held in the gymnasium.

Mayor Weinstein stated they requested input from the BIC regarding the 24 hour ordinance. The RRIC stated they wanted to review the ordinance before commenting.

Mayor Weinstein stated there was a Fire Board issue regarding Kuiken Terrace. Attorney Rosenberg stated the property owner appeared in Municipal Court.

Amending the Historic Preservation Ordinance:

Attorney Rosenberg stated that the ordinance would amend Chapter 120 to provide for the identification of historic sites by the Historic Preservation Commission. The decision to declare a particular property in the Borough as a historic site would be left up to the Council to decide by resolution. There are criteria in the ordinance. They would have to make a presentation to the Council. It is only after that process has been gone through and Council has actually deemed a property a historic site that there would be any of the oversight of that particular property. There is no intent to regulate the interior of historic properties.

If the Historic Preservation Commission requested that a property be designated as a historic site, they would have to give notice to the property owner who must have the opportunity to be heard and can object. If the owner objects to a designation, the Mayor and Council shall not designate that property as historic. Councilmember Baratta felt that weakened the ordinance. Mayor Weinstein noted that they currently have a situation with the Vander Plaats property. Former Assemblyman Felice has spoken twice to the owners about entertaining options by the Borough to purchase the property, whether for open space or historic preservation. The owners have said no. They have owned the property for over 30 years and he felt that they should have the right to make that decision. There is a significant issue with private property rights.

Councilmember Baratta stated that there were only a couple of potential properties left in Fair Lawn. This ordinance will not help at all. Mayor Weinstein pointed out that it is the owner's piece of property. Councilmember Baratta felt they would be losing historic properties. Mayor Weinstein stated that property owners had a right to their opinion and should not be encumbered to take costly legal action. Although it may be important to the community they cannot lose sight of the homeowner's rights.

Deputy Mayor Swain felt the property owner had the right to make their own choices. The Borough might have an opportunity to review this matter if the house goes up for sale or discussions with a future owner. She did not feel it was fair to attach a designation without the owner's approval.

Councilmember Trawinski stated they have already made decisions in one aspect or another for every property owner in Fair Lawn. A property owner does not have the right to do as they please. They are required to come in for site plan review, which takes away to some extent their right to do whatever they want. Every time they pass a zoning ordinance they take away a property owners unfettered right to do what they want. He noted they were about to discuss 24 hour businesses and take away unfettered rights. Historic resources are irreplaceable. They should do whatever they can as a governing body to protect those resources. The structures they allow to violate their Zoning ordinances do not, in some respects, have the same impact as preserving historic sites. He disagreed strongly with Mayor Weinstein. They are the elected representatives of the people. If people do not like the decisions they make, the residents have an absolute right to vote them out of office and that is where their remedy lies. He did not think there was any point in having this ordinance.

Deputy Mayor Tedeschi felt the municipality had an overriding obligation to protect the contents of that municipality to the best degree possible. He did not feel that paragraph belonged in the ordinance. He noted that they always had the right to buy the property. Councilmember Trawinski stated that they could condemn it at anytime.

Mayor Weinstein stated there was a need to balance the rights of the public versus the rights of the private property owner. The new ordinance would put measures in place that, if the homeowner agrees, would be the end of the issue. Additional encumbrances will be placed on that property that will have to be adhered to by the next owner. If the Naugle House becomes an historical structure and is sold on the open market, the buyers will know this in advance. In situations where the rights of the public and the rights of the private property owner were involved, he felt the need to protect the private property owner. When the under-age drinking ordinance was introduced, it took him time to move in that direction because he was concerned about the private property rights of the residents. He supported the ordinance once he was convinced that wasn't going to be an issue.

Councilmember Trawinski stated that it would not stop the property owner from doing things with the property. Mayor Weinstein stated it would impact on the exterior of the home. It was his understanding that the property owners had the right to pursue legal action to fight the designation. Councilmember Trawinski stated that the Court always

come down on the side of the historic sites. Mayor Weinstein did not feel it was appropriate to force a property owners to go to court for a property they have maintained throughout the years.

Deputy Mayor Tedeschi felt that as a community they should develop a sense of who they were. One way to do that is to preserve historical buildings. An individual who has his home designated as historic has the right to come before the Council and does not need to go to court. The property owner may have valid arguments. The process provides opportunities for the owner to be heard. Attorney Rosenberg clarified that the ordinance establishes the process before Council, who were the only ones who could designate a property a historic site by resolution.

Mayor Weinstein suggested they review this issue in July. Councilmember Trawinski suggested they give a copy to the Historic Preservation Commission and the League of Women Voters. Jane Diepeveen will comment as town historian.

Discussion of 24 Hour Businesses:

Mayor Weinstein stated the BIC sent a memo stating they were not for the 24 hour restriction. RRIC stated they would see what Council did and then comment. He met with a River Road business owner who was concerned that people would park on his property if the location did not have sufficient parking. The BIC asked that "properties abutting residential" be more clearly defined. He felt the 24 hour restriction should be for retail businesses and agreed that they needed a clearer definition.

Attorney Rosenberg stated that the ordinance contained very broad definitions. A retail establishment would necessarily include pharmacies, which could be exempt because of public purpose based on the needs of the community. They would have a harder time distinguishing between other types of retail, such as a Blockbuster or Quick Check, but the courts have stated that pharmacies can be distinguished from other types of retail. He though the proposal was that if a property immediately abuts a residential use, 24 hour businesses would not be permitted. He reminded them that they have the ability to distinguish between the five business zones.

Councilmember Trawinski understood that they were all concerned about striking a delicate balance and structuring a regulation that is consistent with the Quick Check versus Springfield Township case. He wondered if they could make a 24 hour retail business a conditional use and then define the conditions that would allow for some of the variations that exist within our zoning districts. There are portions of the business zone on the north side of Broadway that directly abut residential, but he did not think they needed to have a 24 hour ban for those businesses on the south side where there already is an appropriate buffer. Mayor Weinstein stated one business owner suggested 200 feet.

Councilmember Trawinski stated they have already defined that they do not want 24 hour businesses where there is residential above. Rather than banning it completely, he suggested they allow 24 hour operations with appropriate conditions that address the

health, peace and comfort of the surrounding homes. Municipal Clerk Kwasniewski stated the BIC would be more comfortable since businesses would not automatically be excluded. Councilmember Trawinski stated this would be a way to address the issue and tailor it with the narrowest amount of regulation, yet at the same time achieve their goals.

Councilmember Trawinski suggested that Attorney Rosenberg speak with Ms. Bergailo and the League of Women Voters for input. He liked that the deviation from the conditional use standard is a higher burden to meet and would subject businesses that sought to deviate from that standard to the five affirmative votes from the Zoning Board, instead of a simple majority. A business will have to prove their case if they seek that deviation from the standard.

It was the consensus of Council that Attorney Rosenberg prepares a draft ordinance for the August work session.

Adding Grandfather Clause to Pre-existing 50 X 100 Foot Lots:

Attorney Rosenberg stated that they approached the Zoning Office about grandfathering non-conforming lots to help alleviate the backlog of cases. Currently any proposed construction on a non-conforming lot must go before the Zoning Board for a variance. The Board recommended that the Council reinstate the section that was previously in the ordinance 125.32c, which acknowledged that a property owner with a non-conforming lot would not have to make an application to the Zoning Board as long as nine criteria have been satisfied. They felt it was important that these nine criteria be put back into the ordinance, as each works together to protect against loopholes in the ordinance. The Board recommended they reintroduce Chapter 125.32 in concert with the FAR. These two ordinances will achieve their goals and alleviate the backlog of cases.

It was the consensus of Council that Attorney Rosenberg amends the ordinance to add a grandfather clause for pre-existing non-conforming lots.

Requests for Fence Replacements:

Hernandez, 36-22 Northern Drive - Manager Metzler stated that the resident wanted to replace a rear fence along the right-of-way on Route 208. The Engineer has no objections. He agreed with the recommendation.

It was the consensus of Council that the resident be issued a license agreement to replace the fence.

Rimrob Corporation, 12-28 – 12-44 River Road - Manager Metzler stated that the property was located behind the rear of the River Road Post Office. The fence is on Borough property and has been maintained by the property owner, Mr. Wrubel, since 1976. The Engineer has no objections. He agreed with the recommendation.

It was the consensus of Council that the property owner be issued a license agreement.

Improvements to Council Chamber Sound System:

Manager Metzler stated that the specialist recommended the replacement of the microphones and four speakers. The Borough invested in a system for the hearing impaired and that control box will be connected. The cost is \$8,434.50. They are finishing the building renovations. If funds remain, he will recommend to the Council that this be included as renovations to the courtroom and council chambers.

Deputy Mayor Tedeschi asked for a copy of the proposal for the microphones. Manager Metzler will send home copies to the Council. This project does not have to go to bid as it is under the bidding threshold. They will obtain three price quotes.

Fair Lawn Soliciting Other Towns for a Suit Against Round 3 Regulations:

Councilmember Trawinski stated that since this had the potential to impact upon the Landmark Litigation, they decided to also discuss this under pending litigation. Upon the recommendation of Special Counsel Lustgarten and Attorney Rosenberg, he suggested they modify it to say that they should adopt the League's resolution to join the League's suit, but not take the lead. It was a \$500 commitment. It indicates their seriousness and intent to do this, but at the same time does not have them out there where there could be other complications.

It was the consensus of Council that they adopt the League's resolution and join the League's suit.

Manager Metzler asked to add in closed session, under Personnel, his report outlining his proposal about rescheduling the work schedule for Borough employees.

Public Comments:

Harvey Rubenstein, 28 Rutgers Terrace suggested looking at the house on Berdan Avenue that has a circular driveway, as he did not think that is how they wanted the Borough to look. It was agreed that the Planning Board has the right to send Council a message that they would like some regulation. He is not against circular driveways when they are landscaped.

He felt the goal is to reach a harmony between business and residential.

Mr. Rubenstein inquired as to the cost of the fencing at the lacrosse field near the Community Center. Manager Metzler stated that the cost would be \$15,595. Mr. Rubenstein suggested that if the 501(c)3 had any funds left they should pay for the fence instead of putting it in the general fund. Manager Metzler stated that they had one more close out payment to make back to the Borough. There were still funds in an account that had to be used to pay down the debt. Mayor Weinstein explained that they would be paying half of the cost for the fence, as the County pays for half. Deputy Mayor Tedeschi stated that the 501(3)c could not use the money for anything but to pay down the debt.

Mr. Ruben saw an item regarding the Borough Engineer on a closed session agenda and inquired if they were going to hire a new engineer. Mayor Weinstein explained that they were required by statute to re-appoint Engineer Garrison.

Manager Metzler informed Mr. Rubenstein that he followed up with Superintendent Graff on his suggestion about the parking spaces near the dumpster. The Mayor had received a complaint from a resident regarding garbage at Berdan Grove. He learned that the Parks Department employees were picking up the garbage and not their garbage hauler. He is looking into whether these employees could also come by the Community Center and pick up the recyclables so that those containers could be removed.

Anna DiNardo, 13-06 Second Street asked Manager Metzler if they would only be able to do the sound system if money was left over from renovations. Manager Metzler stated that the sound system would either not be done in this budget year or they might find the funds in October, when they transfer money into the operating budget. Mrs. DiNardo thought it would be nice if the departments could find additional funds, since this was an important project.

Maureen Moriarty, 14 Burnham Place thanked the Council and Attorney Rosenberg for considering the amendment to the Historic Preservation ordinance. The Naugle House will be a property owned by the Borough. Local historic designation will remain. Anyone interested in buying the Naugle House would understand the importance of preserving the integrity. She felt the Vander Beck House was the same situation. She did not think anyone would want to see something happen to either home once they understood the historic significance.

Ms. Moriarty stated that the Vander Plaat family has maintained the exterior of the house. She is hoping that with the Naugle House they will address the issue of not letting the developer bring it up to code. If there is local designation, any application for renovations would have to go to the County. Councilmember Trawinski stated that was not true, as there was no basis for County jurisdiction unless it was on a County road or there is County drainage. Ms. Moriarty clarified that the application would have to go to the Historic Preservation Commission. It also states that anything the Commission recommends is advisory only. All decisions remain with the Council.

Councilmember Trawinski stated that if they decide to sell the Naugle House, they would put a historic preservation easement on it so that the house would be protected. He took issue with her comment that everyone who purchases a historic site understands the importance of keeping it historic. He has several developers as clients who do not understand the historic value, and only want to level the house as quickly as possible. There is still a need for the protective step.

Jane Diepeveen, 14 Ryder Road inquired if they were using open space funding for fencing. Mayor Weinstein clarified that it was open space money from the County, and not from their open space trust fund.

She wondered if she heard correctly that they were not budgeting for trees this year. Manager Metzler clarified that the trees they budgeted for have all been spoken for. Councilmember Trawinski stated that they budget for trees every year.

Mrs. Diepeveen stressed that there was no point in having the historical preservation ordinance if the homeowner can veto it. She did not understand the distinction between an advisory opinion from the Historic Preservation Commission to the Planning and/or Zoning Board. They have the final say. They have made many changes in the Zoning ordinances that affect the rights of homeowners. This is no different. It is only exterior. The ordinance would not stop them from making changes, it would merely require them to be historically sensitive and follow the advice of the Commission. Fair Lawn used to have more pre-revolutionary stone houses than any town in Bergen County, but they torn down three of them. She did not want to lose any more. It was a matter of local pride.

Erik Bal, 1433 46th Street, North Bergen, president of the First Mountain Chapter of the New Jersey Society of Sons of the American Revolution stated he had an interest in the two properties that were being considered for a possible historical designation. The Naugle house appears on General Erskine's revolutionary war maps. The Vander Beck house was used as a meeting place for patriots. General Lafayette attended a meeting there. The Naugle House was apparently owned by Lafayette's paymaster.

Mr. Bal stated that his organization had an interest in Fair Lawn because it was steeped in history. He reviewed their settlement agreement when it became public. It has the developer restoring the Naugle House. He advised them not to let the developer do the repair work and renovations. He was not sure if he was mistaken in his understanding, but it appeared that the developer would restore it. There was a fund, and it would not cost more than \$243,000. He felt the developer would have a conflict of interest and would want to do the work as cheaply as possible.

Attorney Rosenberg stated there were restrictions. The first step was to stabilize the house, not to bring it up to historic standards. The full range, long term plan for the house has not yet been determined by the Council. It is important for people to know that stabilization of the home is the first step. Basic services need to be brought back into the house. Mayor Weinstein noted that if the developer felt the front porch was not worth keeping they did not have that choice. They cannot do away with things to save money.

Mr. Bal noted that in the course of stabilizing the home, there should also be design criteria considerations. They should not be allowed to rip up 250 year old floorboards to access some foundation point to stabilize it in the cheapest way. They should be required to preserve as much of the building as possible in the stabilization process and there should be design criteria so that a minimal amount of destruction of original materials is involved in the process.

Mr. Bal stated he did not see the proposed ordinance, but he felt it was a good idea to have design standards that ensure that the house will be kept in historic condition. He was pleased that the Naugle house would be preserved. He thought it would be good to

have more protection built into the ultimate approval. He felt the design standard have to be specified in the ordinance.

Mr. Bal concluded by stating that he applauded the Council's efforts to protect the Naugle House.

Kevin Dunn, 354 Maple Avenue, Oradell stated he was a member of the First Mountain Chapter of the Sons of the American Revolution. The issue of the Naugle House is also a matter of local pride. Looking at the Naugle House as a historical structure and its significance to American history, he felt they should be sensitive to the fact that a foreign developer would have no sense of the American heritage connected with this home. It goes beyond local pride, it was national pride. This piece of history is irreplaceable. Once it is developed it is gone.

He wondered what the outcome would be if construction begins and artifacts are found. Attorney Rosenberg stated that the developer was obliged to comply with State statutes if something is found during the course of excavation. Councilmember Baratta wondered who would know if they found anything. They could uncover a piece of pottery and move on. She wanted to know what would trigger the developer to comply with state regulations. Attorney Rosenberg stated that Mr. Dunn raised a good question as it was not just .20 acres, it was the whole site. Councilmember Baratta believed that if something was found the project was shut down. This happened in Waldwick when a cemetery was discovered. Councilmember Trawinski stated there were different standards for cemeteries and Indian burial grounds.

Attorney Rosenberg stated that the regulations he was familiar with were under the DEP jurisdiction for wetlands. If during the course of a wetlands permit there is a historic analysis done, there have been instances where they stopped projects. It arises from the DEP's jurisdiction. There is an Office of Historic Preservation within the DEP. Mr. Dunn inquired as to who would monitor that and be present. Councilmember Trawinski stated that would not be the case unless the Planning Board states they can amend the settlement and make it a condition of the approval. He agreed that was a good point.

Mr. Dunn noted this was a large tract of land with three buildings on the property. Councilmember Trawinski suggested Attorney Rosenberg discuss this with Planning Board Attorney Beirne so that the Board can look into this.

It was the consensus of Council that Attorney Rosenberg contacts Planning Board Attorney Beirne to discuss amending the settlement with the Naugle House developer to provide restrictions regarding the uncovering of historical artifacts.

Craig Miller, 5 Ramapo Terrace stated that he knew of five homes that had property maintenance issues. He thanked the Shade Tree Department for coming by twice to pickup tree limbs and remove branches from power lines. He suggested the gates at the pedestrian railroad crossing by 20th Street be looked at.

Harry Poster, 13-10 2nd Street stated there was an article in the record that a person with a handicap placard could not be given a parking ticket. A solution for election parking would be to have the Police put the temporary "no parking" signs in front of several spaces. A non-handicapped driver would not be allowed to park there, but a driver with a handicap placard could. Mayor Weinstein asked Manager Metzler to discuss this with Traffic Safety Officer Franco.

Mr. Poster stated that he was at the Radburn Train Station and those crossing gates also went up and down as the train came across Fair Lawn Avenue.

Lawrence Koplik, 6 Reading Terrace stated they should keep in mind that a historic preservation ordinance is an overlay ordinance that provides additional specific items that may apply to a specific historic property. These items can be tailored to the property. It has the same legal validity as any other Zoning ordinance, in that it protects the character of the community. It will also help protect the appearance of the community in terms of historic properties. The person doing the renovations might be made aware of the parameters of his or her property, so that he can make good decisions that make the house attractive while meeting the requirements of the Historic Preservation Commission. These restrictions are no worse than what is imposed for other purposes under the Zoning ordinance.

He stated that the Naugle House also had something to do with the Underground Railroad. The term Dunkerhook means "dark corner" or "dark bend" because of that connection. As far as protection with archeological work, there may not be anything in the State law specifically requiring it, but the Municipal Land Use Fund and the Zoning Ordinance Procedure Established Funds for Municipal Land Use law would allow them to put in their ordinance the requirement to investigate anything that may be found during excavation.

The ordinance they create can contain the features they want it to have. There is no need to give the option to opt out, because it is up to the Council to designate the property.

Mr. Koplik questioned if the grandfather clause to the non-conforming lots was intended to make them conforming lots. Attorney Rosenberg stated it was not.

Felice Koplik, 6 Reading Terrace thanked Attorney Rosenberg and the Council for drafting the Historic Designation Ordinance. She will discuss it with the Commission at the July meeting. She wondered if they would like feedback from the Commission. Mayor Weinstein stated they would like a summary report. He informed Mrs. Koplik that she would be notified of the meeting so that she could be present for the discussion.

Mrs. Koplik stated that when a property is stabilized there is still the possibility of doing architectural damage to the home. They cannot give open leeway to the developer.

There has to be specific architectural guidelines as to what has to be protected. She heard discussion about redoing the wiring. They should not tear up 200 year floor boards if they do not know what the use of the house will be. Mayor Weinstein thought this issue should be brought up at the Planning Board meeting.

Closed Session:

Upon motion by Deputy Mayor Tedeschi and a second by Councilmember Trawinski, the following closed session resolution was unanimously adopted at 10:40 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 Personnel – Employee Buyouts, ADA, Borough Gardens Committee.

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

WHEREAS; minutes will be taken during this closed session and once the need the confidentiality no longer exists the minutes will be available to the public.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Lawn that the public be excluded since these matters as set forth above are ones which permit the exclusion of the public from such discussions.

Mayor Weinstein reconvened the meeting at 11:35 p.m.

ADJOURNMENT:

Upon motion by Councilmember Trawinski and second by Councilmember Baratta the meeting was adjourned at 11:35 p.m.

Respectfully submitted,

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

