

WORK SESSION OF FEBRUARY 6, 2007

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

PRESENT: Mayor Weinstein, Deputy Mayors Etler and Tedeschi, Councilmembers Baratta and Trawinski.

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

Mayor Weinstein advised that Special Council Lustgarten called him to advise him that the numerous counts that Landmark had brought attacking the Borough's zoning as arbitrary and capricious have been dismissed. He will be sending a memo to the Council.

REVIEW OF THE TENTATIVE AGENDA (2/13/07)

Municipal Clerk Kwasniewski indicated that she would like to add three items to the Consent Agenda: a professional services resolution for HARP, a resolution extending the contract for Storm & Sanitary Sewer Cleaning and TV Inspection and a resolution approving the Raffle for the Sunrise Rotary. The Council concurred.

F.A.R. AND HEIGHT ORDINANCE PRESENTATION BY TODD MALKIN

Todd Malkin was present. He stated that he, Deputy Mayor Etler and Phil Cassidy were the F.A.R. subcommittee to review possible changes to the zoning ordinances to control the growth of large homes on small lots that are considered to be out of character with the existing neighborhoods. They focused on zoning use types, F.A.R. ordinances from various communities, height and impervious coverage. They reviewed Chapter 125, Article III Schedule of Area, Yard and Building Requirements. The subcommittee discussed height. The present code has a maximum height of 30 feet. He read the current definition of height. They reviewed the F.A.R. ordinances that Teaneck, Wayne, Paramus and Scarsdale, NY have adopted. The current code has impervious coverage ranging from 30 to 35 percent for one and two family homes.

They made several recommendations. They proposed changing the methodology utilized to calculate the height of all single and two family homes and keeping 30 feet as the maximum height. Since there are many homes that predate the ordinance, they have created a range for the floor area ratio; i.e., for lots with 6,500 square feet the F.A.R. would be 0.40, for lots with 7,500 square feet the F.A.R. would be 0.37 and for lots with 10,000 or 12,000 square feet the F.A.R. would be 0.40. They did not recommend making any change to the impervious coverage.

He stressed that their recommendations only apply to residential property. He indicated that he read the draft of the ordinance. He thought it covered the recommendations of the subcommittee.

Councilmember Baratta wanted to know what is in the calculation for the F.A.R. Mr. Malkin stated that

the garage and
basement are not
included. If a person
applies for a Page
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building permit and they are going to change the basement or the garage, then they would have to do the F.A.R. calculation. Councilmember Baratta questioned whether the

basement is out of the ground would it be included in the F.A.R. Attorney Rosenberg stated that he had raised the issue of whether the Council was going to change the definition of the basement or if they wanted to say that in order to be excluded the basement must be totally below grade.

Councilmember Trawinski asked about a deck or patio. Mr. Malkin stated that they fall under the impervious coverage requirements. Councilmember Trawinski thought the ordinance defines structures so it would include decks and patios for the F.A.R. calculation. The ordinance should exclude them for the F.A.R. calculation. He continued that the appearance of mass can come from a non-floor. He thought they should include a provision that any interior space with a floor to ceiling height of 10 or 12 or 14 feet counts twice. He thought they were creating two definitions of building height. The one they have proposed is taking out the gambrel roof. He thought the intent was that they want it to apply to all roofs. They should put it back into the ordinance.

Councilmember Trawinski continued that the proposed ordinance talks about facing the street. He wondered how that affects the corner lot. He thought it should be whatever is considered the front or do they want to do it to the lowest point. He thought they should ask the Committee take another look at it.

Councilmember Trawinski stated they could ask the Zoning Board and the Planning Board after a year to come back and give them a report on how the ordinance is working.

Mayor Weinstein stated if the basement is below grade and not finished it should not be considered in the F.A.R. calculation. Mr. Malkin thought a good definition of a basement is needed.

The five main issues to be resolved are: basement, massing, detached structures, uncovered porches and corner lots. Mr. Malkin stated the subcommittee will look at these points and will report to the Planning Board for their meeting on February 26. This item will be on the March 6 work session.

Deputy Mayor Etler indicated it was a pleasure to work with Phil Cassidy and Todd Malkin. Mayor Weinstein thanked Mr. Malkin and the subcommittee for their hard work.

OPEN SPACE FORUM TO DISCUSS ALL RELATIVE ISSUES

Mayor Weinstein stated that they have talked about Clariant and the environmental issues. He thought it was a good idea for the community to have an open space forum sponsored by the Mayor and Council. He proposed having such a forum in the next few weeks and inviting the DEP's environmental experts, the governmental leaders to discuss the opportunities for grants. Councilman Trawinski thought it should be cosponsored by the
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Open Space Committee so it counts for the DEP requirements. Deputy Mayor Tedeschi thought it was important for the DEP to attend and he also thought Assemblyman Gordon should be present, Councilmember Baratta wondered about the format. Mayor Weinstein stated that he envisions a presentation and then questions and answers. He suggested March 13. Manager Metzler pointed out that the Borough Attorney just sent out the letters. He thought they should schedule it allowing sufficient time for the DEP to answer him.

Attorney Rosenberg stated the letter he sent was designed for Clariant. They are now talking about something broader so they are not the same people or Departments in the State. Councilmember Trawinski said there is a brownfields coordinator who would have to be specifically invited. He thought there are a number of environmental issues with TOPPS and Hayward. He asked if this forum will be just for Clariant. Mayor Weinstein thought it should be primarily be about Clariant. Manager Metzler suggested that if the focus is Clariant they should try to gather the group for Clariant and then they can do another meeting addressing a different site. He thought it made sense to focus on one property at a time.

There was some concern about the second reading of the rezoning ordinance. There was no point in adopting that ordinance if the DEP is coming to discuss the environmental issues. However, they did not yet know if they have received the extension from COAH. Attorney Rosenberg will report to Special Counsel Lustgarten.

HONORING OUR TROOPS

Mayor Weinstein received a letter requesting that yellow ribbons be placed on the Municipal Building to show support for the troops.

The consensus was to have yellow ribbons placed on the Municipal Building and encourage the residents to put them up as well.

REPORT ON BOARD OF EDUCATION SHARED SERVICES

Mayor Weinstein reported that he and Councilmember Trawinski attended a meeting with the Board of Education committee to continue the discussion on shared services. They discussed sharing the costs for a police officer as a resource officer. Another project they have been working on is the sharing of the mechanic's shop. Starting February 1 a 54-passenger bus is to be the first project. The Board will not have to outsource the mechanical work. They will be paying the Borough at a rate that is 40% less. Discussions are continuing regarding moving the buses to the DPW Complex but that requires funds.

Councilmember Trawinski stated that although what takes place at the meetings seems mundane, they are many municipalities that do not work together. They are looking for creative ways to reduce costs. He commended the School Board Administrator, the Manager, the DPW Superintendent and the Board of Education person in charge of the buses for their efforts.

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Manager Metzler stated that they will be purchasing the computers through a shared services agreement with the Board of Education taking advantage of the reduced rate allowed educational entities by DELL which is about 25 percent less than the government rate.

PROFESSIONAL SERVICES OBTAINING GRANTS

Deputy Mayor Tedeschi stated that ten years ago there was a need for grants so they outsourced obtaining grants. Finding grants is a specialized function. Borough staff will continue to seek the grants the Borough routinely gets. He proposed hiring one or two firms that are paid on a commission basis. Councilmember Trawinski thought the Council had taken a consensus to move forward but he thought the RFP was not done.

The consensus was to have Attorney Rosenberg prepare the RFP. This matter will be on the March 20 work session.

Councilmember Trawinski stated they received a notice from ANJEC advising that they were mailing out packets concerning grants for Environmental Commissions. Manager

Metzler stated the deadline for filing is June 30 and the forms have been sent to the Environmental Commission.

MAYOR AND COUNCIL YOUTH COMMUNITY SERVICE AWARDS

Deputy Mayor Tedeschi stated that they children in Fair Lawn can do many good things relating to community service. He though the Council should recognize them. The Community News may be willing to partner with the Council to put the children in the paper.

Mayor Weinstein added that TJ Middle School is starting a key program. Memorial Middle School has the character program. Deputy Mayor Tedeschi stated he would reach out to the schools, to the churches, etc. asking them to nominate a child. They would devise a form setting the criteria. Councilmember Baratta thought it was a good idea but wondered if it would be every month, who would make the decision and what ages are they targeting. Deputy Mayor Tedeschi indicated they would have to work out the details.

It was agreed that Deputy Mayor Tedeschi and Councilmember Baratta would work on this program.

REVISIT THE SIZE OF THE OPEN SPACE COMMITTEE

Mayor Weinstein read a statement regarding the establishing the Open Space Committee and its purpose and explaining the language he used when four members of the Committee were not reappointed. A committee of 12 is large enough and the committee actually consists of 16 people including the Manager, the Superintendent of Parks and Recreation and two Councilmembers. He concluded that there is no new direction but two new people who represent a cross section of the community.

Councilmember Baratta stated that the resolution says the committee should be between 11 and 13 members.

She would like to expand the committee so those two people could

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be put back on the committee. She did not think it would be detrimental to add them. She did not want to remove anyone.

Councilmember Trawinski stated that he accepted on the face that there was no new direction. He supported expanding the committee and discussing putting the two people back on it. Some members of the committee have not attended meetings. The two who were not reappointed attended all the meetings.

Deputy Mayor Etlar felt there was an adequate number of people on the committee. The majority of the Council decided they wanted to get other opinions. He saw no need to

expand the committee.

Mayor Weinstein stated that the process of appointments has been in existence for a very long time. This is the first time that there was an outcry on appointments. He insisted that sometimes the process is not fair but on the whole it works. Councilmember Baratta stated that there was not a call for resumes for this Board. Mayor Weinstein stated that people are always asking to be on a committee. Sometimes they get put on another committee than the one they ask to serve on. Councilmember Baratta stated that she did not think people knew they were looking for new people on the committee. She felt that the process was flawed because they do not advertise that they are looking at new appointments.

Mayor Weinstein stated that he had no problem with announcing in November that they are looking for people to serve on the committees. Councilmember Baratta stated that they do not look at resumes that come in. She did not see any resumes.

Deputy Mayor Tedeschi stated that if any Board has 12 members and three terms are expiring and they put an ad looking for new members he was concerned about the message that sends to the members whose term is expiring. The Committee itself might not want any changes.

Councilmember Baratta stated that if it is the policy of the Council, everyone will understand what they are doing. Mayor Weinstein felt that if a person is not reappointed, he is not going to think any process is fair. Deputy Mayor Tedeschi stated that it is the Council who selects committee members. If there are people on that committee that should have been reappointed, that fact should have happened then not after the fact. The vote was unanimous. There was no advocate.

Councilmember Trawinski stated that the Chairman of the Zoning and Planning Board have a say who is on the Board. It is not unique to Fair Lawn. No one on the Open Space Committee knew the Council was making those change. He would like to keep the two. The consensus was to keep the size of the Open Space Committee with Councilmembers Baratta and Trawinski dissenting.

LIAISON REPORTS

Councilmember Trawinski distributed the RRIC report including their annual report, the listing of members with their telephone numbers and a notice that the Chamber of Commerce is honoring John Cosgrove as person of the year. There is a memo on the issue of the parking lot. The Fair Lawn Economic Collaborative is an overview of the major undertakings of the EDC and the BIC. He continued that RRIC has issued a dozen grants under the sign and awning grant program. Mayor Weinstein added that they looking for new funds from the County to continue this program. Councilmember Trawinski reported that the businesses taking advantage of the program are small businesses.

Councilmember Trawinski felt that part of the duty of being a liaison is to make reports to the Council. He suggested that they add a section to the Work Session so that each Councilmember could make a report. They all attend a number of different committee meetings which the public does not see.

It was agreed that Council Liaison Reports will be the second item on the work session agendas.

Mayor Weinstein reported that the EDC would like to make a presentation on their vision for Route 208 at the February 20, 2007 work session.

Deputy Mayor Tedeschi asked if the RRIC had made any decision on the Council's counterproposal on the George Street lot. Todd Malkin asked for and received permission to speak. He reported that RRIC is trying to put together a prospectus to give to the property owners so they would allow cross easements to the George Street parking lot. This lot does not have any access to George Street. Deputy Mayor Etlar stated that the vote was for as contiguous lot including the lot that the Borough was going to cede to RRIC.

If they do not get the whole lot, the Council should not give any money out. Mayor Weinstein stated that they are not giving any money out and that is what the RRIC are looking to do. Councilmember Trawinski stated that most of the owners had said they were conceptual in agreement but they wanted to see the terms of the easements. Mr. Malkin stated that they never got the documents so they are doing it themselves.

Manager Metzler stated that RRIC was reluctant to move forward with property owners without knowing if the Borough was willing to commit their 50 percent share. RRIC now knows that the Borough of Fair Lawn is willing to lend that portion of the money they do not have for this project. They need to go to the property owners. Mayor Weinstein stated that this process could have been resolved if the legal work had been done. Deputy Mayor Tedeschi stated that the original proposal was for the Borough to give them \$100,000 for this parking lot. Even if the Council had agreed, they still would not have the parking agreement. Mr. Malkin indicated they have been waiting for that from the previous Borough Attorney. Councilmember Trawinski stated that it is very similar to what they did in 1996 except that the Council will lend them the funds. They did not have the

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cooperative parking agreement with Bank of New York at the time they advanced the money and demolished the building.

Councilmember Baratta stated that the part of the plan for that lot was to refurbish the lots behind the business. Mr. Malkin stated they are finalizing the information to present to them.

RECONSIDERATION OF REQUEST TO BAN TOWNHOUSES EXCEPT FOR AGE RESTRICTED

Councilmember Trawinski indicated that he has reflected on this matter. The problem is that he is doing one of the things that he does not think they should be doing and that is

picking apart the zoning ordinances. It should be dealt with as part of the master plan project so he is holding off on his request.

RESOLUTION OPPOSING A-3857 AND S-2451 (ELIMINATING RCA'S)

Councilmember Trawinski stated that they received something from the League of Municipalities on this matter. RCA's provide another tool that could help them deal with whatever the Mt. Laurel obligation is. While he is not saying they should use the RCA, he does not think they should allow the legislature to take it away.

The consensus was to adopt a resolution.

CELLULAR TOWER ANTENNA ORDINANCE

Attorney Rosenberg stated that he was working with Engineer Garrison. He reviewed the ordinance again. Currently the ordinance allows only one tower on any property. He

believed that the ordinance needs to be amended to allow the cellular on wheels (COWS). COWS are not towers but there are commercial antennas. He asked for guidance before they go out to bid. Deputy Mayor Tedeschi stated that the intent at the time the ordinance was introduced was that antennae are located on towers. Councilmember Trawinski added that they did not contemplate portable towers at that time. They need to carve out an exception or clarify the ordinance that towers are permanent not COWS.

The consensus was to amend the ordinance. It will be introduced on February 27, 2007.

Councilmember Trawinski stated that they were supposed to get a report explaining how the existing permanent tower got put into the wrong place. Attorney Rosenberg recommended that this discussion should be held in Closed Session.

2007 MARATHON

Manager Metzler reported that he received a letter from the Fair Lawn High School Marathon Committee requesting permission to hold the annual marathon on May 18 and 19.

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The consensus was to grant permission for the marathon on the usual conditions. A resolution will be prepared for the next meeting.

SPECIAL MEETING

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

Mayor Weinstein reconvened the Work Session at 9:17 p.m.

PUBLIC COMMENTS:

Harvey Rubinstein, 28 Rutgers Terrace wanted to know what the COWS were. Attorney Rosenberg explained that they are temporary cell towers on wheels. Mr. Rubinstein stated that he did not understand why discussing the tower in the wrong location needs to be done in Closed Session. He asked if the Clariant ordinance is going to be passed because of the litigation that is going on. Mayor Weinstein explained that they postponed the second reading until March 6.

Frank Baldino, 12-62 3rd Street stated that last year he submitted a list of people on 2nd and 3rd Street who are opposed to the Clariant development. Since that time an additional 32 people who have signed it. The 75 people who signed the petition are opposed to what is going there. The signatures indicated that they did not want the development. The other part of the questionnaire is what they would want.

Felice Koplik, 6 Reading Terrace wondered if attic space is included in the F.A.R. Mr. Malkin stated it depends on the definition of attic space in the ordinance. If it is living space, it would be counted. Ms. Koplik stated that the more specific the ordinance is the better the results concerning building size and coverage. It would be possible to have a 30-foot building with the first floor of nine feet, the second floor of eight feet and the attic could be eight feet. They could add dormers. Attorney Rosenberg stated the definition of attic is that it is not habitable. Mr. Malkin stated that if they add to the attic it would become a third floor not an attic. Ms. Koplik suggested that areas with head room about seven feet be included in the F.A.R. calculation which keeps people from putting the dormers on the house. Councilmember Trawinski stated that the ordinance already limits stories to two and a half so there is already a protection against what Ms. Koplik is suggesting. He does not want to put it in the ordinance. He thought the two and a half stories limit is sufficient.

Councilmember Baratta wondered what happens when they build something with a flight of stairs instead of the pull down stairs to the attic, they can turn it into liveable space. Councilmember Trawinski stated they would need a permit and a variance to do that legally.

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Peter Kortright, III stated that liveable space is defined by whether there was heating and air conditioning and then a permit is required and a variance is also required. Maureen Moriarity, 14 Burnham Place asked Mayor Weinstein to repeat what he said at the beginning of the meeting about the Landmark matter. Mayor Weinstein reiterated that there were multiple counts attacking the zoning ordinance. The only complaint that is still standing is going to COAH. The other counts were dismissed without prejudice. Councilmember Trawinski added that the questions is whether the Borough is in compliance with its round two obligation and whatever the round three obligation is determined to be. Deputy Mayor Tedeschi stated that one of Landmark's arguments was that they were the only place in Fair Lawn that could build affordable housing.

Laurence Koplik, 6 Reading Terrace stated when a building has a flat roof and it is 30 feet

high it will be very massive looking. Councilmember Trawinski stated that is one of the reasons for the proportionality ordinance. Mr. Koplik stated this if there is a hill on the property only a ranch may be allowed. Councilmember Trawinski stated that they can apply for a variance. Mr. Koplik stated that they have to make sure that it is not possible for them to put a stair in at a later time. Good construction practices indicate that living space is defined by heating, windows and air conditioning.

Craig Miller, 5 Ramapo Road, thought they should extend the community service awards to the adults and senior citizens.

CLOSED SESSION:

Upon motion by Councilmember Trawinski and seconded by Councilmember Baratta, the following closed session resolution was unanimously adopted at 9:35 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 - Garden Club, Environmental Commission and the Manager, Pending Litigation - Landmark vs. Borough of Fair Lawn and Anticipated Litigation - Cellular Tower Location; 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.

Mayor Weinstein reconvened the meeting at 10:20 p.m.

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ADJOURNMENT:

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, the meeting was adjourned at 10:20 p.m.

Respectfully submitted,

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

The undersigned have read and approve the foregoing minutes.

Mayor Steven Weinstein

Councilmember Jeanne Baratta

Deputy Mayor Martin Etlar

Deputy Mayor Joseph Tedeschi

Councilmember Edward Trawinski