

## **WORK SESSION OF SEPTEMBER 25, 2007**

Mayor Weinstein called the meeting to order at 9:50 p.m.

**PRESENT:** Deputy Mayors Etler and Tedeschi, and Councilmembers Baratta and Trawinski

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

### **Closed Session:**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the following closed session resolution was unanimously adopted at 9:50 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 Attorney/Client Privilege - COAH; Contract Negotiations - Possible Acquisition of Property and Pending Litigation - Tax Appeals.

**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 10:35 p.m.

### **Report of Subcommittee Regarding Request from the DACKKs Group Home - CDBG Application:**

Councilmember Trawinski reported the subcommittee met with the president, Karen Amy who requested an endorsement of their application for Home funds. This would not impact on the Borough's Community Development Block Grant funding as it would come from H.U.D. Even though they are a 501(c)3 the homes do not come off the tax rolls. The tenants pay rent. They are either on disability or earn low wages. They act as landlords, handle enforcement and help the tenants get jobs. They provide social service. It is not a group home. Deputy Mayor Etler did not agree since he does not know where the house might be.

Deputy Mayor Tedeschi stated they would be going into a pool that is extremely competitive. Only 10% of the requests will be satisfied and many take more than one year. He feels there is a place in the community for this type of home. He will support this. Mayor Weinstein and Councilmember Baratta agreed. If the home comes to Fair Lawn they will need to comply with their rules and regulations. Councilmember Baratta feels they will have checks and balances in place. Councilmember Trawinski felt these types of homes are sensitive to their reputation and

standing. This would be single family residential living. He asked that Municipal Clerk Kwasniewski schedule a special meeting next week to adopt the resolution.

**Fair Lawn Jewish Center and Residential Neighborhood:**

Attorney Rosenberg indicated he reviewed the material from Construction Official Kolano with respect to whether the operation of a commercial basketball league from the Fair Lawn Jewish Center violates Zoning regulations. There are issues about whether or not the use of the gym is grandfathered. He felt the scope of the grandfathered uses never included commercial basketball leagues like those being operated at the site. The Borough permits Houses of Worship, and all other uses which are associated accessory uses. That can include other types of uses that are not just the simple prayer area. Fair Lawn is an inclusive Borough and the intent of the ordinance was to encourage that type of activity. In the absence of the Jewish Center providing any documentation to the contrary to the Zoning Officer, he has the right to issue a Cease and Desist order or issue a Zoning Violation immediately. This would compel the Jewish Center to apply to the Zoning Board of Adjustment for a use variance as commercial basketball leagues are not permitted in that zone.

Mayor Weinstein stated it was his understanding that the basketball league has existed since the 1960's . The Fair Lawn Jewish Center has the right to use the gym for their members. Mayor Weinstein wondered if the Fair Lawn Jewish Center had applied to the Zoning Board in the past as Lew Sprechman, a former Mayor and Planning Board member was a past president. Attorney Rosenberg could not find anything in their records to indicate this had occurred. If the Fair Lawn Jewish Center had approval from the Zoning Board for that commercial use and notified property owners within 200 feet, a public hearing and public notice would have been required. The Fair Lawn Jewish Center would have received a use variance for the commercial basketball league. Attorney Rosenberg explained that if the Jewish Center was legally operating an approved commercial basketball league, the only recourse for the residents would be with the Police Department with respect to violations of the Borough's general peace and order ordinances. Deputy Mayor Tedeschi stated the Fair Lawn Jewish Center has rights too. He inquired what the process would be if a Cease and Desist order was issued. Attorney Rosenberg stated the Zoning Officer would advise the Jewish Center that the activities violate the zoning ordinance. The Jewish Center could file an appeal. Under the Municipal Land Use Law they would be allowed to continue to operate since they will have an automatic stay. Councilmember Trawinski reminded Attorney Rosenberg to send a letter to the Assignment Judge. The Center may have to appeal the Cease and Desist order. They could ask for a mandatory stay.

Councilmember Baratta did not think the Jewish Center had formal permission or they would have stated that at their first meeting with Borough representatives. They are also not in compliance with the noise ordinance. She felt initially the residents were not looking to remove the league completely but it has now reached that point. The residents still had recourse if the Jewish Center filed an appeal as they could call the Police Department. Deputy Mayor Tedeschi wondered if the Police Department would enforce the time restrictions in the event a Cease and Desist order was issued, an appeal was filed and they were allowed to continue to play. Mayor Weinstein stated there was an agreement that games would end at 9:30 p.m. so that the players would be gone

by 10:00 p.m. The games have been lasting until 10:15 p.m. or later and the players do not leave until 11:00 p.m.

Councilmember Baratta asked if a representative of the Jewish Center was present during the games. Mayor Weinstein stated the Fair Lawn Jewish Center was supposed to provide an off duty police officer. Manager Metzler wondered if they could pursue assessing property taxes on the for-profit portion of the gym. Deputy Mayor Etlar stated that would be difficult. Deputy Mayor Tedeschi inquired as to how they would be able to operate in an appeal period. Councilmember Trawinski has a client in Oakland on the reverse side. They have applied for variances and the Oakland Municipal Court Judge took a contrary position of the Borough's Judge on a particular provision of the Municipal Land Use Law. He felt the Borough's Judge was correct. The law states that once one files a zoning application all further proceedings are frozen. The Oakland judge felt it did not apply to zoning violations because it was quasi criminal. They have several violations which are being stayed because of that provision. He suggested they authorize Attorney Rosenberg to go to Superior Court and ask the Judge to issue a declaratory judgement that it does not apply, or request that the stay is lifted. If the Zoning Official certifies that it affects the public health, safety and welfare then the automatic stay does not apply. Attorney Rosenberg felt the complaints filed with the Police Department may be sufficient for Construction Official Kolano to stipulate that the violations relates to the public's safety, health and welfare.

Councilmember Trawinski discussed the issue of pre-existing nonconforming use. The August 11, 1972 application did not request a continuation of commercial activity in the gym. The gym predates 1972. He wondered if this was an admission that they abandoned any commercial use prior to that time. He wanted it made clear that he did not fault Construction Official Kolano for seeking the Borough Attorney's opinion. He felt they had a different responsibility to the residents. He was glad that this issue was being discussed and hoped they reached some sort of conclusion.

Deputy Mayor Tedeschi asked if there was another option. Deputy Mayor Etlar suggested Mayor Weinstein and Councilmember Baratta contact the Rabbi one more time. Mayor Weinstein stated the Rabbi was not involved in this issue and did not think it would be resolved. The deadline was September 30<sup>th</sup>. Mayor Weinstein asked if there were any neighbors of the Jewish Center who wanted to speak.

Robert Wallace, 11-06 Alexander Avenue stated that Anne Peck of the Zoning Board researched the files in the basement and could not locate any paperwork. Mayor Weinstein questioned the availability of older records at the Borough and wondered if the Jewish Center could produce any documentation. Mr. Wallace felt the Jewish Center would have produced the papers if they existed. Mayor Weinstein stated the members were unsure and were going to research it further. He wanted to give them more time to complete the research. Councilmember Trawinski stated the burden would be shifted to the Jewish Center.

Melissa Wallace, 11-06 Alexander Avenue felt they have tried to accommodate the Fair Lawn Jewish Center and have tried to compromise with them on several occasions. The neighbors have also attended meetings with Borough officials. She stated the president of the Jewish Center, Mr. Rosen did not keep his word about ending the games at 9:30 p.m. and hiring an off duty policeman. The Jewish Center has been aware of this problem for years. Her husband

attended a Council meeting back in April and now more months have gone by. She does not understand the delay. Mrs. Wallace objected to any further compromises. They have tried to amicably settle this situation, and have been met with a total lack of respect or courtesy on the part of the Jewish Center.

Tom Tomesco, 10-11 Alexander Avenue wondered if they would have to wait years for a ruling from the Zoning Board if a stay was issued tomorrow and the Jewish Center appealed. Councilmember Trawinski assured him that Council would not allow them to wait years, although it could take time. It depended on the process and whether the Court would accept certification that the situation impacted on health, safety and welfare. If the Court does not agree then that type of litigation proceeds with more dispatch than the ordinary litigation. It could take six to nine months.

Mr. Tomesco does not want to give the Jewish Center any relief. Councilmember Trawinski stated the Jewish Center had legal rights. Mayor Weinstein clarified that Rich Rosen is fairly new as president of the Jewish Center. He believes the Jewish Center has been trying to work out the situation. The problem is the tenant who was arrogant at the meetings. An off duty police officer has been hired and the windows and side door will remain closed. They will end the games at 9:30 p.m. The Jewish Center representatives are not there in the evenings. They are counting on the off duty police officer to monitor the conditions.

Mrs. Wallace stated it was the Jewish Center's responsibility to ensure that their tenant was complying with the rules and respecting the neighbors.

Ann Brodsky, 11-12 Norma Avenue stated it pains her deeply to note that the premise of good faith no longer exists with the Jewish Center. Mr. Kaufmann sat in her dining room four years ago and accused her of stirring up trouble because she contacted the neighbors. He told her point blank that the games would continue. She felt that any facade of being neighborly was over. She does not take their efforts in good faith. She would want any organization where she is a member to hold itself to a standard of decency and respect for its neighbors and would be mortified if her own synagogue treated its neighbors in this manner. This was about retaining revenue. She was appreciative of Council's efforts, but did not feel the Jewish Center should be offered more opportunities to resolve this matter.

Pat Friedman, 10-12 Alexander Avenue was concerned about the unruly behavior in the parking lot. She wondered how many Police reports would be necessary to prove the health, safety and welfare issue. The incidents are never reported in the Community News. She questioned how many drawn guns or massive fights would be necessary prove it was a safety issue. Manager Metzler noted there were two Police reports filed on September 23rd. One report for a noise complaint was deemed unfounded and the other pertained to stolen property. A violation was previously issued for improper signs. A Police report dated August 13th indicated the off duty officer requested assistance while the participants were leaving the area. A Police report dated June 19<sup>th</sup> indicated suspicion of a gun. He did not have a copy of a May Police report.

Ms. Friedman did not feel the incident reports would be considered substantial evidence of a health and safety issue. Deputy Mayor Etlar and Councilmember Trawinski disagreed. Attorney Rosenberg explained the standard was imminent peril to life or property. The Zoning Officer's

certification would prevent a stay of the violation during the proceedings before the Zoning Board. He felt the incidents would meet the criteria but he is not the court judge who will make that decision. The applicant can appeal to a Superior Court Judge requesting the stay be set aside. The process begins with the Zoning Officer's certification, so that the Board of Adjustment understands that there is no stay of proceedings for the ongoing activities that are the nature of the violation.

Mr. Wallace, 11-06 Alexander Avenue stated the Police Department were insistent that two off duty officers were needed as one officer could not handle the crowd. Mayor Weinstein asked Manager Metzler to look into that as it was an important issue. He asked Manager Metzler and Attorney Rosenberg to reach out to the president and legal counsel of the Jewish Center, and asked that Construction Official Kolano be instructed to take the appropriate actions.

It was the consensus of Council to have Construction Official Kolano take the appropriate steps to issue a Cease and Desist order against the Jewish Center.

**ADJOURNMENT:**

Upon motion by Councilmember Baratta and second by Councilmember Trawinski the meeting was adjourned at 11:15 p.m.

Respectfully submitted,

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Joanne Kwasniewski, RMC/CMC/MMC  
Municipal Clerk

The undersigned have read and approve the foregoing minutes.

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Mayor Steven Weinstein

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Councilmember Jeanne Baratta

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Deputy Mayor Martin Etlar

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Deputy Mayor Joseph Tedeschi

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Councilmember Ed Trawinski