

REGULAR MEETING OF AUGUST 15, 2006

Mayor Etler called the meeting to order at 7:30 p.m. Municipal Clerk Kwasniewski read the following statement of compliance:

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, 2005. 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 North Jersey Herald and News and the Shopper. The annual notice identified the times and locations of the Council meetings and work sessions.

PRESENT: Mayor Etler, Deputy Mayor McCarthy, Councilmembers Baratta and Trawinski.

ABSENT: Deputy Mayor Weinstein

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

PRESENTATION TO FIREWORK'S SPONSORS:

Mayor Etler read the proclamation expressing appreciation to the sponsors of the Borough's fireworks. The Mayor and Council then presented them to representatives from Shoprite and Kuiken Bros.

MANAGER'S REPORT: The Manager's Report was available.

COUNCIL COMMENTS:

Deputy Mayor McCarthy reported that the developer for the Naugle House property did not appear at the Planning Board meeting. He and his attorney claim that they are entitled to approval of the project because the Planning Board had not acted within the statutory time frame. The Planning Board has never deemed the application complete. Concern has been expressed that the developer may be looking for a demolition permit to raze the Naugle House. He proposed that in accordance with Chapter 120 the Mayor and Council adopt a resolution imposing a moratorium on the issuance for 12 months. Attorney Kates advised that they could do so.

RESOLUTION NO. 263A-2006 - Moratorium on Demolition

Upon motion by Councilmember Trawinski and a second by Deputy Mayor McCarthy, Resolution No. 263A-2006 was discussed.

Councilmember Trawinski indicated that this resolution was important because it will prevent the demolition of the Naugle House but he thought at the next meeting they should consider rezoning the property. The Borough has the right to change zoning at any time. It may not be the best strategic move but the Council should talk about it. They should also talk about legal strategy if the developer is going to institute a suit claiming that his application should be approved.

There being no further discussion, Resolution No. 263A-2006 was unanimously passed.

COUNCIL COMMENTS CONTINUED:

Councilmember Trawinski stated that the Municipal Clerk certified the planned community democracy ordinance petitions which had been brought to the Council. Regardless of how people feel about the petition and the initiative, he commended the effort and diligence of the Municipal Clerk in reviewing, certifying the petitions and doing the job in a woman like manner to get this done. She had 20 days by statute and she did it much quicker. He publicly complimented her for the work she did.

He thanked the people who brought the petition regardless of its merits. There is nothing more fundamental in the exercise of the first amendment rights than the right to petition the government for the redress of grievances. The voters will decide whether the petition is well conceived and well planned. It was a stirring example of fundamental civics and democracy in action. He complimented those who worked so hard on this matter.

Councilmember Barretta reported that she attended the 4th Junior Citizen's Police Academy graduation. She congratulated those who graduated and commended those officers who run the program.

Mayor Etler read an email commending the efforts of several members of the Police Department and the Ambulance Corps in their efforts revive a two-month-old child.

Councilmember Trawinski commended the police officers and the Ambulance Corps. members.

ORDINANCES: FIRST READING:

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Ordinance No. 2058-2006 was discussed:

Ordinance No. 2058-2006

AN ORDINANCE OF THE BOROUGH OF FAIR LAWN SUPPLEMENTING THE PROHIBITED USE CATEGORIES OF ARTICLE 111, "ZONING REGULATIONS" OF CHAPTER 125, ENTITLED "LAND DEVELOPMENT", OF THE CODE OF THE BOROUGH OF FAIR LAWN 2000, MORE SPECIFICALLY SECTION 125-15, ENTITLED "USES PROHIBITED IN ALL ZONES"

Attorney Kates explained that this ordinance prohibits the use of live animals for testing in the manufacturing processes in all zones in the Borough.

There being no further comment, Resolution No. 263-2006 introducing Ordinance No. 2058-2006 was passed.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, Ordinance No. 2059-2006 was discussed:

Ordinance No. 2059-2006

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 94 ENTITLED "FEES", AND CHAPTER 223 ENTITLED "TOWING", TO REVISE THE FEE SCHEDULE FOR TOWING AND STORAGE, AND TO IMPOSE ADDITIONAL REQUIREMENTS FOR ALL TOWING OPERATORS AND BOOTING SERVICES DOING BUSINESS IN THE BOROUGH OF FAIR LAWN

Councilmember Trawinski explained that this ordinance is a combination of a substantial amount of effort by the Council, the Borough Attorney and citizen input who advised them of a Charlotte ordinance dealing with a similar problem involving towing of vehicles on private property. At the last work session the Council agreed to integrate part of that ordinance into what they were proposing in an effort to alleviate the problems of towing vehicles from McDonalds. The ordinance prohibits the use of Borough streets for storage and cruising by the tow truck operators. The ordinance may need some changes in the future but it is a good start. Attorney Kates added that the ordinance also updates the fee schedule. The ordinance is not confined to the Borough's tower's list but to all towers.

There being no further comment, Resolution No. 264-2006 introducing Ordinance No. 2059-2006 was passed.

PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY:

Upon motion by Councilmember Trawinski and a second by Deputy Mayor McCarthy, it was unanimously agreed to open the time for public comments on agenda items only.

Stuart Shaw, 19-32 Chandler Drive asked about the towing ordinance. Councilmember Trawinski pointed out that the ordinance is not a consent agenda item so this was not the appropriate time for his question. Attorney Kates gave him a copy of the ordinance.

Jane DiPeeven, 14 Ryder Lane, questioned the resolution endorsing the Community Development Block Grant for Bris Avrohom. Deputy Mayor McCarthy explained that they have to apply to the County for the grant but they must get the approval of the Mayor and Council first. They have to prove to the County that they meet the requirements for the grant. Councilmember Trawinski added that the faith-based organizations have a federal exception so they are now eligible to apply.

Lou Silvestri, 1-30 37th Street thanked the Mayor and Council and the staff for their support of their request for relief for their traffic problems. The residents of 37th Street petitioned the Borough to dead end 37th Street to control the traffic. After hearing the concerns of the residents of 36th Street that the traffic would be diverted to their street, Chief Rose and Officer Franco developed a fair resolution to help both streets. It is unfortunate that not only patrons from McDonalds leave from this designated entrance, but so do McDonalds owners, managers and employees. He presented

the transcript from Zoning Board meeting of June 3, 2002 in which the traffic engineer for McDonalds said he could not control the drivers. He presented photos.

RESOLUTIONS BY CONSENT # 23-2006

Upon motion by Councilmember Trawinski and a second by Deputy Mayor McCarthy, Consent Agenda 23-2006 containing the following items was unanimously adopted.

- a. Resol. #265-2006 - Approval of Minutes:
 - Closed Session 4/19/06
 - Work Session 4/19/06
 - Closed Session 4/19/06
 - Regular Meeting 4/25/06
 - Work Session 5/2/06
 - Regular Meeting 5/9/06
- b. Resol. #266-2006 - Approval of Raffles & Bingo:
 - Temple Beth Sholom Mens Club, Bingo
 - St. Leon's Armenian Church, Off-premise 50/50
 - Fair Lawn Friends of Music Assoc. Inc., Off-prem mdse.
- c. Resol. #267-2006 - Refund of Overpayment of Taxes
- d. Resol. #268-2006 - Renewal of Interlocal Agreement with Ridgewood - Maintenance of Traffic Signals
- e. Resol. #269-2006 - Authorizing Execution of Interlocal Agreement - Central Bergen Cooperative Pricing System
- f. Resol. #270-2006 - Reject Bid: Brick Facing - Road Garage
- g. Resol. #271-2006 - Tax Appeal Settlement - CEM
- h. Resol. #272-2006 - Supporting You Drink and Drive You Lose 2006 Statewide Crackdown
- i. Resol. #273-2006 - Endorsement of CDBG Application for Unprogrammed Funds: Bris Avrohom ESL After-school Program
- j. Resol. #274-2006 - CDBG Grant Agreement: Barrier Free Improvements
- k. Resol. #275-2006 - Banning Dual Office Holding in Fair Lawn
- l. Resol. #276-2006 - Closing of Driveway Abutting 37th Street
- m. Resol. #277-2006 - Appointment to the Fair Lawn Borough Garden Committee
- n. Resol. #278-2006 - License Agreement - 13-29 Sunnyside Drive
- o. Resol. #279-2006 - Rescinding Resolution No. 237-2006 - Awarding Fire Apparatus
- p. Resol. #280-2006 - Awarding Bid: Fire Apparatus

MISCELLANEOUS PUBLIC COMMENTS

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to open the time for public comments.

Jane DiPeeven, 14 Ryder Road, reported that the Planning Board denied the application for the Naugle House property. Deputy Mayor McCarthy explained that the Mayor and Council adopted a resolution for a moratorium for 12 months preventing the demolition of the Naugle House.

Arlene Rubinstein, 22 Rutgers Terrace, asked if the Council followed Roberts Rules of Order and who is the parliamentarian. She wanted to know why the Mayor shuts people down prior to their five minutes running out and when she wanted to yield her time he did not allow it. Mayor Etler advised her that she did not have the right to yield her time. Ms. Rubinstein continued that the Mayor is denying the residents their constitutional rights. She requested that Roberts Rules of Order be followed. Attorney Kates stated that the Mayor has the right to run the meeting.

Harvey Rubinstein, 22 Rutgers Terrace objected to the ugly fence around the pool. The Berdan Avenue entrance is not manned. The rest rooms are a disgrace. The geese poop is back and it is not being cleaned up.

Larry Koplik, 6 Reading Terrace suggested that they consider a new master plan because decisions on projects are being made on a piecemeal basis. The town has changed since 1992 when the master plan was adopted. The master plan has to state the feeling and nature of the town. The FAR will define the appearance of the buildings to make them attractive. The master plan will cost less than litigation.

Suzanne DiGeronimo, 16 Beekman Place stated that CCRF has submitted the petitions. The Municipal Clerk has certified that sufficient valid signatures have been obtained. The ordinance is only for planned communities. She asked the Mayor and Council to listen to the citizens of Fair Lawn and what they want.

Mayor Etler remarked that he thought the democracy ordinance was ill advised. He did not think it was good legislation and he was opposed to it.

Ron Cole, 10 Ramapo Terrace stated that in Radburn eight or nine people control everything that goes on in that community. He read that Don Morris stated that the dissident residents have been vocal and strident. They are being denied the right to vote in a democratic election.

Mayor Etler stated that this is an internal problem which Fair Lawn should not be involved in. Councilmember Trawinski stated the Twin Rivers decision makes clear that in the exercise of fundamental right there is no distinction between the public at large and the members of a homeowners association. Any fundamental right engages the public interest by definition. He believes that they interfere and regulate fundamental rights every day. He asked the Mayor to support the initiative.

Deputy Mayor McCarthy stated that he read the decision and he does not agree with Councilmember Trawinski's interpretation. The Borough does not have the right. The Radburn Association has been a good neighbor for 75 years. They are a valued member of the community. It is a planned community that Fair Lawn should be proud of, but this is a dispute that the Radburn Association should resolve. The Council should not be involved in it. Attorney Kates opinion was given to the Council after the Twin River decision was rendered. The people should be applauded for their efforts to present their case to the community although he does not agree with it.

Mayor Etler added that Twin Rivers was very narrowly focused on the fourth amendment rights not governance. Councilmember Trawinski indicated that Twin Rivers was decided on the New Jersey Constitution. One of the statutory rights is to have fair and open elections. It is that right that engages the public interest.

Joan Goldstein, 12 Bedford Place thanked the Mayor and Deputy Mayor McCarthy for making the people of Radburn responsible for Radburn. As a member of Radburn Association she thought her property

rights were being trampled on. When bought her house the attorney told her that there were rules. She does not live in sub government of Fair Lawn. She lives in a homeowner's association. Radburn is a place where they chose to live. It is a planned community with rules. The rest of Fair Lawn should not dictate how the Association should be run. There is a vocal and uncompromising group that feels someone else must solve Radburn's problems. It is not Fair Lawn's problem. It is Radburn's problem. She did not think people who have no stake in Radburn should be deciding what should happen in Radburn. It is not a Fair Lawn governmental problem. Radburn is a corporation that is run for the people of Radburn.

Councilmember Trawinski pointed out that the very act of addressing the trustees is denied to them. He strongly believes that he must protect the public interest. The court said that the constitutional right outweighs the property rights

Ms. Goldskin replied that she sat in a room with people who said they want compromise but they were already going out for the initiative.

Stuart Shaw, 19-32 Chandler Drive stated that the Twin Rivers decision is the law of the land until decided by the Supreme Court. He asked if the democracy ordinance is passed by the community and the Radburn Association brings suit if there would be damages. Attorney Kates advised that an ordinance is not a case for damages.

Mr. Shaw then asked Deputy Mayor McCarthy to explain his reasons for his decision. Deputy Mayor McCarthy replied that the decision by the Appellate decision is not that clear. He does not think the Borough has the right to get involved. This is a private dispute. The plaintiff was the Community for a Better Twin Rivers not the Borough of East Windsor.

Felice Koplik, 6 Reading Terrace expressed concern about the safety and maintenance of the Naugle House. She asked that a fence be installed. She also asked what the Council can do. She felt that there are dangerous conditions on the site. Manager Metzler advised that he met with Code Enforcement who has been out to the site. He does not know if there was a violation issued. The department has a policy of trying to get the property owners to remedy the problem rather than just taking them to Court. He will follow up with the Department.

Gerry Gould, 4 Arlington Place indicated that she was appalled by the rhetoric about freedom and democracy in Radburn. She has never seen such an effort to disrupt a community. She did not know what purpose would be served by putting it before an unsuspecting public. Most of Fair Lawn does not have any interest in Radburn. They make no financial contribution to Radburn. There are the same disinterested people who are being asked to make decisions for Radburn. The Radburn Board looks for people who are active in the community. They are not absentee landlords; they are normal people. She knew what the rules were when they bought their house. There are those who are now saying they cannot accept the rules. These are not town wide issues.

Donal Meyers, 8-22 Mayfair Terrace stated that democracy is a simple notion. Although he is not a Radburn resident, he supports the initiative. By approving the initiative they will be giving all of the people in Radburn the right to solve their problems by electing their own leaders. Mayor Etlar indicated that if the initiative is approved, it will bring instant litigation costing this

town thousands of dollars.
Councilmember Trawinski
disagreed. It does not have to
bring instant litigation that is the
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choice of the trustees. The trustees' ill-advised action of selling Daly Field has cost the people of Fair Lawn thousands of dollars.

Pam Coles, 13-34 George Street thanked the Council for instituting the 12-month moratorium for the Naugle House. They have an obligation to keep the Borough's history intact. It is going to take some doing to restore it, but she thought they could do it with minor cost to the Borough residents. She felt it was important that a new master plan be done. She continued that she was not a resident of Radburn but she thought it was important to stand for democracy. She wanted the Council to support all their constituents. Mayor Etler stated that the master plan was done in 2002. The Planning Board does not believe that it is necessary to redo the master plan. Deputy Mayor McCarthy added that there are a number of things that are being discussed; i.e., FAR ordinance and the way the height is measured. Councilmember Trawinski indicated that he and Councilmember Baratta support doing a complete review of the master plan. They have been planning by variance. They will act to address some of the issues but a new plan is needed.

Barbara Minton, 1-25 36th Street asked if the issue concerning closing the entrance at McDonald's is finished. Mayor Etler replied that the issue is done. Manager Metzler thought the barrier would be in place shortly. Deputy Mayor McCarthy added that many issues will be discussed at the Zoning Board meeting in September.

Ken Ayers, 4 Arlington Place stated that the word democracy has been turned into a buzz word. It is trying to confuse people about an issue. It has nothing to do with whether the democracy does or does not exist. Many families have lived in Radburn for 30 or 40 years. If they had been dissatisfied, changes would have been made years ago. Corporations do not invite the public to pick the Board. It is an issue for the Radburn residents. He is disturbed that the people offering the petitions for signature were deceiving people. Deliberate deception has occurred.

M. Johan Broekman, 4 Allen Place expressed his gratitude to the Police Department and the Ambulance Corps for their assistance when he had an accident. He stated that he was extremely grateful to the allied forces for their assistance during World War II. He is appalled by the people calling democracy the overriding basis for this foolish initiative. Democracy is a great buzz word but that is all it is. He did not think it was in the best interest to force upon the people of Radburn a resolution that is ill advised, that will lead to exorbitant expenses and that will generate animosity. There was a process going on that the people in Radburn were trying to address concerning elections. The current election process of the trustees is considered legal and proper. There is no basis to go against it. He advised everyone to work together to get this matter resolved.

Barbara Gremillot, 1 Bristol Place felt the trustees could not be trusted. They just want to have the right to know what is going on in the community. They just want to be heard. Louise Orlando controls the community. She has a stranglehold on the community. She sold the property secretly which is why they are asking the Council for assistance.

Councilmember Trawinski explained the initiative will allow all qualified people to run for election to the Executive Board. They will have to be duly nominated under a fair and equal opportunity process open to participation by all qualified voters. He did not understand what was so terrible about allowing anyone who wanted to run for the Executive Board. In 1996 Radburn asked for assistance on the bike paths and the Council helped them to get a grant. Neighbor against neighbor is not pleasant. They have put an initiative to the people of Fair Lawn who will make that decision. If the trustees are Page Eight
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doing such a great job and everyone is happy, then why not give everyone the opportunity to become a trustee.

Mr. Broekman, 4 Allen Place reiterated that he was not in favor of the initiative which will have the Borough of Fair Lawn in its totality direct the Radburn Association. There are many open and frank discussions going on that would lead to some changes. A group of people has chosen to circumvent the democratic process in Radburn and have the Fair Lawn Borough ordinance dictate what they can or cannot do.

Craig Miller, 5 Ramapo Terrace pointed out that the Borough gets involved in private issues all the time. Daly Field was sold without telling the residents. The residents were in an uproar. Four hundred residents voted in a new president of the Citizens Association to make changes. No changes have been made. They do not know what is going on financially. He supported the initiative.

Matt Ahearn, 6 Beekman Place stated that he has been retained by eight homeowners in Radburn to bring an Order to Show Cause immediately because this petition is ill conceived for legal reasons not what it is trying to do. Although they have the right to petition the government for grievances that is not what this is. This is a Faulkner Act initiative. The courts have limited through court cases the applicability of any ordinances; i.e., budgets, zoning, fire districts. Case law does exist supporting the Municipal Clerk turning down the petition because it is an ultra vires ordinance that is not within the municipal powers to act or not within the Faulkner Act powers because of the New Jersey constitution. This ordinance is an ultra vires ordinance. It is clearly preempted because it dictates by law changes that impact the charter of the non profit organization. His clients feel strongly about their rights. He looked forward to resolving the issue in the court room.

Louise Orlando, 12 Arlington Place took exception to Councilmember Trawinski's remarks that she and the attorney for Radburn asked for a favor from the Borough. The Borough Fair Lawn is the owner of the walkways in Radburn. The walkways were dedicated during the site plan process. The Radburn Association was not asking for a favor; they needed the Borough to make an application for funding.

Grants were received by the Borough of Fair Lawn. She continued that there were many parts of the Twin Rivers decision some of which have been remanded, some have been accepted for certification to the supreme court and other parts were thrown out. This is one of many appellate panels. She has been a resident since 1973 and has lived in Radburn for 33 years. She was not the one who sold Daly Field. Daly Field is the subject of a contract not Hayward which is owned by Landmark. Archery Plaza is owned by Radburn Associates.

Councilmember Trawinski stated that relating to the issue of ownership of the walkways, it was then Borough Attorney Lustgarten's opinion that the walkways were not properly dedicated to the Borough. It was a joint application although the issue of who owned the bike paths was not resolved. He expressed his willingness to pull out the memorandum from Attorney Lustgarten. Ms. Orlando indicated she would like to see that memo since Attorney Lustgarten had no objection to the Borough filing for the grants.

Stuart Shaw, 19-32 Chandler Drive indicated that he does not live in Radburn but he objected to the remarks made by Mr. Ahearn.

Jane DiPeeven, 14 Ryder Road appealed to the Council to raise the thermostat. She asked them to consider the schedule of area, yard and building requirements in the proposed Clariant ordinance before it is introduced. The draft ordinance gives the developer what he asked for and in two cases

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gives him more than he asked for. She objected to the development because there was too much coverage. The proposed setback was not sufficient and the height was too high.

There being no further comments from the public, upon motion by Councilmember Trawinski and second by Deputy Mayor McCarthy, the time for public comments was unanimously closed.

Municipal Clerk Kwasniewski reported that she reviewed the 131 petitions submitted on August 3, 2006. One thousand six-hundred seventeen signatures of qualified voters were required to have the initiated ordinance submitted to the Mayor and Council. She determined and certified to the Mayor and Council that each paper of the petition had a proper statement of the circulator and that the petition has been signed by the required number of qualified voters. She presented the ordinance as submitted. The ordinance is now deemed to have had a first reading according to the statute. If the Mayor and Council do not pass the ordinance or one that is substantially the same within 20 days, it must be submitted to the voters at the next election.

ADJOURNMENT TO WORK SESSION

Upon motion by Deputy Mayor McCarthy and a second by Councilmember Trawinski, the meeting was adjourned to work session at 10:00 p.m.

Respectfully submitted,

Kwasniewski, RMC/CMC/MMC
Municipal Clerk

Joanne M.

The undersigned have read and approve the foregoing minutes.

Mayor Martin Etler

Councilmember Jean Baratta

Deputy Mayor Own McCarthy

Councilmember Edward Trawinski

Deputy Mayor Steven Weinstein