

WORK SESSION OF OCTOBER 28, 2008

Mayor Weinstein called the meeting to order at 8:50 P.M.

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

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

Library Policy Regarding Distributing Leaflets

Attorney Rosenberg stated that the Council had asked him to investigate Library policy to restrict the distribution of leaflets in the plaza and the steps leading up to the Library because a resident had been petitioning and leafleting in the area around the entrance to the Library. Attorney Rosenberg advised that he had received a letter from Tim Murphy regarding the adoption of a prohibition of these activities in the area of the steps and the promenade of the Library property. The question for consideration is whether the Library is an open public forum, a limited public forum or a closed forum and how the Library has been viewed historically for purposes of first amendment expression. Since 1998 the Library property has not been a full open public forum. The Supreme Court defines an open public forum as a place that historically can be expected to be used for the purpose of full and free open expression, such as streets and sidewalk areas.

Attorney Rosenberg stated that assembling in and around the Supreme Court Building to the street was constitutional, however, the steps, promenade and entrance to the Supreme Court building is not an open public forum. The sidewalk around the building is an open public forum. Therefore, he concluded that the perimeter sidewalk around the Library building is an open public forum backed by the First Amendment of the Constitution. The steps, ramp and promenade area leading to the Library entrance is a limited public forum. A policy in accordance with what is constitutionally enforceable has been adopted as a limited public building to preserve the intent and purpose of the Library.

Attorney Rosenberg stated that Court cases have consistently said that Court Houses, libraries and hospitals are not the same as parks, streets and sidewalks and cannot have any types of constitutional limits imposed. This is a policy of the Library Board of Trustees which is historically consistent and the question is whether the Council wants to support this policy for all of Borough owned properties. Attorney Rosenberg stated that the Council has the right to tell the Library Trustees that the property belongs to the Borough and that the Council wants this to be an open public forum, which would mean that any individual, group or organization would have access to these areas of the Library to express their First Amendment rights. Attorney Rosenberg concluded that what the Library Board of Trustees has done is not unconstitutional, however, this is Borough property therefore the Borough should be making decisions.

Upon questioning by Mayor Weinstein, Attorney Rosenberg said that it is possible to have a building by building policy. Regarding the Memorial Pool property, he felt that safety would be compromised during July 4th celebrations if people were allowed to have petitions or give out flyers. Attorney Rosenberg stated that from his research the policy of Fair Lawn seems to treat Borough properties as a limited public forum.

Councilmember Baratta recalled press conferences held on the steps of Borough Hall and she said that this policy was probably in effect but not enforced. She noted that the policy had been recently changed by the Library Trustees and she asked whether this should have been done without consulting the Council. Attorney Rosenberg said that the Library had a policy dating back to 1998 prohibiting the distribution of leaflets on the exterior of the building. Councilmember Baratta asked whether the Garden Committee selling bulbs at the Library would constitute a violation. Attorney Rosenberg said this is a Borough sponsored function and wouldn't be included in the prohibition. He said that if First Amendment Rights such as leafleting are not allowable in this area then neither would things such as charitable solicitations or other activities by any group or foundation.

Councilman Trawinski stated that the former Mayor held press conferences on the steps and he asked how other people could be restricted. He said that under the First Amendment, he couldn't reconcile the difference between people distributing leaflets or selling plants. Mayor Weinstein agreed and said that the issue is consistency. Councilman Trawinski noted that the Library cannot say they will allow some things and not others and he added that the Library is a place for solitude. He also wondered where the line is drawn regarding the steps and the sidewalk in the area of the Library or would it be the right of way. Attorney Rosenberg said that he would have to look at the metes and bounds plan of the Library property to give an opinion.

Councilman Trawinski asked if the materials displayed inside the doorway is considered neutral. The procedures for the use of this display stand need to be prominently posted. Attorney Rosenberg said he will also look into this. Councilmember Baratta said that as a former Library Board member she understood that Tim Murphy made those decisions. This should also apply to the bulletin board inside the municipal building.

Deputy Mayor Swain said that she supports the open public forum on the sidewalk as outlined by Attorney Rosenberg as well as the importance of consistency. Councilman Trawinski said that he doesn't agree with limiting things, however, he thinks this must be done because there is no one who is going to make decisions on what is and what isn't acceptable. Councilmember Baratta said she doesn't like limiting speech; however, consistency is important here. Mayor Weinstein said that it is not safe to have people congregate on the steps of the Library giving out leaflets or signing petitions.

Bernice Katz, 2-22 Saddle River Road said that the area around the Library is a public domain and she has consulted an attorney as well as the ACLU on this restriction of access. She said that this patio is really a part of the handicapped access which leads to the front door. Ms. Katz stated that she has a handicapped parking permit and is entitled to use the handicapped ramp for access to the Library. Councilmember Baratta said that Ms. Katz is allowed to use the handicapped access but cannot hand flyers out on the ramp.

After a long discussion regarding the incline in front of the Library building, Attorney Rosenberg stated that there is a sidewalk before the first set of steps leading into the Supreme Court building which he considers to be public right of way. The United States vs. Grace is the common law that governs the municipality in applying the First Amendment standards and is a consistent approach. The public has a right to enter the Library to a limited extent without being bombarded and the Supreme Court has clearly drawn the line at the sidewalks.

Harvey Rubenstein, 28 Rutgers Terrace questioned the use of the steps of the municipal building for Christmas or Hanukah celebrations. Attorney Rosenberg said that the Supreme Court has issued a completely different set of opinions regarding holiday displays on government buildings.

Councilmember Baratta referred to Ms. Katz statements regarding the distribution of leaflets to people using the handicapped ramp. She commented that Ms. Katz is hindering the ability of others to use the ramp.

Mayor Weinstein agreed with Attorney Rosenberg in that it is not a right or a policy of one person exercising his or her first amendment rights but it goes to groups, organizations and others and the amount of area and accessibility must be taken into account. It could be groups of people such as unions or protesters who wish to exercise their First Amendment rights of assembly and this must be looked at in the broadest sense.

Craig Miller, 5 Ramapo Terrace pointed out that there is an area on the side of the building where there is a bench. Attorney Rosenberg said that he doesn't think this is in the right of way but he will look into this.

Meeting Time for November 12, 2008

Municipal Clerk Kwasniewski recommended starting the November 12th meeting at 6:30 P.M. because a number of volunteer officers have been invited. A discussion on the turf field is scheduled as well as the approval to proceed with the clock. A Closed Session has also been scheduled to discuss personnel. It was agreed to begin the November 12th Work Session at 6:30 P.M.

Municipal Clerk Kwasniewski spoke about the November 25th meeting saying it would include a work session and a regular meeting. It was agreed to begin the meeting at 6:30 P.M.

Mayor Weinstein announced that one of the Borough employees, Peter Palmer, has lost his wife who was terminally ill. He will contact the Councilmembers regarding funeral arrangements.

Public Comments

Howard Mark, 12-23 Ferry Heights reported that the mini bus had been quite crowded. Manager Metzler stated that the Health Officer has been advised to do an accounting of ridership on the mini bus once a month.

Closed Session:

Upon motion by Councilmember Baratta and a second by Deputy Mayor Swain the following closed session resolution was unanimously adopted at 9:36 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 Personnel – Chief Financial Officer; Contract Negotiations – Department Heads;

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 matter as set forth above are ones which permit the exclusion of the public from such discussions.

ADJOURNMENT:

Upon motion by Councilmember Trawinski and second by Councilmember Baratta the meeting was adjourned at 9:45 P.M.

Respectfully submitted,

Joanne M. Kwasniweski, RMC/CMC/MMC
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

