

## WORK SESSION OF JUNE 12, 2007

Mayor Weinstein called the meeting to order at 6:00 p.m.

**PRESENT:** Mayor Weinstein, Deputy Mayor Etlar, Councilmembers Baratta and Trawinski (Late)

**ABSENT:** Deputy Mayor Tedeschi

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

Mayor Weinstein stated they would hold discussion on the Floor Area Ratio Ordinance, Use of Community Center and Review of Proposed Ordinance No. 2081-2007 until Councilmember Trawinski arrived.

### **Property Tax - Interest Dispute:**

Alice Lee, Tax Collector was present

Manager Metzler reported that there is a resident who stated she had paid her taxes but payment was not received or recorded. The payment was received late and now the resident is disputing the interest charges. Manager Metzler stated that an exemption from fines would require Council action. There have been instances when people say they put their payment in the box in the parking lot, but they have not been received. The Library has retrieved water and tax payments placed in the book depository slot and two checks were forwarded from the Fair Lawn AC. It is the property owner's responsibility to get the taxes to the Tax Collector.

Tax Collector Lee stated that she sent out delinquency notices. The homeowner came in to inquire about the notice. She came back two days later with her attorney, who claimed he had mailed the check. The payment was sent regular mail and there was no cancelled check. The interest came to over \$500. Tax Collector Lee explained that the resident paid the third and fourth quarter taxes at the closing but her attorney never sent the check. Councilmember Baratta asked if a similar situation had ever occurred before. Collector Lee said it happened occasionally but was usually not disputed. The attorney was responsible for sending payment from the escrow account but did not do so. Mayor Weinstein questioned how long of a time period elapsed before they discovered the check did not clear. The closing took place on November 9, 2006 and the resident came into the Borough in February, 2007 and told the Tax Department she needed to check with her attorney. The Tax Department did not hear anything until the Tax Sale Notice was posted on the door. The resident was living in the house for six months before she took action. Mayor Weinstein felt it was the attorney's responsibility as he did not submit payment. He felt the attorney should have sent the tax payment Registered Mail to ensure payment was received. It was the consensus of Council not to abate the interest.

### **Request to Use Walsh Pool by the Borough of Haledon:**

Manager Metzler reported that the Mayor of Haledon had requested the use of Walsh Pool for Haledon residents. Municipal Clerk Kwasniewski had been in contact with the Municipal Clerk from Haledon. She advised him that Council would be discussing this issue. Manager Metzler stated that Haledon had previously used North Haledon's North Cove swimming facility. He wanted an idea as to the number of people that would use the pool as he did not want to

overburden Walsh Pool. Superintendent Graff felt they could take additional people. Municipal Clerk Kwasniewski was not given a figure from Haledon's Clerk as he did not know. Manager Metzler felt they should proceed provided the number would meet with Superintendent Graff's recommendation. It was the consensus of Council to approve this at the usual fee charged for out of town residents. Municipal Clerk Kwasniewski suggested they approve the resolution at a special meeting during the work session next week.

### **Ordinance Creating Position of Housing Liaison:**

Manager Metzler reported that COAH had changed some rules which required training of their Housing liaison, Cathy Hochkeppel. An ordinance is now required to establish the position. He recommended they proceed with the ordinance.

### **Ambulance Corps. Request to Place Ribbons on Trees:**

Manager Metzler stated the Ambulance Corps. was beginning their 2007 Fund Drive. They have requested permission to place orange ribbons on trees on Plaza Road, Berdan Avenue, Saddle River Road and Morlot Avenue for three weeks. The Corps. will advertise the fund drive the week of June 18<sup>th</sup>, and will be responsible for putting the ribbons up and taking them down. Attorney Rosenberg stated they could not authorize the use of County trees. He felt that if they allowed the use of Borough's trees by any entity than another entity had the right to claim use of the trees.

This would set a bad precedent. The issue is the protection of the trees. If they grant the Ambulance Corps. permission then a resident can request use for posting garage sale signs. He felt it went back to the tree ordinance and how trees were to be used.

Manager Metzler discussed requests from residents who wanted to place something in the easement, which required Council approval. Council independently reviewed the merit of each case. He asked why that was different than the Ambulance Corps. request. Attorney Rosenberg explained that easement requests were a property issue whereas this was a Borough wide issue. He was sensitive to this request as they were currently working on the tree ordinance. If the Ambulance Corps. wanted to put them on telephone poles they would need the permission of the Public Utilities Board. Mayor Weinstein thought they could have the Shade Tree Department supervise. He asked if they could deny permission in the future to another group if they approved the request from the Ambulance Corps. Attorney Rosenberg asked what criteria they would use. They would need to be consistent. Mayor Weinstein felt the Ambulance Corps. benefitted the community. With the Shade Tree Department supervising the safety of the trees he was in favor of granting this request. It was the consensus of Council to allow the ribbons until July 9th.

Councilmember Trawinski arrived at 6:20 p.m.

### **Floor Area Ratio Ordinance:**

Deputy Mayor Etlar stated it was the position of the Planning Board to proceed. They felt there was merit to the proportionality ordinance and would appoint a subcommittee to review it, but they did not want to delay the FAR ordinance. Mayor Weinstein asked Attorney Rosenberg if they should bring back the section they removed from Chapter 125 because there was no FAR ordinance.

Construction Officer Kolano specifically asked if that would be re-commissioned so that they do not have to go to the Zoning Board for an add-a-level if they met the FAR requirements.

Councilmember Trawinski thought they should proceed with the FAR ordinance as proposed, live with it a year and revisit it after the Zoning Board has experience with it. Mayor Weinstein stated the Zoning Board has asked for relief since they have a backlog of applications. Councilmember Trawinski suggested they revisit it in January and invite Scott Levy to share the Zoning Board's experiences.

Attorney Rosenberg requested guidance on two inconsistencies. The League of Women Voters recommended counting all garage square footage over 400 square feet. The Planning Board did not think that should be included in the calculation. Councilmember Trawinski felt the League's suggestion made sense. It was the consensus of Council to follow the League's suggestion and incorporate garages over 400 square feet and limit the height at 30 feet.

The League wanted to know why there is a ratio that varies according to lot size. Deputy Mayor Etlar explained the ratios were put in to give allowances to a resident planning an expansion on a bigger lot. Councilmember Trawinski supported the Planning Board's recommendation. Mayor Weinstein agreed. Attorney Rosenberg will present a draft at the Work Session on June 19<sup>th</sup>. Councilmember Trawinski wanted the Planning Board to know that this was not an attempt to impose design standards.

#### **Community Center by Theater Camp:**

Mayor Weinstein attended the Shared Services meeting with the Board of Education. He felt the BOE should be able to use the Community Center at no cost for its theater camp. All Sports is a town program that currently uses school facilities and fields. Councilmember Trawinski agreed and stated there was a high percentage of Fair Lawn residents that used the camp. Deputy Mayor stated it was a for-profit camp. He did not feel they should open the Community Center to everyone. Councilmember Trawinski explained the profit is used by the School Board to reduce their tax increase, benefitting the residents. Mayor Weinstein stated it was similar to All Sports using their proceeds to maintain fields and replace score boards. A custodian would be required. Manager Metzler explained the custodian would go in after the camp left and do day to day clean up. There was regular evening use so the theater was cleaned on a regular basis. The Center was booked Saturdays in January and February, 2008 with performances. They will need a written agreement with the BOE listing the camp dates. The BOE would need to understand that pre-booked performances would not be cancelled.

Manager Metzler stated they were capable of running two programs, although there were some logistics to work out. The Borough was not charged when they used one of the schools and they made several facilities available to the BOE without charge. He understood that the camp was a for-profit operation but reiterated that the funds were going into the BOE's general fund. It was the consensus of Council to allow the camp to use the Community Center at no cost, with Councilmember Baratta dissenting.

#### **Action Plan for Rotella Property:**

Manager Metzler reported that Mr. Rotella received a Notice of Violation from Property Maintenance. Mr. Rotella came to the Building Department and requested a Demolition Permit.

He has not filed the application yet but this action puts a hold on Property Maintenance until the application expiration date. He has requested the list of property owners within 200 feet. He was waiting for the marking of utilities prior to filing the demolition permit.

Deputy Mayor Etler inquired about the house on Ellington Terrace. Manager Metzler stated it was being taken down next week.

Councilmember Trawinski asked how long Mr. Rotella could delay filing the demolition permit. Manager Metzler stated 20 to 30 days and then Mr. Rotella would have to respond to the summons at that time. He was not sure if Mr. Rotella had retained legal counsel. Deputy Mayor Etler stated that he joined the Zoning Board in 1975 and Mr. Rotella's case was the first case he heard.

Councilmember Trawinski reported that the Borough's request to the League of Municipalities Land Use Drafting Committee had been acted upon. They were drafting legislative changes to eliminate the mandatory stay when someone who is in violation of a Zoning Ordinance states they are going to apply for a variance. Currently the owner can delay and the Borough would not be able to take enforcement action because of the automatic stay. This legislation will put the burden on the property owner to go to court to obtain the stay. They have had a positive impact on the change in the Municipal Land Use Law. Loretta Weinberg will introduce the legislation.

#### **Municipal Building Cell Tower/C-O-W-s:**

Manager Metzler recommended they proceed with the 130 ft. tower with antennas mounted directly on the outside. It will require a zoning change. He discussed the three types of cell towers. The typical tower has an array that extends beyond the mast. There is a flag pole tower where the antennas are mounted inside. The third type has the antennas mounted on the outside on the mast but directly to the mast so you do not have the big array around it. He recommended the third type because they will be able to have two carriers on the pole. They could not fit a third carrier. He stated they will lose three to four parking spaces and it will involve the relocation of the tower.

Councilmember Baratta asked why the relocation was necessary. Manager Metzler explained the relocation was due to utilities in the area, the location of the generator and the loss of additional parking spaces. Deputy Mayor Etler asked what they would get in return. Manager Metzler stated it would go to bid if Council wanted to proceed with the zoning changes. He has received figures ranging from \$25,000. to \$33,000. They had a request from the Police Department to replace the cables. The new antennas and cables would be included in the bid specs and installed at the carrier's expense. Councilmember Trawinski wanted the Manager to quantify the savings to tax payers using this plan. They should be prepared for significant resident objection. A previous ordinance was deleted for this reason and the height was lower. Manager Metzler stated the current tower is 90 feet and the new tower would be 130 feet.

Councilmember Baratta thought they should review the ordinance on cell towers. She felt the regulations were vague. Some municipalities had large areas of land so that if a tower fell, it would not land on the sidewalk. Attorney Rosenberg stated Chapter 125 created the commercial antenna zone, which establishing three permitted areas. This would be the fourth location if they re-zone. The regulation limits height and requires site plan approval. Councilmember Baratta questioned if their regulations were substantial. Attorney Rosenberg will review them again. Councilmember Trawinski stated they could make them bond the removal at termination. The fall away zone should

not have the affect of prohibiting it. Attorney Rosenberg stated that because of the development of cell phone technology, cell tower companies are now going to an eighth of a mile, which is what they need.

Mayor Weinstein wondered about the pole being replaced for the Police and asked if they needed a height of 130 foot. Manager Metzler stated it would be on the Capital Budget in 2009. The original specifications called for a 180 foot tower. Mayor Weinstein asked if there was another location for the Police tower. Manager Metzler explained there were re-user repeater systems the

Fire and Police Departments at the Water Tower, Nabisco and the sewerage station on Saddle River Road. There is also the DPW frequency, State Police Emergency Network (SPEN), the Bergen County frequency and the weather monitoring equipment. With SPEN, Fair Lawn can speak clearly to Cape May. This tower will help with the dead spots they are currently encountering.

Councilmember Trawinski stated re-zoning was an expensive and time consuming project for Municipal Clerk Kwasniewski. He felt they should hold off until Deputy Mayor Tedeschi has time to review this. Mayor Weinstein suggested discussing this and the COWs at the Work Session next week. Manager Metzler will obtain preliminary figures on the tax savings. Attorney Rosenberg stated they will take action on rebidding at the public meeting on June 19th.

**Review of Proposed Ordinance No. 2081-2007 Limiting Hours of Operation in B-4 and B-5 Zones:**

Attorney Rosenberg drafted an ordinance restricting the hours of operation for retail establishments in the B-4 and B-5 districts which would limit hours in a mixed use building containing residences between the hours of 12:00 a.m. and 5:00 a.m. It was Council's intent to preserve the residents' quality of life and prevent sale of merchandise after 12:00 a.m. Stores would be able clean up after hours. Deliveries are already covered in another section of the ordinance. He noted Councilmember Trawinski's concern about deed restriction but felt that should be monitored by the Building Department. Councilmember Trawinski pointed out that if there were complaints from tenants, they need to be aware of this restriction. It was the consensus of Council to proceed with this.

Councilmember Trawinski stated that he reviewed all the cases supplied to them by 7-Eleven's counsel in Long Island. He believes those cases are significantly distinguishable. Deputy Mayor Etlar was concerned that 7-Eleven thought the Borough did not have the right to limit hours.

Manager Metzler reported that the residents near Mc Donald's wanted them to know that the buffer has been replaced and they are very happy. He has sent home an update on the issues discussed at the May 17<sup>th</sup> Work Session: the strip mall on 17<sup>th</sup> Street has been cited, the parking lot improvements at 15-01 Broadway, the buffer at B & B Liquors has been replaced, and the Naugle House was re-secured. He prepared an extensive report on Scholastic Bus and distributed information on PODS. The critique on the clothing bins has been forwarded to the Borough Attorney for his review.

Manager Metzler discussed the movie filmed in Fair Lawn. They learned there were deficiencies in their agreement. There were no provisions to charge a fee for a Borough representative to oversee operations, although they received a donation equal to that fee. The Borough Attorney

will review changes and add the appropriate provisions. Councilmember Trawinski stated if there

are standard guidelines from the New Jersey Motion Picture, Television and Development Commission. He asked that the Manager or Municipal Clerk to look into those standards.

**Public Comments:**

Harvey Rubenstein, 28 Rutgers Terrace stated that some parents had a concern that the Community Center had less supervision on Friday nights during the summer. Kids can leave at any time. There is a chunk of raised sidewalk on 20<sup>th</sup> Street. He mentioned CPI Products, a company which boosts signals and suggested they look into what they offer.

Felice Koplick, 6 Reading Terrace inquired about the FAR Ordinance and asked where they measure the 30 feet. Deputy Mayor Etler explained it was measured from the center of the road to the top. It is from existing grade.

Lawrence Koplick, 6 Reading Terrace felt they should include sky exposure planes in the FAR Ordinance to address the issue of bulk on the upper stories. Councilmember Trawinski stated it was addressed in the Proportionality Ordinance. Mr. Koplick asked if community objection was the reason they were not locating the antennas on the water tower. Mayor Weinstein stated that the Engineering Department did not feel there was enough room. There was a concern about where they would be placed on the tower. Councilmember Trawinski stated it was in the 1996 ordinance but was taken out due to resident complaints.

Mr. Koplick stated that the configuration of transponders on the tower is a factor of the technical system that is determined by which carrier is selected. Manager Metzler explained that having the antennas mounted on the structure allowed for more carriers. He made it clear that the driving force on this installation was not revenues to the Borough, but the knowledge that they would have to do something with the current tower. There was merit to having someone pick up that cost for them. The carriers came back with a way to get two, possibly three carriers and still meet the Borough's needs and concerns.

Mr. Koplick referenced the Manager's comments on how some antennas projected out and some where on the pole and stated that each of the systems had a different requirement. They may rule out a particular carrier by stating they do not want the antennas to project out as that carrier's system may require that placement.

Arlene Rubenstein, 28 Rutgers Terrace is glad that the hours of operation have been restricted for businesses in a mixed use zone. She did not think having stores open until midnight was in Fair Lawn's best interest. She felt they should use Ridgewood as a vision. Councilmember Baratta commented that Ridgewood has a Starbucks and movie theater that are open past midnight.

Jeffrey Kantowitz was present on behalf of his client. His vision of a downtown neighborhood redevelopment included stores such as Starbucks or an upscale jazz café wanting to be open until 1:00 a.m. on a Saturday, and that would be precluded. The River Road master plan, produced with a great deal of thinking and planning, does not discuss time limitations. He felt their determination came late as his client had made extensive efforts. This will have consequential effects on his client proceeding. Mayor Weinstein asked if his client had reached out to the RRIC before this situation. They would have guided him and given assistance. Mr. Kantowitz said they did not.

Mr. Kantowitz felt that there was a fine line in how the corridor was developed. He asked the

Council to keep in mind that these changes will have an affect on development. The signal it sends changes the conditions under which commercial enterprises, that make substantial investments, find themselves operating. For many years there were no time restrictions. He was a member of the Planning Board when the document was created and served as a Planning Board attorney so he was very familiar with the River Road Master Plan. There was no mention of time limitation anywhere in the document. That would have been a consideration that speaks about quality of development, quality of life, aesthetics and utter concerns and it would have been expressed somewhere. He stated his client is adversely effected by this and he does not know what the consequences will be.

Deputy Mayor Etlar stated they can't think of everything when they are making the rules. If they had anticipated a 24 hour operation within that district, a time limitation would have been included. People find loopholes in laws and they have to come back and make the changes. Councilmember Trawinski noted that when the ordinances were originally adopted and the master plan was prepared, they did not allow residential on the second floor. There was discussion on the time issue but they did not contemplate that they would have retail on a first floor with residential above. They felt the probability would be office use on the second floor. The change to the residences necessitated the change in hours. Councilmember Baratta thanked Mr. Kantowitz for his comments and vision of River Road. She pointed out that there were several stand alone buildings which would not be affected by this time limitation.

**Closed Session:**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the following closed session resolution was unanimously adopted at 7:15 p.m.

**WHEREAS;** the Open Public Meeting 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 - Naugle House and Personnel - Improper Use of Borough Equipment; 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 the 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.

Mayor Weinstein reconvened the meeting at 7:35 p.m.

Upon motion by Councilmember Trawinski and second by Councilmember Baratta, the meeting was adjourned at 7:35 p.m.

Respectfully submitted,

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Joanne Kwasniewski, RMC/CMC/MMC  
Municipal Clerk

The undersigned have read and approve the foregoing minutes.

\_\_\_\_\_  
Mayor Steven Weinstein

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Councilmember Jeanne Baratta

\_\_\_\_\_  
Deputy Mayor Martin Etlar

Absent  
\_\_\_\_\_  
Deputy Mayor Joseph Tedeschi

\_\_\_\_\_  
Councilmember Ed Trawinski