

WORK SESSION OF DECEMBER 2, 2008

Mayor Weinstein called the meeting to order at 6:30 P.M.

PRESENT: Mayor Weinstein, Deputy Councilmembers Baratta, Deputy Mayor Swain and Deputy Mayor Tedeschi

ABSENT: Councilmember Trawinski

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

Special Meeting:

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, the Work Session was recessed to the Special Meeting.

Review of Tentative Agenda (12/9/08)

Acting Manager Kwasniewski stated that additions to the agenda include the minutes for 10/7/08 Work Session and a request for a refund due to the overpayment of taxes. The overlay zone will be kept on the agenda for now and tabled if necessary.

Council Liaison Reports

Deputy Mayor Swain said she is very interested in sustainability and she asked Councilmember Baratta to contact the Borough Manager in Wayne for further information. Councilmember Baratta said she would reach out to Wayne regarding the newspaper article.

Councilmember Baratta spoke to Jane Spindel, of the Garden Club concerning the donation of lilac trees by Hillcrest Gardens. She had a lot of questions such as where would the lilac bushes be planted and who would water them. She commented that if the bushes were all the same they would get monotonous, however, she is in favor of the donation.

Councilmember Baratta attended a meeting with the Mayor's Group at Senator Gordon's office to convince Senator Gordon to put the COAH regulations on hold. Mr. Gordon agreed that there are many flaws in the plan. She added that she spoke to the Mayor of Bridgewater about doing an informative meeting on COAH which had been done through a power point presentation. The Mayor will send the information to Councilwoman Baratta electronically.

Councilwoman Baratta said that she and Deputy Mayor Swain are meeting tomorrow at 3:00 p.m. with Health Officer Carol Wagner on the volunteer physicals. Deputy Mayor Swain was not aware of the meeting and Councilwoman Baratta will send the information again.

Mayor Weinstein reported that he has been attending tax seminars. He reported that a new \$20 per diem refund is available for people who travel to work by bicycle.

Dog Park

Acting Manager Kwasniewski said that they are waiting to hear back from Engineer Garrison on this matter, however, he hasn't returned from the Thanksgiving holiday. Assistant Support Specialist Van Kruijning has done some investigation work with the County but she could not locate his report at this time. Councilmember Baratta recalled the maintenance of the dog parks is very expensive. Mayor Weinstein stated that there are problems with dogs contracting ringworm at the dog park in Ridgewood.

Impounding Shopping Carts

The Council discussed a possible ordinance regarding what Attorney Rosenberg described as errant shopping carts. Attorney Rosenberg stated that the Council should adopt the ordinance so that there is consistency with the State Statute. There are fines imposed upon the owner not to exceed \$50 for each occurrence and for failure to retrieve the shopping cart during a 24 hour period. This is a preventative ordinance. After a short discussion, the Council did not feel that an ordinance was necessary.

Donation Clothing Bins

Attorney Rosenberg stated that the Council may remember that the Donation Clothing Bin Ordinance was passed in October 2007 and contained a sunset provision stating that it would expire on 12/31/08. The State Legislature has now adopted a State-wide donation clothing bin statute which goes into effect in January. Therefore, he recommended that the ordinance be amended to make it consistent with the State statute. He said that in some instances it is more onerous than the Fair Lawn ordinance. It is not limited to charities and there is a fine of up to \$20,000 for failure to comply. He recalled that the Fair Lawn ordinance required site plan approval by the Planning Board, however, State statute refers to an appropriate "municipal agency" which would ensure that a donation clothing bin cannot be placed anywhere that would constitute a safety hazard.

Attorney Rosenberg stated that the question is which agency would be responsible for determining whether a donation clothing bin is in a safe location or a hazardous location. Deputy Mayor Tedeschi confirmed that there are no limitations on the number of bins although Attorney Rosenberg stated that it could be argued that too many bins would constitute a safety hazard.

Deputy Mayor Tedeschi asked if there were any restrictions on the placement of the bins. Attorney Rosenberg said that the only restriction is that they cannot be placed within 100 yards of a location that sells fuel or other flammable liquids such as gas.

Deputy Mayor Swain said that if there is a situation where there are too many bins, would they be approved on a first come first served basis. Attorney Rosenberg indicated that this would be up to the regulatory agency that is responsible for reviewing the applications. The statute applies to both existing and proposed bins.

Acting Manager Kwasniewski said that she has been contacted by business owners asking how they could get rid of the clothing bins. Business owners contact the phone number on the bin and find it has been disconnected and they are left with the bin on their property. Attorney

Rosenberg said that the state statute requires written consent of the owner before the bin can be placed on the property. In the even of a complaint the municipal agency has the right to investigate. If the person placing the bin does not rectify the situation within 45 days, the appropriate municipal agency may seize the bin and remove it, at the expense of the owner, and sell it at public auction or dispose of any donations. Any bin in any location must have a permit. Attorney Rosenberg said he would distribute a copy of the State statute and draft an ordinance for Council's adoption.

Reorganization Meeting Date

Acting Manager Kwasniewski asked for recommendations from the Council. Mayor Weinstein suggested they have the reorganization meeting on the first Tuesday in January which is the 6th. Acting Manager Kwasniewski stated that on January 13th the Council could have a combined work session starting at 7:00 p.m. followed by the regular meeting at 8:00 p.m.

Councilmember Baratta questioned the appointments. Acting Manager Kwasniewski suggested that they discuss this in Closed Session at the December 9th meeting.

Deputy Mayor Tedeschi said that the Council is advised to name a person as the keeper of the records in the Borough. He stressed the importance of records being kept in the Borough Clerk's Office and stated that he had requested records today that were not available there. Attorney Rosenberg stated that this is a statutory obligation and he has discussed this previously with Acting Manager Kwasniewski.

Mayor Weinstein said they would begin discussing the appointments tonight and continue with them during Closed Session on December 9th and again on December 16th. Acting Manager Kwasniewski stated that the Council needs to decide who will be doing the benediction and invocation.

Violation of Pay to Play Ordinance

Councilmember Baratta distributed one sheet of information to Councilmembers from the Bergen County Democratic Organization (BCDO) in 2006 and gave the entire report to Acting Manager Kwasniewski. She stated that the Pay to Play Ordinance was enacted in June 2006 and noted that the donations were made after the ordinance was passed. There are donations noted from the auditor in the amount of \$1,750 and the prosecutor in the amount of \$2,500. She said that this is a clear violation and should have been disclosed on the Pay to Play Disclosure form they filled out for 2007.

Mayor Weinstein pointed out that one donation is dated August 29, 2006 and the other is dated September 7, 2006. Both dates are very close to the June 2006 date of the adoption of the ordinance. He would question when the checks were written and when they were finally posted. Councilwoman Baratta said that the noted date is the contribution date and agreed that they need more details, however, these are violations that were not picked up in 2007. Mayor Weinstein stated that if the check was written before June 27th everything they did through June 26 was in compliance. Attorney Rosenberg agreed stating that this is what the ordinance indicates. Deputy Mayor Tedeschi suggested that they produce a copy of the front and back of the check to the Council. Attorney Rosenberg said that he would get copies of the checks.

Councilmember Baratta said that the ELEC website is difficult to navigate and understand. She found that there are BCDO accounts and Victory accounts. The Victory accounts are Democratic accounts that resemble Freeholder accounts. In order to get a clearer understanding she went back to Victory 2004 going up to Victory 2012. All of these separate accounts are run by the same people and include the names of Joe Ferriero and Matthew McCarter.

Councilmember Baratta recalled that one of the things they eliminated in the Pay to Play ordinance was wheeling from one account into other accounts. She looked at the BCDO accounts and the Victory accounts side by side for one year. She explained how that the money goes back and forth between accounts. Councilmember Baratta indicated there was a list of contributors to the Victory accounts.

Mayor Weinstein asked if Councilmember Baratta looked at the contribution report of Fair Lawn. He said that the ordinance refers to contributions made prior to the effective date of the ordinance. There was no money going into his account. Councilmember Baratta agreed with Mayor Weinstein but reminded him that when an ordinance is passed it is not passed for this specific Council; the ordinance is passed going forward. Mayor Weinstein said that the Council unanimously passed the Pay to Play ordinance with the intent to prevent money from coming to local Council candidates. He stated that the Council may want to review the Pay to Play ordinance if they think it should be strengthened. He added that he didn't believe that anyone has the right to say that the professionals did anything illegal.

Mayor Weinstein stated that the purpose of the ordinance is to assure the people of Fair Lawn that the Council is not taking money and is not connected or under the thumb of anyone such as Joe Ferriero and after three years he believes this has effectively been done. They have proved to the people of Fair Lawn that the Council is working effectively without large sums of money. He reiterated that he believes the professionals have done nothing wrong.

Councilmember Baratta said that the ordinance states that anyone who gives money to the BCDO or BCRO cannot work in the Borough. She is attempting to prove that the BCDO and the Victory accounts are the same thing and the money is shared back and forth. The Victory account is a loophole for the BCDO. She recalled that there were many people contributing to the BCDO in Fair Lawn before the ordinance was passed and now they give money to the Victory accounts who in turn give it to the BCDO. They loan money back and forth from one account to the other. Councilwoman Baratta stated that no one is saying that this Council is taking money from contributors, however, these accounts need to be included in the ordinance because they are one in the same. Mayor Weinstein agreed stating that the ordinance should be strengthened but he did not think that the ordinance was violated.

Councilmember Tedeschi stated that the intent of the Pay to Play ordinance is to stop money from coming into Fair Lawn. Attorney Rosenberg stated that it was also supposed to stop money coming in for those who receive no bid contracts. Deputy Mayor Tedeschi said that Fair Lawn has separated itself from the BCDO and have fired Mr. Ferriero's firm. Attorney Rosenberg said that there should be some sort of nexus between who you are prohibiting money from and the Borough Councilmembers. He said that although he was not present when the ordinance was debated and drafted, he felt that there was supposed to be some demonstrable nexus between the entities. He thought the language in the ordinance stating "the primary purpose of the organization was to promote or support the Borough candidate"

was proper. He said that he was not aware of Victory 2000 or Freehold and he recommended they look into this as well as the checks mentioned earlier.

Councilmember Baratta said that the investigation cannot be restricted to the five Councilmembers because there was money coming in from the BCDO previously. Mayor Weinstein said that they need to research how far they can go to prevent wheeling and the professionals paying into a PAC. Councilwoman Baratta said that she is only asking to have this investigated.

Councilmember Baratta said that Victory and BCDO are tied together. Deputy Mayor Tedeschi said that Victory, as well as any other similar organizations, have to be specifically named in the ordinance. Councilmember Baratta said she would give Attorney Rosenberg all of the documents in order for him to see how the money constantly goes back and forth between BCDO and Victory. Mayor Weinstein stated that they have successfully controlled the acceptance of money but he wasn't sure how they could control what goes on outside of Fair Lawn. He asked Attorney Rosenberg if they could restrict contributions made by professionals to anybody who is not connected with Fair Lawn.

Deputy Mayor Swain agreed with the investigation, however, she stated that they shouldn't be limiting people's contributions to entities outside of Fair Lawn. Councilmember Baratta said that an individual cannot contribute to the BCDO and work in Fair Lawn. Mayor Weinstein asked if that is the case and Attorney Rosenberg said this is what exists and it hasn't been challenged. Deputy Mayor Swain said she thought the goal of the ordinance was to control the money flowing into Fair Lawn.

Deputy Mayor Tedeschi questioned whether this ordinance could be driving people or professionals away because it is so restrictive. Acting Manager Kwasniewski stated that there were a large number of professionals who were thrilled with this ordinance because they were tired of giving to both Republicans and Democrats and this was the vehicle that would stop this practice.

Attorney Rosenberg stated that under the ordinance that the professionals have to certify that their contributions were not supporting or promoting Fair Lawn candidates or Fair Lawn office holders. He stated that professionals who contributed money to Victory would not suspect that they were doing anything wrong because it is not an enumerated entity in the ordinance. Attorney Rosenberg stated that when the Pay to Play form is prepared by Acting Manager Kwasniewski for the following year she asks the Councilmembers to list and declare any entities from which they have received money or intend to receive money. The hook to close the loop is the Councilmembers supplying the Clerk with this information. Attorney Rosenberg indicated that he will analyze the situation.

Acting Manager Kwasniewski asked Councilmembers for lists of any new organizations if applicable to them.

Public Comments

Harvey Rubinstein, 28 Rutgers Terrace, said that the minutes regarding the Pay to Play ordinance refer to political organizations in the municipality such as the BCDO, BCRO, etc.

Mayor Weinstein stated that it is Fair Lawn that has to be controlled. Deputy Mayor Tedeschi commented that he had reviewed the minutes.

Mr. Rubenstein referred to the clothing bins specifically several located at a gas station at the intersection of Morlot Avenue and Saddle River Road. These would be considered safety hazards due to the proximity to flammable materials.

Craig Miller, 5 Ramapo Terrace, said that he checked the Borough website and he couldn't find any information about the holiday lighting.

Mr. Miller questioned the requirement for site plan approval by the Planning Board for clothing bins. Attorney Rosenberg stated that it is appropriate for the municipal agency to determine whether or not the placement of a clothing bin is safe or unsafe and he would include this in the ordinance.

Mr. Miller noted that Rescue has a small ATV which is not plated. Ira Marks said he would check into the regulations.

Bernice Katz, 2-22 Saddle River Road, asked for an update regarding the DEP approvals for the road to the County Park by Oceanos. Attorney Rosenberg said that nothing had been received at this time. She also inquired about the approval for the rezoning for a catering hall for Oceanos? Mayor Weinstein reported that the application is still at the Planning Board. Ms. Katz asked about approvals for public flyers on the public bulletin boards. Attorney Rosenberg said that he has advised the Acting Manager to remove this sign.

Ms Katz spoke about leafleting and petitioning on library property. She was told that using the steps or promenade constitutes a nuisance. She feels this is unnecessary and no disturbances have ever been reported. She said that Municipal property should not be used for displays of public speech such as those connected with the holiday season. Attorney Rosenberg said that this would fall under a different standard according to the United States Supreme Court. Ms. Katz reiterated that freedom of speech should be allowed on the Library steps, promenade and handicapped access areas.

Acting Manager Kwasniewski said she has drafted an advertisement for the Borough Manager and she asked for everyone to review the ad and discuss it at the next meeting in order to have it advertised in January.

Closed Session:

Upon motion by Deputy Mayor Swain and a second by Deputy Mayor Tedeschi, the following closed session resolution was unanimously adopted at 8:34 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 Pending Litigation – Landmark & Lentini, Personnel – Fair Lawn Competitization Committee, Zoning Board, Shade Tree Advisory Committee and Appointments to Various Boards and Committees for 2009 and Attorney Client Privilege – Omnipoint and AT&T;

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

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

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

ADJOURNMENT:

Upon motion by Councilmember Baratta and second by Deputy Mayor Swain the meeting was adjourned at 9:50 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