

## **WORK SESSION OF JANUARY 10, 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.

### **REVIEW OF TENTATIVE AGENDA:**

There were no changes.

### **MAPLE AVENUE DEED RESTRICTION:**

This item was moved to Closed Session.

### **HOLOCAUST MEMORIAL:**

Mayor Etler suggested that the memorial needs to be redesigned and that it should be removed from the agenda.

The consensus was to remove this item from the agenda until such time as it is redesigned.

### **NAUGLE HOUSE:**

Councilmember Trawinski thought this was spot zoning and should be rezoned. Deputy Mayor Weinstein noted that the application is going before the Planning Board and recommended leave the zoning as it is and let the Board handle the matter. Councilmember McCarthy agreed and suggested that the Borough Attorney review the matter to see if it is spot zoning. Councilmember Trawinski noted that under the time of decision rule the Council can still change the zoning. Mayor Etler felt the Council should not change the zoning. The decision should be made by the Planning Board. Councilmember Trawinski expressed concern that if the applicant acquires the VanderPlaat property, the Borough will have town houses along the entire area. Mayor Etler indicated that he would not support any change in the zoning for the remaining property. Councilmember Trawinski stressed that he felt this was contract zoning since the ordinance was changed upon the execution of an agreement to preserve the Naugle House. Councilmember Baratta urged the Council to zone it back to residential.

### **CABLEVISION RENEWAL:**

Councilmember Trawinski recused himself.

Attorney Kates indicated he reviewed the file but was unable to prepare an ordinance because the Council had not settled on the terms. He needs a list of what exactly was agreed upon before he can move forward.

### **TRAFFIC SAFETY ISSUES:**

Deputy Mayor Weinstein recommended the formation of a subcommittee to meet with Chief Rose, Traffic Safety Officer Franco, Engineer Garrison and a member of the County to discuss ideas to resolve some issues.

There was an unanimous consensus for Deputy Mayor Weinstein and Councilmember Trawinski to work on this issue.

### **MORATORIUM ON DEVELOPMENT:**

Councilmember Trawinski thought the Borough could institute a moratorium on development because of the contamination on the Topps property. The pollutants from the drying cleaning chemicals are significant although they can be remedied. He thought that development on the Heyward, Archery Plaza and Daly Field should be halted for the next six months because the pollution presents an imminent threat to the health, safety and welfare of the residents. During that period of time the Council should ask the Health Officer if there are any further actions the Borough should be taking. He felt that with the potential for a substantial development on property that is immediately adjacent to this property a moratorium would be a prudent course of action.

Mayor Etler noted that nothing can be built on the Topps property while the DEP cleanup is going on. Attorney Kates should look into this suggestion for the next work session.

Deputy Mayor McCarthy wondered if they would need a professional expert to make the determination that a moratorium is needed. Attorney Kates advised that particular health hazards are justification for a moratorium. However, a moratorium cannot be based on surmising that something is there. It must be based on specific facts. Councilmember Trawinski thought that Anderson Muhlolland Associates has provided the data to the DEP. The Borough would need a health official to certify the data.

The consensus was to have Attorney Kates provide an opinion on this issue for the next work session.

Deputy Mayor McCarthy suggested that at the end of the meeting they prioritize the items given to Attorney Kates.

### **BANNING PAY TO PLAY ORDINANCE:**

Councilmember Baratta had distributed a model ordinance that would ban pay to play. Councilmember Trawinski stated that if the Council adopted its own ordinance wheeling which it is not prohibited under the current law would be prohibited. He believed that the Council can say that anyone who makes any contribution in excess of a given amount will not get a no-bid contract. Attorney Kates stated that on January 5, 2006 Governor Cody signed a law allowing local ordinances to be more strict than the State law. Deputy Mayor Weinstein would like the Borough Attorney to see if the Borough can limit the amount of contributions to \$750.00.

Municipal Clerk Kwasniewski explained the current law which applies to contracts that are more than \$17,500 and are not bid. Councilmember Trawinski thought they could set a lower contract limit.

Attorney Kates will give them an outline but the Mayor and Council will have to set the limits.

There was an unanimous consensus to have Attorney Kates report back to the Council in February.

### **CAMPAIGN CONTRIBUTION DISCLOSURE:**

Councilmember Trawinski advised that this ordinance would not prohibit anyone from doing business. As part of the application to the Boards a financial disclosure would have to be filed listing the campaign contributions made by the professionals and the applicants. Morristown has such an ordinance. Councilmember Baratta distributed a model ordinance. Such an ordinance would actually amend the land use ordinance.

The consensus was to have Attorney Kates submit his opinion in February.

### **PLANNED COMMUNITY DEMOCRACY:**

Councilmember Trawinski noted that Congressman Rothman has stated that Radburn needs to be democratic if the Borough expects to receive his support for any grants to acquire property in Radburn. The DCA initially took the position that PREVDA applies to Radburn. He thought the Borough could put an ordinance in place to say that everyone in Fair Lawn even those in planned communities have a right to democracy. He drafted a proposed ordinance. He suggested that Attorney Kates review the ordinance and give the Council his opinion.

Attorney Kates pointed out that there may be a preemption issue and the Borough may not have the authority to enact such an ordinance. The citizens have the standing to correct the problem. He would have to look very closely at municipal intervention. He was not sure that this is something that Borough polices.

### **BANNING COUNCIL FROM EXERCISING POWER OF EMINENT DOMAIN UNDER THE GUISE OF ECONOMIC DEVELOPMENT:**

Councilmember Trawinski proposed a limited ban. He thought they should give some measure of comfort to the residents that this Council will not take property just because more tax revenue would be generated.

Mayor Etlar disagreed. He did not think it was wise to narrowly define when the Council can exercise eminent domain. He certainly would not use that power unless it was for a public use.

Councilmember McCarthy presented an article in the League of Municipalities Magazine which discussed the differences between New Jersey's law and Connecticut's Page Four Work Session  
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law. There are protections in place in New Jersey.

Attorney Kates advised that he represented the Lodi mobile homeowners. He explained that case. The judge applied a New Jersey statute that says a municipality cannot take private property for redevelopment purposes unless it meets a statutory test. If you meet that test, then the municipality must justify it. He suggested that it be studied.

**BANNING SEX OFFENDERS FROM RESIDING WITHIN 1000 FEET OF ELEMENTARY SCHOOL PLAYGROUND OR CHILD CARE CENTER**

Councilmember Trawinski advised that Cherry Hill, Hamilton and Brick had adopted ordinances based on an Iowa decision where the Eighth Circuit of Appeals said it is not unconstitutional to limit sex offenders from residing in areas where children reside or congregate. It is a logical extension of the drug free school zones. He suggested that Attorney Kates draft an ordinance and present it to them. The Council needs to decide what the distance should be. He recommended 1,000 feet.

Deputy Mayor McCarthy pointed out that this was a big item in the fall and there were legal challenges to those ordinances. He wanted to know about the Third Circuit in New Jersey. He thought it was a good idea if it is permitted.

Municipal Clerk Kwasniewski advised that the Borough does have a map of the drug free school zones.

**DRUG FREE SCHOOL ZONES ORDINANCE:**

Councilmember Baratta distributed an article from The Record. The State is considering shrinking the drug free school zones because they are finding in the inner city areas everything is in a drug free school zone. She did not think that applied to Fair Lawn. She would like to the Council to do a resolution supporting leaving the zones alone.

There was a unanimous consensus to adopt a resolution.

**CABLE TV BROADCASTS OF COUNCIL WORK SESSIONS, ZONING AND PLANNING BOARD MEETINGS:**

Councilmember Trawinski stated that he had initially thought it would be a good idea to broadcast the work session, but he was no longer sure that was a good idea. He did think the meetings of the Zoning Board and the Planning Board should be broadcast if the

volunteers are available. Deputy Mayor Weinstein wanted to know how the Boards felt before making a decision. Acting Manager Metzler stated that Stuart Pace has already expressed concern about the drain on their volunteers. Deputy Mayor McCarthy indicated that he did not want criticism if some of the meetings are televised and others are not because the volunteers are not available.

It was agreed that Acting Manager Metzler would check with the Zoning and Planning Boards for their opinion.

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**EMAIL POLICY:**

Councilmember Trawinski noted that he accesses his office email for Borough purposes. He felt they needed a recommendation for a policy. He has decided that any time he sends anything, he will automatically send a copy to the Municipal Clerk.

**SCHEDULE MEETING WITH THE BOARD OF EDUCATION:**

Acting Manager Metzler advised that the Board of Education would like to have a joint Council and Board meeting to discuss the school budget, the relocation of the buses and to continue the discussion on vacating Fairclough Place.

January 23 or 25 was suggested.

**INTRODUCTION OF EDC, RRIC, BID:**

Deputy Mayor Weinstein and Councilmember Trawinski met with Don Smartt who will be coming to the January 24 work session with the chairman of each of the Boards.

**FORMATION OF SUBCOMMITTEE REGARDING COMMUNITY CENTER:**

Deputy Mayor Weinstein suggested that a subcommittee meet with the trustees for an update. Acting Manager Metzler suggested that Superintendent Frey and one or two of the trustees and one or two councilmembers work together. He added that they have been working on the operating costs and the personnel needs for the facility.

There was an unanimous consensus that Deputy Mayor McCarthy and Councilmember Baratta serve on the subcommittee.

Councilmember Trawinski asked Attorney Kates to look at the lease and the charter to see what the Borough can do. He felt that the Council should understand the Borough's rights to the building.

**JOHN ALAIMO BALLFIELD SIGN:**

Mayor Etlar stated that Superintendent Frey asked for approval of the suggested sign.

There was an unanimous consensus to approve the sign but the Council wanted to know the cost.

## **MISCELLANEOUS PUBLIC COMMENTS:**

Arlene Rubinstein, 28 Rutgers Terrace thanked Councilmembers Trawinski and Barratta for the ordinance to extend the ban on pay to play. She requested that a Historic Preservation Commission be established in the next two months.

Don Oliver, 8-32 Mitchell Place stated that two years ago he recommended that the field they are going to rename for John Alaimo be named for Mary Ann Collura.

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Stewart Golding, 14 Rutgers Terrace objected to single source bidding. He thought that the police needed to be reallocated so they could focus on pedestrian safety. He concluded by praising the garbage company and the recycling employees.

Donal Meyers, 8-22 Mayfair Terrace recommended that the Council rezone the Naugle house very quickly. He urged them to pass the pay to play ordinance quickly. He noted that there is a tremendous amount of money wheeled into the campaign at the last minute. The people of Fair Lawn are entitled to not worry about the loss of their homes through eminent domain.

June Meyerson, 15 Ballard Place expressed support for the planned community democracy ordinance. She described the meeting with Congressman Rothman and then read the letter from him to Governor Corzine concerning the governance of Radburn.

Stuart Shaw, 19-32 Chandler Drive urged rezoning the Naugle House. He also thought more could be done to ban pay to play.

Craig Miller, 5 Ramapo Terrace thanked the Council for having the lights turned on at Morlot Avenue and 17<sup>th</sup> Street. He asked if it was possible to have the agendas for the Planning Board and the Zoning Board of Adjustment posted on the website. He also asked for increased police patrols on Fair Lawn Avenue.

Acting Manager Metzler stated that they are conducting a study to determine whether it is possible to man the communication center with all civilians which would put more officers on the street. They are looking at all the programs that pull the officers off the streets. Mayor Etlar felt the Council should consider creating some type of traffic division.

Maureen Moriarty, 14 Burnham Place thanked the Council for their support of democracy in Radburn. She noted that the houses across Plaza Road are also contaminated. She suggested that even if they do not put a moratorium in place at least they should not allow development until a letter of no further action is received from the DEP.

Harvey Rubinstein, 28 Rutgers Terrace, suggested that advertising the Recreation Center might bring in some funds. The Planning Board is holding a special meeting on the Naugle House on January 30. He asked for an explanation of Third Circuit and Eighth Circuit.

Councilmember McCarthy explained that they are federal judicial districts. New Jersey is in the Third Circuit.

Mr. Rubinstein stated that it did not make a difference whether an applicant had made contributions to any political party. When they appeared before the Planning Board, he would treat them in a fair manner. He concluded by saying that he thought the Zoning Board and the Planning Board meetings should be filmed.

Robert Gulack, 4 Bancroft Place did not believe the planned democracy ordinance was preempted by State law. The ordinance goes beyond PREDFA . He believed that the by-laws precluded the Radburn residents from fixing the problem themselves. He believed that the Borough had the right to assist them.

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Kathy Moore, 13-16 Plaza Road urged the Council to make supporting democracy in Radburn a priority. She expressed concern that no one is meeting with the homeowners and keeping them up to date on the contamination. She wanted the Borough to push the DEP to widen the area of testing.

Suzanne DiGeronimo, 16 Beekman Place suggested that the Naugle House be preserved through the open space funds. She expressed concern that if the applicant presents a plan that complies with the zoning ordinance, the Borough will have to approve the development. She also felt the Borough needs a new master plan.

Pam Coles, 13-34 George Street wants the Naugle House preserved and restored. She express concern about traffic safety. She felt that Fair Lawn has become a cut through town. She urged the Council to make democracy in Radburn a top priority.

Councilmember Trawinski noted that he had seen nothing but a willingness to cooperate on the ordinance to ban pay to play by Mayor Etlar, Deputy Mayor Weinstein and Deputy Mayor McCarthy. He suggested that they judge them by their actions.

### **CLOSED SESSION:**

Upon motion by Deputy Mayor McCarthy and seconded by Councilmember Trawinski, 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 Contract Negotiations, 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 resolution of this matter within 180 days 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 10:15 p.m.

**MAPLE AVENUE DEED RESTRICTION:**

Stuart Liebman was present. He pointed out that restrictions have been removed on some of the properties without any consideration. The municipality is not in the business of owning and controlling restrictions and then leasing them. The restriction either serves the purpose as a buffer or it does not. If it does not, then it can be removed. When the  
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property is developed it will be reassessed and additional revenue in the form of taxes will be received by the Borough. It has been handled unevenly so far. They cannot construct a building with a restriction under it. No bank will lend money if there is a license under the building when the license can be revoked. He suggested they remove the restriction, allow the building to be built and the taxes be achieved without any restriction. If there is an administrative fee for changing the maps, paying the Borough Attorney and whoever is required to work on this matter, they would accept a one time fee.

Deputy Mayor Etler stated the Council feels that an assessment has to be made. The question is how much the fee should be. The Council has reached a consensus. He suggested that Mr. Liebman and Acting Manager Metzler should discuss it.

Mr. Liebman stated that they have a law suit pending that can be amended alleging the constitutional violation. His client is leaving 40 feet from the rear of the property. The restriction should be removed where the parking lot and the building. He believes the restriction taints the property.

Councilmember Trawinski did not think that he was bound by the actions of the past Councils. He was not convinced that the restriction is not needed behind this property. He does not think a modest fee is out of line. He thought it was his responsibility to seek a fair license fee.

Deputy Mayor Weinstein stated that it is the feeling of some of the business owners that a fair and reasonable fee is necessary.

**CLOSED SESSION:**

Upon motion by Deputy Mayor McCarthy and seconded by Councilmember Trawinski, the following closed session resolution was unanimously adopted at 10:30 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, Pending Litigation, Acquisition of Real Estate and Contract Negotiations, 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 or Acting Manager in 60 to 90 days, relating to Pending Litigation at the conclusion of the legal action except for legal strategy, relating to Acquisition of Real Estate at the conclusion of any contract with the exception of legal strategy and Contract Negotiations upon the conclusion of the contract within 180 days with the exception of legal strategy.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough  
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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.

Deputy Mayor Etler reconvened the meeting at 11:15 p.m.

**Seating Chart:**

Councilmember Trawinski expressed concern about the seating arrangement at the regular Council meetings. Deputy Mayor Etler indicated that he wanted the attorney on one side and the acting manager on the other. Councilmember Trawinski thought the attorney and the acting manager should be next to each other. Councilmember McCarthy suggested that he and Councilmember Trawinski change seats.

**Adjournment:**

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, the meeting was adjourned at 11:20 p.m.

pectfully submitted,

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

The undersigned have read and approve the foregoing minutes.

Mayor Martin Etler

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Councilmember Jeanne Baratta

Deputy Mayor Owen McCarthy

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Councilmember Edward J. Trawinski

Deputy Mayor Steven Weinstein