

WORK SESSION OF FEBRUARY 21, 2006

Mayor Etler called the meeting to order at 7:35 p.m.

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

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

CLOSED SESSION:

Upon motion by Councilmember Trawinski and seconded by Deputy Mayor McCarthy, the following closed session resolution was unanimously adopted at 7:35 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 contract negotiations and Personnel; and

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

WHEREAS, public disclosure of the results of these discussions shall be made relating to personnel upon formal action by the Mayor and Council of the Manager within 60 to 90 days if formal action is taken and relating to contract negotiations upon formal resolution of the matter except for legal strategy.

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 Etler reconvened the meeting at 8:10 p.m.

REVIEW OF TENTATIVE AGENDA

Councilmember Trawinski asked for an explanation on the use of Walsh Pool by Saddle Brook. Municipal Clerk Kwasniewski indicated that the Council had decided not to increase the fees. Saddle Brook has been one of the municipalities that enter into an interlocal agreement since the Borough started this program.

Municipal Clerk Kwasniewski reported that she received an email from the Environmental Commission asking if the presentation to the retiring Environmental Commission members and the river walk was scheduled for next week. The Council had not discussed this request. Mayor Etler stated that it came to his office and he just thought it was taken care of. Municipal Clerk Kwasniewski indicated that she was looking for guidance for the Council since they have asked for 30 minutes at the regular meeting. It was agreed that they could have 15 minutes.

Municipal Clerk Kwasniewski reported that she had received all the required pay to play documents so the professional services resolution could be adopted at next week's meeting. She also received a letter from Community Development concerning the \$60,000 grant that they were not able to use for the cardroom at the Fair Lawn Recreation/Community Center. She had asked the County if it would be possible to reallocate the money to two other projects, i.e., \$40,000 for roadway improvements and \$20,000 for the Senior Center improvements. They have agreed so resolutions amending the grants agreements must be adopted. Another set of minutes is also ready so she their approval will be on the next agenda.

MORATORIUM ON DEVELOPMENT

Attorney Kates presented sections of the statute from Cox. The statute states that no moratorium is allowed except on the basis of a written opinion by a qualified health professional that a clear imminent danger exists to the health of the residents. He mentioned the West Windsor case. He has asked for particular documentation on a particular property.

Further discussion was reserved for Closed Session

BANNING PAY TO PLAY ORDINANCE

Attorney Kates distributed a draft ordinance. If someone has contributed more than \$300 they can be hired if the municipality uses a fair and open process including a request for proposals. If the municipality uses the non fair and open process, each hiree must certify that they have not nor will they make a contribution that is more than \$300.

The proposed ordinance based on the Hightstown ordinance, removes the option of hiring someone who has contributed more than \$300 to a candidate or \$500 to a Borough or Bergen County Party Committee or \$2,5000 to all candidates or office holders.

Mayor Etlar wanted to consider this carefully before making any decision. Deputy Mayor Weinstein wanted to know if they could extend the prohibition outside of the County. Deputy Mayor McCarthy wanted to know if they could something to prevent wheeling. Attorney Kates indicated that they could if they chose to. Councilmember Trawinski did not think the draft eliminates wheeling or contributions to legislative leadership committees and federal candidates and committees. Attorney Kates thought there may be a federal preemption. Councilmember Trawinski continued that he thought the ordinance should be tied into an election not for a year so it would be \$300 for the primary and the \$300 for the general election. Attorney Kates stressed that this ordinance would foreclose the use of the fair and open process. Deputy Mayor McCarthy wondered if they get set a limit a candidate could receive from any source. He suggested \$750.00. Deputy Mayor Weinstein asked Attorney Kates to parallel the State's pay to play regulations with this proposed ordinance.

CAMPAIGN CONTRIBUTION DISCLOSURE ORDINANCE

Attorney Kates had distributed the Hightstown ordinance. This disclosure is done in the

context of a development application. The checklist would identify if the applicant has given to a local campaign. No limits are set. It would advise the Planning Board or the Zoning Board whether or not the applicant has been a contributor to any candidate.

Deputy Mayor McCarthy wondered if a limit might be needed. He wanted to protect the residents from being questioned about a modest donation. Councilmember Trawinski agreed with Deputy Mayor McCarthy. He suggested \$300. It does not ban someone from applying to the Board even if they have made a contribution.

Attorney Kates stated that the ordinance prevents conflicts of interest. He wondered if the checklist ordinance can go beyond the normal categories that are in the checklist. The drafting committee of the MLU is considering adding this provision which may mean that the Borough cannot adopt this ordinance. Hightstown and Morristown have this ordinance.

Deputy Mayor Weinstein stated this disclosure list would go to the Board so that they will now know about the contributions being made where before they did not know.

Attorney Kates will do some redrafting for the next work session.

BANNING COUNCIL FROM EXERCISING POWER OF EMINENT DOMAIN UNDER GUISE OF ECONOMIC DEVELOPMENT

Councilmember Trawinski wanted this Council to say that they will not exercise the power of eminent domain for economic purposes, i.e., more rateables on residential properties. Mayor Etlar did not think an ordinance is necessary. He would not use his power unless it was for the public good. Deputy Mayor McCarthy expressed concern that there may be a need at some point. He does not want to restrict the Council. Councilmember Trawinski wanted it for a limited purpose only. Deputy Mayor Weinstein pointed out that Assemblyman Gordon is working on this matter through the legislature. In order to get anything done in the community you need the consensus of the residents who live in the community. He did not think there was a reason for this proposal. Attorney Kates noted the Assembly Gordon is working on a change to the law since he feels there is a section that needs to be tightened up. If the law is changed, then specific criteria will have to be met. Mayor Etlar suggested that they wait until the legislation goes through. Councilmember Trawinski and Councilmember Baratta wanted Attorney Kates to draft an ordinance. Deputy Mayor McCarthy did not think there was a problem with Attorney Kates drafting something.

The consensus was for Attorney Kates to draft an ordinance with Mayor Etlar dissenting.

NAMING PAPER STREET AND PLAQUE - RECREATION/COMMUNITY CENTER INC.

Deputy Mayor McCarthy stated that the he and Councilmember Baratta met this morning and were giving a tour of the facility.

The representatives of the 501(c)3 unanimously thought that Lou Weiss gave the most effort and time to this project. They recommended naming the street in his honor. Deputy Mayor Weinstein thanked Lou Weiss for the endless hours he put in to make the Community Center one of the most successful projects in the history of Fair Lawn. Mr. Weiss stated that it was not necessary although

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Mayor Etlar assured him that it as well deserved.

The consensus was to name the street Lou Weiss Lane.

Mayor Etlar had done a sketch of a plaque. He will have something for the next work session. Councilmember Baratta stated that John Cosgrove is working on a plaque with the trustees' names.

FURTHER ORDINANCE CHANGES ON MCMANSIONS

Councilmember Trawinski appeared before the League of Women Voters at their request to discuss McMansions at their request. The League presented several suggestions including some sort of proportionality limit which would only apply to the residential property. He also suggested architectural limitations by neighborhood which has been done in other areas of the country. He did not believe that the floor area ratio ordinance will solve the problem by itself. Deputy Mayor Weinstein thought the Planning Board should be looking at this problem. The League expressed concern that the Board members do not visit the sites. The League suggested that perhaps site visits should be part of the application process and as built site photos be required. The deed and change of title should reflect the conditions of approval.

Attorney Kates stated they would have to establish criteria because they should not attach the standard conditions but rather things that are unique. Deputy Mayor McCarthy stated that he will raise this issue at the Planning Board and the Borough Attorney should speak to

the Board Attorney.

TREE PLANTING POLICY

Councilmember Trawinski stated that he was not sure that the tree planting ordinance is tough enough. Enforcement may be the issue. This problem should go to the Planning Board, the Environmental Commission and the Property Maintenance Committee.

Deputy Mayor Weinstein stated that they have done more to advertise the availability of trees. Deputy Mayor McCarthy suggested that something should appear on the web site. Mayor Etler thought the Council may have to insist that trees be planted. Municipal Clerk Kwasniewski stated that the Council would have to change the policy because the long-standing policy is that if someone does not want a tree, the Borough does not plant it. Councilmember Trawinski suggested seeing how many are planted this year and then revisiting the policy.

Municipal Clerk Kwasniewski stated that last year they ran two ads in The Shopper. She will mention to Acting Manager Metzler that the Council wants that done again.

EXAMINE AND MODIFY TOWNHOUSE ZONING

Councilmember Trawinski thought that independent of the litigation by Landmark, they need to look at the townhouse zoning and see if it should be eliminated except for age restricted housing. He recommended asking the Planning Board to look at it and give their Page Five

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opinion. His ultimate goal is to ban pure market rate townhouses. He was concerned that if the older industrial sites become available the Council will receive more and more pressure to allow townhouses.

FOLLOW UP ON PLANNED COMMUNITY DEMOCRACY ORDINANCE

Deputy Mayor McCarthy indicated that he was not willing to reopen the discussion but he was in favor of the legislation introduced by Assemblyman Gordon. It is an appropriate issue to be dealt with by the State. He proposed a resolution in support of the legislation.

Councilmember Trawinski indicated that one of the residents suggested that the Council try to reach out to the trustees. Mayor Etler indicated that they have already started that process. Deputy Mayor Weinstein stated that last week there was a meeting at which

progress was made between the Radburn Association and the residents. He and the Mayor met with the President. It will take some time. It sounds like the Radburn Association and the residents are starting to work out their differences. The President of the Association said he would come to the next meeting and make a statement.

Attorney Kates and Municipal Clerk Kwasniewski will draft the resolution in support of the legislation proposed by Assemblyman Gordon.

POLICY ON WEBSITE CONTENT - WHO DECIDES

Attorney Kates stated that a member of the public asked the Legal Department if something could be placed on the website. The Manager decides departmentally what is posted but he questioned those items relating to the Council. He thought the Council should delegate the decision. Municipal Clerk Kwasniewski stated when the website was first developed the policy was that no political items were to be posted. Most items are passed through the Manager's office to make the decision, but they have never had a member of the public ask to have something posted. Councilmember Baratta indicated she would be comfortable with it going through the Borough Manager. Deputy Mayor Weinstein added that if the Borough Manager has questions, he could refer it to Attorney Kates.

The consensus was that items would go through the Manager with questions being resolved with the Borough Attorney.

PUBLIC COMMENTS

Mayor Etler announced that the five minute rule was in effect.

Don Olive, 8-32 Mitchell Place thought the pay to play ordinance was a good start and he liked the \$300 limit. He expressed concern about eminent domain and urged the Council to adopt the ordinance. He thought the tree planting ordinance had a few flaws that need to be corrected.

Harvey Rubinstein, 28 Rutgers Terrace expressed concern that the closed sessions were held at the beginning of the meeting. He mentioned several cases concerning cell towers Page Six

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and deed restrictions.

Maureen Moriarity, 14 Burnham Place expressed disappointment that June Meyerson was not included in the meeting with Mayor Etler and Deputy Mayor Weinstein. She was not convinced that there would be change.

Howard Mark, 12-23 Ferry Heights thought it would be better to plant the trees behind the property instead of in the front of it.

Craig Miller, 5 Ramapo Terrace asked if it was a proposal to address the dead zone by Fire Company #3. Deputy Mayor Weinstein stated that the Council has not see any proposal.

Robert Gulack, 4 Bancroft Place expressed concern that election reform is not being considered. The elections are in the bylaws which are changed often. June Meyerson will give accurate information but the trustees will not. He went through a time line of events since 2004 in which he claims misinformation was distributed. It is very important that the Council give Radburn Association three months to offer a compromise on the election issue and if they do not do so, then the Council will go ahead with the ordinance.

Deputy Mayor Weinstein stated that he has spoken to a great number of residents in Radburn. Mayor Etler stated that the meeting with Louise Orlando and Don Morris was on the Mayor's calendar for two weeks.

June Meyerson, 15 Ballard Place was surprised that she was not included because she represents the community. They are forming a committee to discuss the election process. She is always left out of the loop. She should be included in any meeting with the Radburn Association. She represents the community. The trustees represent the governmental entity.

Mayor Etler asked Ms. Meyerson if she was suggesting that they should not use the office of the Mayor and Deputy Mayor to try to ameliorate the situation. Councilmember Trawinski suggested that they should not since the Mayor is only one councilmember. The meeting was not authorized by the Council. The Council is supposed to act as a collective body under the Faulkner Act.

Louise Orlando stated that they received a letter from the acting director of the DCA and one from Ed Hanneman informing them that the election process is not against the law. They may not like it but it is not against the law. Ms. Meyerson represents a certain section of the community. The meeting last week had nothing to do with elections and she saw nothing wrong with explaining the process the Radburn Association is attempting to work its way through. They have continued a dialog with the DCA for many months. The information on how to proceed with the alternative dispute resolution is scant. Radburn Association is taking all due deliberation to get to the point where they can offer something to the community that they will be comfortable with. It does not involve the election process. It is unfair to characterize they way they provide information to their residents as improper. There are many people who do not agree with the position taken by Ms. Meyerson.

Stanley Hayden, 12 Beekman Place indicated that he has lived in Radburn for 49 years and was also a veteran. He has unhappy about the situation. The Radburn Association trustees are stalling. They are going to agree to the ones that are the law but the essence of the problem is voting. It is vital that they have the right to vote. There is no intention to give them the vote. He urged them to reconsider their position. The law proposed by Assemblyman Gordon will not address the issue of voting.

Barbara Gremillot, 1 Bristol Place, stated she was at the meeting last Wednesday. Don Morris did not answer the questions but rather let Ms. Orlando answer them.

Robert Gulack stated that Ms. Orlando has a letter from January 10 but it does not matter anymore because of the Twin Rivers decision.

Lou Weiss stated that he is one of the trustees of Radburn and no one has approached him to find out how he stands. He has received calls from the newspaper. He does the best for the whole community. He sits on the Board because he did run. It is not true that it is a closed issue. The architectural guidelines have been changed over the years. It is not one person. It is a whole Board of Trustees. They are neighbors trying to keep what they have had for 75 years. He requested that they let things take its course the way the Board has to work. They are working on this issue. It is not right to keep going after Ms. Orlando because she is the manage. It is the Board and they will come up with a decision.

Councilmember Trawinski asked Lou Weiss where he stands on the democracy issue. Mr. Weiss stated that he will not be bullied by a few people who think they should do what they want. He believes in democracy. He supports everything that was good for the whole of Radburn.

CLOSED SESSION:

Upon motion by Councilmember Trawinski and seconded by Deputy Mayor McCarthy, the following closed session resolution was unanimously adopted at 9:55 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; and

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

WHEREAS, public disclosure of the results of these discussions shall be made upon the conclusion of the litigation except for legal strategy;

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.

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Adjournment:

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

Respectfully submitted,

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

The undersigned have read and approve the foregoing minutes.

Mayor Martin Etlar

Councilmember Jeanne Baratta

Deputy Mayor Owen McCarthy

Councilmember Edward J. Trawinski

Deputy Mayor Steven Weinstein