

REGULAR MEETING OF NOVEMBER 12, 2008

Mayor Weinstein called the meeting to order at 7:35 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 issues of December 14, 2007. 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: Deputy Mayor Swain, Deputy Mayor Tedeschi and Councilmember Baratta.

ABSENT: Councilmember Trawinski

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

COUNCIL COMMENTS

Councilmember Baratta announced that a new program has been undertaken by the Fair Lawn Recycling Department in cooperation with Goodwill for the collection of textiles. The materials collected will be sold to Goodwill of Northern New Jersey. Fair Lawn is the first municipality to offer this service and collections will be by appointment only. The Recycling Department can be contacted at 201-794-5366 and the appointment for materials pick up would be the same day as the regular Recycling Day for that area. Materials for pick up include clothing in good condition, sheets, blankets and linens, and small toys. It is anticipated that this that this will be a cost saving program for the Borough. Councilmember Baratta stated that she hopes everyone will take advantage of this program in order to make it a success.

Deputy Mayor Swain stated that she had recently attended the Fair Lawn Community Family Services 20th Anniversary celebrations. This program began in Wayne and there is now a satellite office on River Road in Fair Lawn to serve families in need. Deputy Mayor Swain pointed out that it is dark earlier now and everyone needs to exercise caution when driving particularly in the area of the train station.

Deputy Mayor Tedeschi stated that every year the Community School presents a Thanksgiving Concert. This marks the eighth year of the concert which will be held at the High School on Saturday November 29th at 7:30 P.M. The entire proceeds of the concert will go to local organizations including the Ambulance Squad, the Rescue Squad, the Maryanne Colora fund, the Rotary Club and other organizations. Deputy Mayor Tedeschi advised that tickets can be purchased at the Community School located at the rear of the High School. The organization where you want the ticket proceeds to go can be chosen at the time of purchase and that organization will get the credit. People are asked to bring canned and dried goods to the concert as well as frozen turkeys.

Mayor Weinstein stated that yesterday was Veteran's Day and he acknowledged all of the men and women who are serving the nation at home and abroad. Last week was the Presidential Election and he pointed out that the veterans play a large part in the smooth transition from government to government.

ORDINANCES ON FIRST READING:

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

ORDINANCE NO. 2083-2007**AN ORDINANCE FIXING THE SALARIES OF CERTAIN EMPLOYEES OF THE BOROUGH OF FAIR LAWN, BERGEN COUNTY, AND NEW JERSEY AS AMENDED.**

Upon motion by Deputy Mayor Tedeschi and a second by Deputy Mayor Swain, Resolution No. 380-2008 introducing Ordinance No. 2083-2007 was discussed.

Manager Meltzer explained that this ordinance will set the salary for department heads, the Municipal Clerk, Chief Financial Officer and the Police Chief through January 2012.

There being no further discussion Resolution No. 308-2008 introducing Ordinance No. 2083-2007 was unanimously adopted.

ORDINANCES ON SECOND READING:

Upon motion by Councilmember Baratta 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. 2083-2007**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN, 2000, SPECIFICALLY CHAPTER 125, "LAND DEVELOPMENT" TO PROVIDE FOR A FLOOR AREA RATIO FOR RESIDENTIAL DWELLINGS**

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

There being no further discussion, upon motion by Councilmember Baratta and a second by Deputy Mayor Swain, Resolution No. 308-2008 adopting Ordinance No. 2083-2007 was unanimously passed.

Upon motion by Deputy Mayor Swain 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 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

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.

There being no discussion, upon motion by Councilmember Baratta and a second by Deputy Mayor Swain, Resolution No. 309-2008 adopting Ordinance No. 2084-2007 was unanimously passed.

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

ORDINANCE 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."

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

Upon motion by Deputy Mayor Swain and a second by Deputy Mayor Tedeschi, Resolution No. 310-2008 introducing Ordinance 2132-2008 was discussed.

Manager Metzler stated that the change to this ordinance allows the Borough to perform property maintenance in cases where the property owner does not do it and allows the cost to be charged to the property owner along with an extra 25%.

There being no further discussion, Resolution No. 310-2008 adopting Ordinance No. 2132-2008 was unanimously passed.

Upon motion by Deputy Mayor Tedeschi 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. 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."

Harvey Rubenstein, 28 Rutgers Terrace said that this ordinance was discussed by the Planning Board who was against it. He suggested that Councilmembers review the minutes of the Planning Board meeting to see the objections.

Robert Landzettle, 65 Cummings Court, Mahwah, president of Landzettle Realty Co. and president of the River Road Improvement Organization said he has concerns regarding this ordinance. He stated that the notice identifies certain lots but it would be helpful if items on those lots were identified. He only became aware that several of the lots are owned by Landzettle Realty Co. at a recent meeting of the RRIC.

Mr. Landzettle said that his primary concern is how this ordinance relates to the Master Plan for the River Road District and the proposals which deviate from the Master Plan. He noted that the RRIC has not had the opportunity for a full discussion of the ordinance, however, it is fairly certain that they would agree with the points Mr. Landzettle is making both as president of the RRIC and as a property owner.

Mr. Landzettle said that his realty company is the owner of 1712 River Road or Lot 3; 1710 River Road (office condominium) or Lot 7; Lot 1 (Bergen Motor and Tool); and, Lot 2 (Shoprite Shopping Center). He pointed out that Lot 5, also owned by Landzettle Realty, is missing and may have been an oversight. The ordinance identifies what would be the affordable housing component overlay of the district. Mr. Landzettle referred to an earlier ordinance regarding an overlay district that had been prepared for River Road that covered the intersections of Fair Lawn Avenue and Berdan Avenue and enumerated the various lots for affordable housing. There are similarities between the proposed ordinance, however, the new ordinance goes beyond the first one by offering incentives for this area. Mr. Landzettle spoke in length referring to the COAH requirements, unit calculations and regulations governing developers as well as the potential occupants of this affordable housing. He also noted that the ordinance refers to instances where site plan application fees and zoning application fees can be waived and he asked why fees couldn't be waived for all applications particularly in order to encourage development in these poor economic times.

Mr. Landzettle pointed out that there are many differences from the requirements of the B-4 zone contained in this ordinance such as building height. Mayor Weinstein stated that this is the Planner's recommendation for the overlay zone. Manager Metzler said that the Planner has made these recommendations for the purpose of Round Three COAH obligations which require incentives in order to create affordable housing within the Borough. COAH has told the municipalities that each item from setbacks, parking, height, and the waiver of fees are permitted incentives.

Mr. Landzettle listed various other items that were contrary to the River Road Master Plan and he said that these items need to be adhered to because these standards are what has lead to the growth on River Road. He referred to allowable parking and whether or not green space would be sacrificed for parking and he noted that in the past the Council had been against underground parking. Mr. Landzettle felt that the Planner did not take into account the River Road Master Plan. Additionally, RRIC had little or no time to review or respond to this ordinance which was proposed on October 28th. RRIC would have been happy to convene a meeting for public input.

Mr. Landzettle stated that there would be a major impact on this area if the businesses he mentioned earlier are turned into a residential area. He said that there has been successful development in the area with business on the ground floors and residences on the second and third floors with minimal parking variances, side yard setbacks, etc.

Councilwoman Baratta observed that there are many people here from the River Road neighborhood that were noticed but may not be familiar with COAH and she asked Attorney

Rosenberg to give a brief overview. Attorney Rosenberg said that Mr. Landzettle brought up the issue of incentives existing in this proposed ordinance and not the previous ordinance. As part of COAH Round 3 a municipality has to adopt ordinances containing incentives that would be recommended by the Planner for the Borough. In this instance, the Borough Planner has recommended incentives with an overlay zone which means that the Council has decided not to change the zoning of these properties, but that another overlay zone can be provided for anyone who wants to build a multi family type project on these properties to encourage them to build affordable housing units as well.

Attorney Rosenberg explained that the Council for Affordable Housing has indicated to municipalities that there has to be affordable housing set aside for residential properties developed within the municipality. The planner, in consultation with the Council, recognized that. She believed that affordable housing could be extended to help the Borough meets its ongoing affordable housing obligations into the future by extending the affordable housing requirement for mixed use projects on these properties in the River Road area.

Attorney Rosenberg stressed that all of this is being dictated to the Borough by COAH. The Borough has little control over whether or not it can or cannot provide this affordable housing. It must provide affordable housing based on legislative mandate and the Council has looked carefully at these sites and will be looking at other sites as well in the future in order to comply with it's obligations through 2014.

Mr. Landzettle thanked the Council for all their diligence in this area. He observed that due to the economy a lot of housing is becoming much more affordable and he suggested that help be given to people who are in foreclosure by having people who would qualify under COAH move into these houses that are available now.

Mr. Bahuda, 2-36 29th Street wondered why COAH housing is exempt from the FAR requirements which were just adopted. He said that this is not fair taxpayers in the town while other people benefit though incentives. He referred to the Daily Field issue which allowed for affordable units to be built offsite and Mayor Weinstein pointed out that this issue is still in litigation. Attorney Rosenberg explained that this situation would have to be approved by the Planning Board and potential homes would have to comply with applicable setbacks for that particular zone. This would also be subject to other overall zoning at the site.

Mr. Bahuda referred to the Borough website which he said states that municipalities enter into the COAH program voluntarily. Attorney Rosenberg stated that all municipalities are obligated to present a certification plan by December 31st, 2008 to comply with COAH requirements as adopted on July 17, 2008. Mr. Bahuda stated that he has learned that Governor Corzine said that a Special Master will be advising municipalities on how many housing units need to be built and where to build them. Attorney Rosenberg said that this is why Fair Lawn is trying to comply rather than to have a Special Master compel the Borough which is the reason for adoption of this ordinance.

Mr. Bahuda commented that Fair Lawn is over developed and he is concerned about the prospect of further high density housing at the expense of any green space that is left. Mayor Weinstein agreed stating that the dilemma is the preservation of open space and at each different round of COAH further requirements are issued for additional COAH units that must be built and if the Borough can't move fast enough someone will come in to take it over. Mayor Weinstein stated that Fair

Lawn has joined with other municipalities and the League of Municipalities to fight the COAH requirements while trying to work towards meeting the obligations.

Attorney Rosenberg reminded the public that the Borough has been in litigation for many years with respect to the Daily Field properties to fight this issue. Mr. Bahuda said that a significant sum of money is now being spent on the COAH liaison for the Borough and Mayor Weinstein stated that this responsibility has been given to someone who already works for the Borough. Deputy Mayor Tedeschi noted that the additional salary for this employee will be approximately \$7,500 annually and this is a position that was mandated by COAH.

Mr. Bahuda said that the Borough must be afraid of COAH and there are municipalities who are not going to these lengths. Councilmember Baratta explained that this is not voluntarily and if the Borough doesn't comply the State will dictate the location of affordable housing. This demonstrates that the Borough is making a good faith effort to show COAH that this is a possible area for affordable housing and it in no way means that it will be built there. It is hoped that COAH will realize that Fair Lawn is making every effort to comply with the COAH mandate.

Councilwoman Baratta referred to the term "builder's remedy" which means that if a Borough is not in compliance with COAH, a builder can come in and build at a higher density because the Borough had not complied by submitting a plan to COAH. She reiterated that this is mandated by the State and not something that the Council wants to do and she added that the zoning will remain as is

Attorney Rosenberg pointed out that there are municipalities within Bergen County whose entire zoning codes have been deemed invalid by the Courts due to the failure to try to make good faith efforts to comply with COAH. A Special Master will mean that the municipality will lose all control with respect to its own destiny over land use development within its borders.

Ingrid Pascorella, 8-19 Creek Court asked what would be done to address the increased traffic congestion in the area. Mayor Weinstein said that the Council is not addressing development but an overlay zone which will show COAH that if Shop Rite were to move out in the future this would be an area that could be used for affordable housing.

Marie Scelzo, 15-27 4th Street stated she resides across the street from the American Legion and this is the first she has heard of this proposal. Municipal Clerk Kwasniewski explained that State Statue does not require notice on the introduction of an ordinance because there is no opportunity to comment at that time, however, notice is required for this meeting. Ms. Scelzo contacted the Clerk's Office and said she was frightened about the element that might be coming into the area since it seemed to be more low than moderate income. Mayor Weinstein reiterated that this is an overlay zone and there is no development taking place. Ms. Scelzo asked why residences couldn't be put over the new store fronts on Plaza Road. Mayor Weinstein said that there are other overlay zones in Fair Lawn. He said some of these areas are industrial sites and it would be beneficial to have mixed use development which is already occurring on River Road at the moment. Any developers would want to build apartments and have a return on their investment but they are also required to build a certain amount of COAH units within a development project. Ms. Scelzo repeated her concerns and said that the residents of Fair Lawn deserve better.

Anello Scelzo, 15-27 4th Street said that many things have been promised in the past by Mr. Landzettle regarding his properties. He is very concerned about the potential traffic problems and he asked that the Borough buy his house.

Bernice Katz, 2-22 Saddle River Road said that the ordinance calls for 25% of total units to be set aside for affordable housing if sales or rental housing is produced. She asked if condos would be a possibility and the Mayor said it would. She said that they need to look for a builder who is interested in less dense housing which would be attractive and would cut down on traffic.

Irena Smallo, 8-11 Creek Court observed that many houses are for sale and are usually sold to others who don't maintain the property. She wants more parks and green space and the Borough should not comply with COAH and just wait and see what happens. She also wants specifics about low income development to avoid Fair Lawn becoming an ugly town.

Harvey Rubenstein, 28 Rutgers Terrace said that he recently read an article by Assemblywoman Charlotte Vandervolk indicating that there was a higher authority than COAH. The municipality could appeal to this authority who could overturn COAH requirements.

Attorney Rosenberg explained that the League of Municipalities is pursuing a possible appeal with this Board. The League provides periodic updates on this and they are also pursuing an omnibus litigation on behalf of many municipalities, however, up until now the League has been unsuccessful. Mr. Rubenstein asked that this ordinance be tabled in order to have a further meeting with the Planning Board and until Councilmember Trawinski is present because he has experience with Land Use Law.

Henry Bustillo, 16-31 River Road said that he is unable to pull out onto the road from his home because the intersection here is the most dangerous in town. Attorney Rosenberg explained that affordable housing is calculated as a certain percentage of the median income of Bergen County. In this area affordable housing units are occupied by teachers, police officers, etc. because the affordability index is so high. Mr. Wastillo said he lives in one of the worst areas of the town and he would like to see it improved. He added that people's homes are going to lose value. Mayor Weinstein explained that the entire development cannot be low income or affordable in a designated overlay zone. Attorney Rosenberg pointed out that that ratios for affordable housing under the COAH rules require for that for every 8 units, 25% have to be allocated as affordable housing units for residences that are going to be sold. In a rental development 20% of the units have to be rental units and he stressed that a development would not be 100% affordable. A certain amount of units have to be set aside as affordable in a residential development or they could be provided somewhere else in the Borough.

Mr. Bustillo said that because of the traffic situation he didn't think that anyone would purchase a condo here which would mean that eventually any development would become rental and the quality of life will change. He agreed with earlier speakers that more parks were needed.

Tina Stremler, 3-06 Legion Place said that all the hypothetical plans and overlays are the underpinnings of what is to come. She stated that she saw this area of Fair Lawn referred to as the "shanty side" and it is not fair that this section of town should carry the burden of the affordable housing plan.

Kathy DeGiacomo, 8-15 Creek Court said she has lived on both sides of town and she agreed with Ms. Stremmer is use of the term “shanty town”. She said that traffic is terrible. There is a house on Lake Street where people are constantly in and out at all times of the day and night which has destroyed both the entire street and the neighborhood. Ms. DeGiacomo had heard from someone who attended another meeting that there are plans for 64 units which will ruin the area. Mayor Weinstein said he is confused since this is only an overlay plan and no development is planned at the moment. Ms. DeGiacomo referred to the KEM proposal which is presently an application in front of the Zoning Board. Ms. DeGiacomo stated that the KEM project is what most everyone thought was being debated tonight.

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

Mayor Weinstein recommended tabling this ordinance in order to gather input from RRIC and the Planning Board to see if the ordinance should be amended.

Upon motion by Deputy Mayor Tedeschi and a second by Councilmember Baratta, the ordinance was unanimously tabled. Attorney Rosenberg explained that this ordinance will go back to the Planning Board for consideration. They also hope to get comments from the River Road Improvement Cooperation and members of the public. The next Planning Board meeting for consideration of this ordinance is December 8th.

PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY

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

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

RESOLUTION BY CONSENT #28-2008

Upon motion by Deputy Mayor Swain and second by Councilwoman Baratta, Consent Agenda 28-2008 containing the following items was unanimously passed.

- a. Resol. #312-2008 – Approval of Minutes:
 - Closed Session 9/16/08
 - Work Session 9/16/08
 - Closed Session 9/16/08
 - Regular Meeting 9/23/08
 - Closed Session 9/23/08
- b. Resol. #313-2008 – Refund of Overpayment of Taxes
- c. Resol. #314-2008 – Authorizing the Execution of Agreement with Department Heads Assoc.
- d. Resol. #315-2008 – Award of Bid: Ambulance

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, questioned the inequity of having to see the Borough Manager to post something on the bulletin board in Borough Hall, however, the same rule does not apply at the Library. Attorney Rosenberg stated that with respect to the board in the municipal building the Council has not yet adopted the policy discussed at the last meeting.

Ms. Katz asked if any response had been received from the DEP regarding the driveway and the purchase of the house from Oceanos and she was told no response has been received. Regarding the McMansions, Ms. Katz said that she doesn't understand how people who can afford to expand their homes can be restricted. Mayor Weinstein stated that the FAR ordinance is a way of exercising control over the size of a building on a property. Ms. Katz stated that this is a good way to increase tax revenue as well as improving the look of the town. Mayor Weinstein stated that he believes the Council took a reasonable approach to this after spending a lot of time debating the issue.

Craig Miller, 5 Ramapo Terrace, commented on the improved speaker system in the room. He pointed out that recently there was a serious accident at the corner of Fair Lawn Avenue and Abbott Road. He said that it is difficult to see this intersection until you are right on top of it and, even though it doesn't require a traffic light, a sign identifying this as a dangerous zone might be a prudent idea. The cones used as a traffic deterrents create more of a problem and he suggested that Tim Franco look into this further.

Henry Bustillo, 16-31 River Road, said that he finds himself in the same type of traffic situation daily and accidents occur constantly at his address. There is nothing to stop people who are traveling along the curve at 45 mph in this area. He asked that the speed limit be lowered on the road and that the location of the crossing guard be moved to a safer area across the street from the Legion. Mayor Weinstein said that River Road is a County road and he suggested that Mr. Bustillo meet with the Manager so that the Manager can get further information to forward to the traffic engineer for the County.

Claude Beinstock, 39-11B Broadway, asked if the next Council meeting was on November 24th as reported in the Community News or on November 25th. Mayor Weinstein stated that there is a Closed Session meeting scheduled for November 13th with another meeting on November 24th to discuss Manager Metzler. There is a work session scheduled for November 25th at 6:30 and a regular meeting to follow at 7:30.

Harvey Rubenstein, 28 Rutgers Terrace recalled that at the last public meeting when he spoke about the extremely high PSE&G bill, he was told that that an energy audit would be listed on the next agenda. Councilmember Baratta said that this is scheduled for the next work session agenda of November 25th. Mr. Rubenstein said that he hopes at the next meeting that Councilman Trawinski will give an opinion about the left hand turn on River Road as it relates to the application for the Bank of America as well as the project across the street. Mayor Weinstein reported that he has looked into this and found that it is a County issue and consequently they will make this decision. Deputy Mayor Swain agreed that this is the County's jurisdiction, however, Mr. Rubenstein stated that Fair Lawn has the right to advise the County.

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

CLOSED SESSION RESOLUTION – Attorney Client Privilege

Upon motion by Councilmember Baratta and seconded by Deputy Mayor Swain, the Closed Session resolution was passed

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 Attorney Client Privilege; and

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 TO CLOSED SESSION

Upon a motion by Councilmember Baratta and a second by Deputy Mayor Tedeschi, the Council adjourned to Closed Session at 9:55 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