

REGULAR MEETING OF OCTOBER 28, 2008

Mayor Weinstein called the meeting to order at 7:41 P.M.

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

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

COUNCIL COMMENTS:

Councilwoman Baratta asked everyone to be mindful of children who will be out Trick or Treating.

Deputy Mayor Swain congratulated Captain Cook for his success in obtaining grant funds for the DWI Program which took place between August 15th and September 1st. The grant money pays for the overtime necessary to run this program. She recognized the following officers for their recent help to a local family: Timothy O'Shaunessey, Eric Eleschowitz, Justin Garcia and Peter Uskatas.

Councilman Trawinski stated that he and Deputy Mayor Swain have just returned from welcoming the 8th Annual Fair Lawn Police Academy Class. The participants in this program become another set of eyes and ears for the Police Department. Councilman Trawinski thanked Officer Callons for initiating the program some time ago and all the other members of the Fairlawn Police Department who volunteer their time to participate in the program.

Councilman Trawinski reported another thank you from a Fair Lawn family who recognized the heroic efforts of Officers Franco Elkevich and Ricama together with Fair Lawn EMTs who helped a family member make a miraculous recovery. He encouraged everyone to get out and vote on Election Day.

Deputy Mayor Tedeschi echoed Councilwoman Baratta's comments and he asked parents to inspect their children's candy. He pointed out that thousands of glow sticks will be distributed throughout the County as part of a program started by Fair Lawn's Mary Ann Collora. He thanked the Ambulance Corps and the Police Department for their support of his family over the last eight weeks as they go through some difficult times.

Mayor Weinstein expressed his condolences to the Avoham family regarding the tragedy of two weeks ago involving a ten year old girl. Another thirteen year old boy was involved in the accident and is recovering.

PROCLAMATIONS: PANCREATIC CANCER AWARENESS MONTH

Municipal Clerk Kwasniewski read the proclamation.

NATIONAL CAREGIVERS AWARENESS MONTH

Municipal Clerk Kwasniewski read the proclamation.

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. 2083-2007

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN, 2000, SPECIFICALLY CHAPTER 125, ENTITLED "LAND DEVELOPMENT" TO PROVIDE FOR A FLOOR AREA RATIO FOR RESIDENTIAL DWELLINGS

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain, Resolution No. 290-2008 introducing Ordinance No. 2083-2007 was discussed.

Mayor Weinstein stated that this ordinance was passed some time ago, however, it is being re-introduced because the affidavit of publication was not received from one of the newspapers.

There being no further discussion Resolution No. 290-2008 introducing Ordinance No. 2083-2007 was unanimously adopted.

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

ORDINANCE NO. 2084-2007

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 49, ENTITLED "AFFORDABLE HOUSING" TO CREATE THE POSITION OF MUNICIPAL HOUSING LIAISON FOR THE PURPOSE OF ADMINISTERING FAIR LAWN'S AFFORDABLE HOUSING PROGRAM PURSUANT TO THE FAIR HOUSING ACT

Upon motion by Councilman Trawinski and a second by Deputy Mayor Tedeschi Resolution No. 291-2008 introducing Ordinance No. 2084-2007 was discussed.

Mayor Weinstein explained that this ordinance for the selection of the Municipal Housing Officer was also being re-introduced due to the fact that the affidavit of publication was never received from one of the newspapers. Councilmember Tedeschi referred to this as

an unfunded mandate from the State of New Jersey and he said he had asked the Clerk previously if this could be placed on work session in November or December so that they could consider it. They could appeal all of the various unfunded mandates. This one is relatively insignificant at \$6,000 to \$9,000; however, when added together they come to one tax point. He stated that the Council should consider appealing this if the process is available to them.

There being no further discussion, Resolution No. 291-2008 introducing Ordinance No. 2084-2007 was unanimously adopted.

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

ORDINANCE NO. 2132-2008

“AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 170 ENTITLED “PROPERTY MAINTENANCE” TO REVISE THE COSTS TO BE IMPOSED UPON PROPERTY OWNERS UNDER SECTION 170-21 B.”

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain Resolution No. 292-2008 introducing Ordinance No. 2132-2008 was discussed.

Manager Metzler explained that this ordinance establishes the charges involved when the Borough of Fair Lawn is called in to maintain on a piece of private property.

There being no further discussion, Resolution No. 292-2008 introducing Ordinance No. 292-2008 was unanimously adopted.

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

ORDINANCE NO. 2133-2008

“AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 49 ENTITLED “AFFORDABLE HOUSING” TO CREATE A NEW AFFORDABLE HOUSING COMPONENT OVERLAY DISTRICT FOR CERTAIN PROPERTIES LOCATED IN THE B-4 RIVER ROAD BUSINESS DISTRICT.”

Upon motion by Councilman Trawinski and a second by Deputy Mayor Swain, Resolution No. 292-2008 introducing Ordinance No. 2133-2008 was discussed.

Attorney Rosenberg explained that this ordinance amends the Affordable Housing Ordinance to create a new housing component overlay district for certain properties located in the B-4 River Road business district which are located between Morlot Avenue and Maple Avenue. This ordinance has been recommended by the Borough's Affordable Housing Consultant.

Councilmember Trawinski stated that he would have to withdraw his motion and recuse himself for this portion of the meeting.

Councilmember Baratta made a motion, seconded by Deputy Mayor Swain to introduce Resolution No. 292-2008 introducing Ordinance No. 2132-2008.

There being no further discussion, Resolution No. 292-2008 introducing Ordinance No. 2132-2008 was unanimously adopted.

ORDINANCES ON SECOND READING:

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

ORDINANCE NO. 2126-2008

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 125-45, ENTITLED "TREES".

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

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain, Resolution No. 294-2008 adopting Ordinance No. 2126-2008 was discussed.

Councilmember Baratta stated that this change is recommended by the Shade Tree Advisory Committee and will make the original ordinance less restrictive by raising the diameter or width from 4 inches to 6 inches.

There being no further discussion, Resolution No. 294-2008 adopting Ordinance No. 2126-2008 was unanimously passed.

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 2128-2008**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 125, ENTITLED "LAND DEVELOPMENT" TO REGULATE 24-HOUR RETAIL ESTABLISHMENTS LOCATED WITHIN BUSINESS ZONES OF THE BOROUGH.**

Attorney Rosenberg explained that this amendment will regulate the operation of 24 hour establishments within the business zones of the Borough. The amendments to be adopted are specifically related to two issues. The first being the integration of specific performance standards relating to the regulation of the lighting of properties that already exist within the code. The second issue confirms that businesses currently operating in the B zones as 24 hour establishments can continue to operate. Attorney Rosenberg advised that the Mayor and Council can act on second reading since these amendments are not material to the first reading.

Upon motion by Councilman Trawinski, and a second by Deputy Mayor Tedeschi, Mayor Weinstein called for public comment on this ordinance.

Bernice Katz, 2-22 Saddle River Road asked about the number of businesses that are grandfathered in and what this means to Fair Lawn in terms of how many will be open 24 hours. Attorney Rosenberg explained that under the Municipal Land Use Law any business currently operating 24 hours a day is allowed to continue operating. Ms. Katz asked for the number of businesses involved and Attorney Rosenberg said he had no idea.

Councilman Trawinski stated that the Borough could not lawfully identify or restrict a particular business. The Council decided to look at zones where 24 hour operations should be reasonably restricted and regulated. Areas have been identified where there would be an adverse affect on adjacent residential properties and a variety of conditions are being imposed to protect those residential areas.

Ms. Katz was concerned because an attorney for Broadway Boys had indicated in the past that they are grandfathered and should be allowed to be open 24 hours. Councilmember Trawinski stated that he doesn't see this as an area of major concern and he is only aware of the one business that came in.

There being no further discussion, Resolution No. 295-2008 adopting Ordinance No. 2128-2008 was unanimously passed.

ORDINANCE 2129-2008

“AN ORDINANCE TO AMEND ORDINANCE 2105-2008 AND PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS FROM THE STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION, THEREFORE.”

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

Upon motion by Deputy Mayor Tedeschi and a second by Councilman Trawinski, Resolution No. 296-2008 adopting Ordinance No. 2129-2008 was discussed.

There was no discussion on Resolution No. 296-2008 adopting Ordinance No. 2129-2008 and it was unanimously adopted.

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

ORDINANCE NO. 2130-2008

AN ORDINANCE TO PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS FROM THE STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION THEREFORE.”

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

Upon motion by Deputy Mayor Swain and a second by Councilmember Trawinski, Resolution No. 297-2008 adopting Ordinance 2130-2008 was discussed.

Mayor Weinstein stated that the Borough is receiving \$140,000 for improvements to Plaza Road North.

There being no further discussion, Resolution No. 297-2008 adopting Ordinance No. 2130-2008 was unanimously passed.

PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY

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

Harvey Rubenstein, 28 Rutgers Terrace, asked for an explanation of Resolution No. 300-2008 supporting the Over the Limit Under Arrest 2008 Year End Crackdown. Manager Metzler explained that this is a national program funded through the State of New Jersey, Division of Highway Safety. The resolution acknowledges the Borough's participation in a program that will take place from December 8, 2008 to January 2, 2009 that will crack down on drunk driving enforcement.

Mr. Rubenstein questioned Resolution No. 302-2008 special item of revenue – Green Acres Grant for Open Space Acquisition. Manager Metzler explained that this is the money to be used for the purchase of property from Firehouse 1 on George Street for the pocket park.

Mr. Rubenstein asked for an explanation of Resolution No. 304-2008 Urging Bergen County to Divest Itself from C3 Holdings, LLC Mayor Weinstein said that since there was a possibility that Joe Ferriero could be an owner in this company, the Council decided to stop using this company for its 911 Reverse Directory.

Mr. Rubenstein questioned Resolution No.305-2008 authorizing the Execution of Agreement JP Morgan Chase Bank National Association. Attorney Rosenberg stated that this is a new agreement for the cooperative parking lot which had been owned by the Bank of New York and has been taken over by JP Morgan. The agreement is between the town and the bank.

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

RESOLUTION BY CONSENT #27-2008 change order

Upon motion by Deputy Mayor Swain and second by Deputy Mayor Tedeschi, Consent Agenda 24-2008 containing the following items was unanimously passed.

- a. Resol. No.298-2008 – Approval of Minutes:
 - Work Session 9/2/08
 - Special Meeting 9/2/08
 - Closed Session 9/2/08
 - Regular Meeting 9/9/08
 - Closed Session 9/9/08
- b. Resol. No. 299-2008 – Audit Report

- c. Resol. No. 300-2008 – Supporting the Over the Limit Under Arrest 2008 Year End Crackdown
- d. Resol. No. 301-2008 – Confirmation of Fire Board Actions
- e. Resol. No. 302-2008 – Special Item of Revenue – Green Acres Grant – Open Space Acquisition
- f. Resol. No. 303-2008 – Professional Services: Carl Mecky Architecture & Planning, P.A.
- g. Resol. No. 304-2008 – Urging Bergen County to Divest Itself from C3 Holdings, LLC
- h. Resol. No. 305-2008 – Authorizing the Execution of Agreement JP Morgan Chase Bank, National Association
- i. Resol. No. 306-2008 – Authorizing Adoption of the Bergen County Natural Hazard Mitigation Plan

PUBLIC COMMENTS

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

Bernice Katz, 2-22 Saddle River Road, referred to the library resolution which she didn't think it had been done legally. Mayor Weinstein said that this would be discussed at the work session following this meeting.

Ms. Katz questioned the easement that runs across Oceanos Restaurant to the park. She said she has been active in the Beaver Dam Neighborhood Task Force and she is thinking that Fair Lawn is the responsible party because they knew the ramifications involved. The Council and the Mayor continue to do nothing about this. She suggested building a 4 ft. walkway next to the far end of the parking lot. The County or the Borough could purchase this 4 ft. area and install a railing. The asphalt area which has been expanded will result in additional flooding. Ms. Katz stated that her house is just outside of the flood zone at the moment, however, the removal of the buffer and the additional asphalt will now place her property in the flood zone.

Mayor Weinstein stated that Ms. Katz is suggesting that the easement be built on Oceanos property. Ms. Katz stated that the County owns four houses next to the restaurant and they plan to buy a fifth. The County could save a lot of taxpayer money by buying only 4 ft. of property. Mayor Weinstein stated that it is difficult to respond because this was discussed in Closed Session last week. Attorney Rosenberg advised that this matter is still in litigation

Deputy Mayor Tedeschi stated that Councilmembers do not always see eye to eye on many issues, however, this Council unanimously agreed to pursue litigation against the County regarding William Street. They learned that a Superior Court Judge would give the County access to the park somewhere and the Council is trying to work with the

County in an effort to allow for the use of the park the way they see fit while minimizing the impact upon the residents of Fair Lawn. He reiterated that the Council has worked diligently in a united fashion to make this happen. The County has committed to a no net increase in run off. There may be other impacts upstream but not as a result of this project. The County is aware of the situation and is dealing with the Borough's concerns regarding appropriate pedestrian access. Deputy Mayor Tedeschi asked Ms. Katz and other residents of the Brookside area to be patient as the matter is in litigation.

Ms. Katz stated that she has written to the Department of Environmental Protection putting them on notice regarding her concerns. Councilmember Trawinski stated that they must recognize that this park is owned by Bergen County and they are allowed to make the appropriate decisions. The Borough fought the County in Superior Court regarding access from William Street and lost and he stressed that they have to reach a balance. Ms. Katz stated that the Borough is blocking the access by agreeing to give a permit to Oceanos who is allowed to lock the gate. Mayor Weinstein explained that this is the restaurant's property. Councilmember Trawinski stated that this blocked access way leads to a patch of poison ivy that doesn't provide access to the park. Mayor Weinstein advised Ms. Katz that her five minutes for comment had ended.

Rita Golding, 14 Rutgers Terrace said she had read in the newspaper that public representatives of the Shared Services Association for the Board of Education have been selected. Michael Rosenberg, a member of the Committee, originally said that three members of the public would be picked; however, it has now been extended to five. She asked why it was necessary to appoint two other members. Mayor Weinstein said that three people had been on the committee originally, however, due to poor attendance it was extended to five members. The Borough and the Board of Education each select two people separately and one person is selected jointly.

Craig Miller, 5 Ramapo Terrace, said that there is a bus stop on Plaza Road close to Warren Road. The sign for the bus stop is 5 ft. to 10 ft. away from the curb. There is also another sign further back posted by the Borough advising no parking from here to the corner and Mr. Miller felt that this could cause a major accident because people cannot see around the bus if it is stopped. He also pointed out that he hears cars speeding down Plaza Road towards the Ambulance Corps and he suggested posting an unmarked police car in this area. Mr. Miller said that he has noticed the crack downs on drunk driving and seatbelt use but there is no campaign regarding the "wipers on – lights on" State law. He urged that action be taken on this law. Mr. Miller thanked the Shade Tree Commission for giving up their Sunday to clean up debris after the recent wind storm.

Claude Beinstock, 39-11B Broadway asked when the public hearing on Manager Tom Metzler would be scheduled. Mayor Weinstein stated that the hearing is scheduled for Thursday, November 6th, 2008, at 7:30 P.M. with time for public comment.

Stuart Golding, 14 Rutgers Terrace, stated that he realizes that the Council has been trying to save money by combining equipment usage with other towns. He asked for information on reducing taxes by cutting spending which should be underscored given the current economic climate. He stated that it is incumbent on the Council to review the budget and make downward adjustments and he asked what they intend to do to address the crisis.

Harvey Rubenstein, 28 Rutgers Terrace asked why the Public Service Electric and Gas (PSE&G) charges had risen by over \$50,000 recently. Mr. Metzler said he didn't know why the bill was so high and Mr. Rubenstein asked if there had been any Closed Session meetings to discuss reducing the outdoor lighting and Mayor Weinstein said that this wouldn't be a Closed Session item.

Mr. Rubenstein referred to Resolution No. 2133-2008 on the Affordable Housing Overlay. He asked if there was a report made by the Planner and Attorney Rosenberg stated that the Planner, Cheryl Bergailo, sent a memo indicating that this is her recommendation. He will provide Mr. Rubenstein with this memo.

Mr. Rubenstein referred to an application before the Planning Board by the Bank of America on River Road which had been formerly occupied by Fair Lawn Jewelers. He mentioned a left hand turn in the area of Fair Lawn Avenue and River Road. Mr. Rubenstein referred to the Cox book on planning which states that a municipality could address aesthetic traffic flow and other life issues. Mr. Rubenstein noted that the Planning Board did not require the filing of a traffic report from either side or traffic counts. He asked that the Council review this application because of the traffic issues involved in this area. He objected to this left hand turn because of the large amount of traffic created on River Road by the bank.

Mr. Rubenstein stated that there is a rumor circulating that Mr. Tedeschi is planning to resign from the Council and take over as Borough Manager. Deputy Mayor Tedeschi said that this is not a rumor but a joke.

Regarding the project on River Road, Councilmember Trawinski asked if there had been an engineering report raising any concerns and Mr. Rubenstein said there was not. The applicant claimed that they had gone to the Bergen County Planning Board. Councilmember Trawinski recommended that the Borough be given copies of any engineering and planning reports from the County as well as County approvals. He suggested that the Borough voice their concerns to the County and object to this left hand turn. He recalled that in the past the County would not allow left hand turns out onto River Road and he couldn't imagine under any circumstances that the County would now allow left hand turns. Mayor Weinstein asked Attorney Rosenberg to speak with the Planning Board Attorney on this and advise the Council.

Deputy Mayor Swain said that she was at the Planning Board Meeting when this was discussed and she said that people who frequent the bank will find it difficult to negotiate this left hand turn and they will be more likely to make the right hand turn and go around the block. She noted that there are other places where left hand turns onto River Road are allowed.

Deputy Mayor Swain referred to the earlier discussion of energy costs and announced that Councilmember Baratta has requested that the Council consider an energy audit on a future agenda which will include looking at ways to be more efficient in Borough buildings.

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

ADJOURNMENT TO WORK SESSION

Upon a motion by Councilwoman Baratta and a second by Deputy Mayor Swain, the Council adjourned to Work Session at 8:40 P.M.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approved the foregoing minutes.

Steven Weinstein, Mayor

Deputy Mayor Tedeschi

Deputy Mayor Swain

Councilmember Jeanne Baratta

Councilmember Edward Trawinski