

WORK SESSION OF JUNE 20, 2006

Mayor Etler called the meeting to order at 7:31 p.m.

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

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

Review of Tentative Agenda (6/27/06):

Manager Metzler stated that several resolutions will need to be added the Agenda for next week which included reject/rescinding the bid award for Fire Department and Fire Prevention Uniforms since the bid specs will be rewritten, authorizing application for the municipal alliance grant and endorsing Bergen County Open Space Trust Fund Municipal Park Improvement and Land Acquisition Program grant application - Board of Education.

Mayor Etler asked that the discussion on the Holocaust Memorial Dedication be moved to #3 on this agenda because Mr. Horn was present.

Banning Sex Offenders from Residing within 1000 feet of Elementary School, Playground or Childcare Center:

Chief Rose and Detective Ietto were present. Chief Rose said the Fair Lawn Police Department encourages sex offenders to stay away from the schools, parks, etc, within the Borough. There is the loitering aspect that they enforce. There are other laws that have been considered unconstitutionally vague which may make them spend a considerable amount of money to make case law to defend it.

Detective Ietto stated he had looked over the ordinance. In order for someone to be part of Megan's law, they have to be convicted of a sex offense or one of the underlying offenses, such as kidnaping or being found not guilty by reason of insanity and that is not addressed in the ordinance. The Megan law has three tiers. Tier one is the lowest which are the people mostly likely to commit that act again. In addition to that, there are reporting regulations which could be every 90 days or once a year. They have to see him and there are several forms that have to be filled out and he reads them their rights in the Megan's law. The difference between the 90 days and one year depends on whether or not they are compulsive. If they are, they will have to come in every 90 days to see him regardless of what tier they are in.

Chief Rose said there are about twelve offenders living in Fair Lawn. The Police Department will support and enforce whatever the Council decides to do, but he felt they should spend a little more time on it so they don't have to go into litigation. When he tried to get information from the Prosecutors Office, although they are usually pretty responsive with information, he got the feeling that they did not want to get involved with this and that it would be up to the Mayor and Council and Borough Attorney. He is concerned that the policy in the Prosecutor's Office was not to get involved in it because it could be litigious. He went through the ordinance and found some things that could be

simplified for the Police Department. He thought some of the wording should be standardized in the ordinance so it is easy to enforce. He does have a concern about the loitering aspect of it.

Councilmember Trawinski stated that he understood the reluctance of the Prosecutor's Office and is disappointed for them not showing guidance to a Police Department when they ask for help. Chief Rose said he went to Megan's Law individual not the Prosecutor. Councilmember Trawinski said his first reaction when he heard it two or three years ago was that it would be declared unconstitutional and yet the 8th Circuit Court of Appeals ruled that Iowa's statutes and the ordinances were legitimate and were constitutional. There are municipalities such as Cherry Hill, Hamilton, Brick Township and others that are saying this is worth doing because banning sex offenders from coming near areas where children congregate is something they ought to do. He did think that Detective Letto made a good point about the tier two and tier three offenders and he noticed that one of the towns had woven that into their ordinance. He would like to see the Attorney go back and rework the proposed draft with the Police Department's and Detective Letto's comments about tier two and tier three added since those are the most serious offenders. Councilmember Trawinski said that he would be willing to hear from other Councilmembers about tier two and tier three. He said it was Middletown that had the focus on tier two and tier three.

Deputy Mayor Weinstein agreed they should incorporate the Chief's comments and felt that they should reach out to Saddle Brook and Elmwood Park and give them some of the input of what they are doing since they are the surrounding towns. He felt the Borough Attorney should incorporate the comments from the Chief and Detective Letto.

Detective Letto said the ordinance has 1,000 feet from school, which is the same as the drug law. It also has 300 feet from a park, all these parks would have to be re-engineered. A lot of towns have different footage. Councilmembers Trawinski thought that the 1,000 feet may not work in as densely developed municipality as Fair Lawn. Detective Letto said with the parks the Borough has, they have already been engineered with 500 feet radius, so he wasn't sure if they want to increase it or leave it as it is. Councilmembers Trawinski said he felt they should rely on the existing maps. Chief Rose said they could start with that.

Deputy Mayor McCarthy felt it would save some costs doing it that way opposed to doing new Engineering studies if they already have the maps. He felt they would be giving more protection reducing the number and that makes sense.

Councilmembers Baratta referred to a comment from Superintendent of Parks and Recreation Frey on something the way the parks were worded. Deputy Mayor Weinstein thought he called it playgrounds instead of parks.

Councilmembers Trawinski said they should incorporate the changes and come back to the Council with another draft and make sure the draft goes to Chief Rose and Detective

letto.

There was a unanimous consensus to move forward as Councilmembers Trawinski proposed. Attorney Kates said at the next work session he would have another draft.

Towing Ordinance:

Mayor Etler said they were going to talk about cruising, storing vehicles on the street and the existing authorized Police towers. Councilmembers Trawinski felt they should proceed with banning storing vehicles on Borough streets. Mayor Etler felt they should prohibit cruising on private property as Hackensack did in their ordinance. Councilmembers Trawinski said in regard to authorized Police Towers he believed if one does not meet the requirements the Police Department should be stricter.

There was a consensus to add these items to the ordinance.

Holocaust Memorial Dedication Date:

Manager Metzler said he had received a call from Mr. Horn about scheduling a date for the dedication. He wanted to ask the Council when they would like it. Mr. Horn was present. He explained that he is a Holocaust survivor. He felt it was a dying generation and wanted to leave something for the new generation. He said they wanted to make a change on the wording of the Memorial. Mayor Etler asked if Fair Lawn residents were part of the Eastside Social Center. He suggested adding a line that said "A Fair Lawn Organization of Holocaust Survivors". Manager Metzler asked Mr. Horn if he had a date in mind to dedicate it. Mr. Horn said he would contact Manager Metzler when the plaque was done.

Property Maintenance Issues at 27-01 Broadway:

Deputy Mayor McCarthy said at the last Planning Board meeting, a Food Handlers application was approved for the pizzeria at 27-03 Broadway. During the hearing, questions were raised about the property next door at 27-01 Broadway, which is somewhat

of an eye sore. While this had no bearing on the food handlers application, he advised the other members of the Planning Board that he would bring this up at the next work session.

Mr. Smartt and Mr. Bate were present. Mr. Smartt stated that he has visited this store and spoke to the owner and to his attorney. He was offered a grant for a sign which he declined. The owner is not listening to anyone. The rear entrance is not inviting. He felt the Borough has done everything but there is still a hole that exists. He did not know if it could be fixed by an ordinance. The owner of the property is Richard Carino who lives in Franklin Lakes. Mr. Smartt stated that the two organizations that he is part of are working to

improve the business in Fair Lawn. He is not pleased with this situation.

Deputy Mayor Weinstein questioned if any actions have been taken by Property Maintenance or the Building Department since it is not used as a store. Councilmember Trawinski thought it sounded like a zoning issue. Attorney Kates advised that self storage is prohibited. Councilmember Trawinski suggested looking at the site plan, look into property maintenance code, check for peeling chipping paint and if there are any sign violations.

Deputy Mayor McCarthy suggested that a letter be sent to the property owner, Mr. Carino. Attorney Kates stated he would send the letter. Deputy Mayor McCarthy said the new owner of the pizza parlor wants to work with the Borough but his property is not the issue. Mr. Smartt asked who would work with the zoning issue. Mayor Etlar said that it should be delegated to Manager Metzler and Attorney Kates to work out strategies.

There was a unanimous consensus to have Manager Metzler and Attorney Kates work on this.

Councilmember Trawinski asked if they could find out from the Zoning Board secretary if there is an approved site plan to see if existing conditions comply with the plan.

New Jersey DataNet Telecom, LLC Presentation:

Manager Metzler said that he had received a letter from New Jersey DataNet Telecom, LLC requesting the Borough's consent to access the right of way. He asked them to come in to speak to the Mayor and Council.

Bradford Stern and Martin Rothfelder from Rothfelder Stern, 625 Central Avenue, Westfield, New Jersey were present. Mr. Stern said his firm represents New Jersey DataNet Telecom, LLC. DataNet is requesting that the Borough of Fair Lawn act to adopt a resolution consenting to DataNet's use of the Borough's public rights-of-way for the purpose of placing its telecommunications facilities therein.

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Mr. Stern said that DataNet is a privately held company that is authorized by the New Jersey Board of Public Utilities to provide telecommunications services in New Jersey. Utilizing large-capacity, fiber-optic cable, DataNet provides primarily data transmission services. DataNet is an Internet Services Provider, but does not offer either local telephone service or cable television service to residential or commercial end-users.

DataNet has entered into pole attachment, underground conduit and similar agreements with public utilities that already have facilities within the public rights-of-way in order to run its fiber optic cable overhead on existing poles or underground within existing conduit as needed to connect to a customer's facilities. DataNet requests specific and limited use of the Borough's public rights-of-way in order to provide its services. The fiber optic cable

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DataNet deploys is less than one inch in diameter and its facilities are unobtrusive.

Mr. Stern stated that they have gone to several town that have large customers, such as Woodcliff Lake, the County of Bergen, Township of Mahwah and the Borough of Ramsey which have all adopted consent resolutions granting DataNet access to their respective rights-of-ways. He showed a map of where the fiber optic cable would be run through Fair Lawn. The route would be down Route 208, to McBride and Pollitt Drive. Verizon and PSE&G have poles there already but they will not let them use the poles until there is consent from the Borough.

Councilmember Baratta asked if it would be run through any industrial areas. Mr. Stern said it would not. He explained that they are a utility. The need approval from New Jersey Public Utilities. The statutes that were passed require that any utility that wishes to construct cable lines needs the consent from the Borough. Mayor Etler asked if the Borough would get a franchise fee. Mr. Stern stated that the law prohibits a local government from getting access fees, but that did not mean that DataNet would not pay for any costs involved. Mayor Etler said the Borough does not give away anything. Mr. Stern said several other towns have already approved this. Mayor Etler felt the Borough should get a fee. Councilmember Trawinski suggested that Attorney Kates look into this to see if the Borough can ask for a price. He disagreed with Mayor Etler because the Board of Public Utilities cannot regulate them unless they are a utility.

Attorney Kates advised that it is a public rights-of-way. Right now Verizon is running a fiber optic cable in every residential area. Why is this any different. Mayor Etler said because they were here asking approval from the Mayor and Council.

There was a unanimous consensus for Attorney Kates to review this further and report back to the Mayor and Council.

Tree Ordinance:

Councilmember Baratta said that she and Deputy Mayor Weinstein attended a meeting regarding the trees. The main subject was how to enforce the ordinance. Mayor Etler suggested Channel 77, the new homeowner packets and other ways to do it. Councilmember Baratta suggested adding it to the recycling handbook and to make an informational video for Channel 77 to broadcast. Deputy Mayor McCarthy suggest getting the information to the Planning and Zoning Boards so they could give it out with their applications because they should be informed. Councilmember Trawinski thought that any time a building permit is issued they should be reminded about the tree ordinance. Mayor Etler suggested they get more information about this to be discussed at another time.

McDonalds Possible Zoning Violations:

Attorney Kates advised that they were on an administrative hold. Until the judge releases the case or is resolved in a case management with the judge the Borough waived its right

when it leaped over the Zoning Board. He will appear in Court on behalf of the Borough sometime in July. He advised that they could go to the Zoning Board and tell them to close the driveway. The Zoning Board reserved the right in 1983 to look at it again but the owner will have to be notified.

Deputy Mayor McCarthy asked if the one way had been set up. Manager Metzler stated that it is due to be in place before the next meeting. The Police Department was checking the speed of cars on Rosalie and 35th Street. They placed traffic counting devices on the road to get a base line. They want to see how it impacts the neighbors.

Rezoning Clariant Property:

Attorney Kates advised that this was on hold until the next work session. Councilmember Trawinski suggested sending this plan to the school board since there will be a number of children going to school from that type of development. Let them tell the Mayor and Council what type of impact it will be on them.

Recreation/Center Community Fee Schedule:

Councilmember Trawinski stated that the fees seem on the lower side but felt it will be better to start on the low side. Having seen all the rooms, he would be ready to support these fees. Manager Metzler stated that from September 9 till after Thanksgiving, there is a live show booked every Saturday night.

A lengthy discussion took place regarding the fees for residents and non-residents, Manager Metzler suggested a \$150 annual fee for non residents.

There was a unanimous consensus for \$150 fee for non residents and to go with the fee schedule as proposed earlier to be reviewed in December.

Berkshire Road/Arcadia Road Flooding Problems:

Councilmember Trawinski said he had received an e-mail from Albee Palmieri about the flooding in front of his house at 23-33 Arcadia Road. He said the grant application process was initiated while he was on the Council the last time. He did not know what happened to the solution that had been planned that would have involved connection to the County system for which permission had been obtained when he was on the Council in the late 1990's.

Mayor Etlar stated that funding has been in place, the contractor is in place and they are scheduled to put new pipes int to connect to the County pipes on Midland Avenue. The County will have to dredge the brook. They did not start yet because the contract went to PSE&G who has to move the pipes.

Manager Metzler stated that the Borough has the money they received from various

sources. The Borough has applied for additional funding. Engineering has said that what Fair Lawn does will not have much impact without the County's help with the brook.

Councilmember Trawinski said there is an alternate route that ties in with the County. Ed Renuska will be the one to talk to. There was an authorization in place from the County after the Freeholders met. He suggested that they have Engineering take a close look at it and report back to the Council. He asked Manager Metzler to give a detailed response to Mr. Palmieri.

Shared Services Central Bergen:

Manager Metzler gave an update of the meeting he had with Administrators from ten towns. Fair Lawn will be the lead agency for one year. Currently they are looking at street paving. There is a resolution that needs to be done and signed by all towns. He will put that resolution on consent at the next meeting. As an example if there are motorized equipment that needs to be purchased, they will group them together and write the specs for all of them so that they will get multiple bids. Mayor Etler felt the savings will be great. Manager Metzler said they need to do a consensus so they can be a part of it.

There was a unanimous consensus to take part in the Shared Services Central Bergen Program.

Endorsement of Open Space Application - Board of Education (Warren Point/Milnes School):

Mayor Etler stated this was endorsement for \$56,000 from Open Space for Warren Point and Milnes school. Manager Metzler explained that this grant needs the municipal endorsement for it.

There was a consensus to authorize an endorsement resolution.

National Incident Management System (NIMS) Training:

Manager Metzler stated that as part of the National Incident Management System, the elected officials are required to take this training by January 1, 2007. It will affect Federal funding to the Borough. Deputy Mayor McCarthy suggested scheduling a special meeting to handle this. Manager Metzler said they can discuss the date at the next work session.

Appointment of Community Development Representatives:

Mayor Etler stated that he and Deputy Mayor Weinstein would like to continue being the representative for Community Development. Deputy Mayor Weinstein said Mayor Etler could be the principal and he would be the alternate.

There was a unanimous consensus to appoint Mayor Etler and Deputy Mayor Weinstein

as Community Development Representatives.

15-51 Elmary Place - Rescinding Resolution No. 201-2006 & Adopting New Resolution:

Manager Metzler said that previously the Council passed a resolution allowing bricks to be put on the driveway but it has been determined that the measurements were incorrect.

There was a consensus to adopt a new resolution with the correct measurements.

July and August Meeting Schedule:

Councilmember Trawinski stated that as a former Councilmember he knew that the summer meeting dates were different but since they have a new Councilmember he just wanted to clarify it for her. There will be no changes to the meeting schedule.

Public Comments:

Harvey Rubinstein, 28 Rutgers Terrace, stated that shared buying was a good thing. He questioned what the open space was. Deputy Mayor Weinstein stated it was for playground equipment.

Craig Miller, 5 Ramapo Terrace, suggested that the Manager ask Chief Rose concerning the property at 27-01 Broadway and how no one can see inside the store.

Mr. Miller asked about the light at Chandler Drive and about the crossing at Plaza Road and how the hand stays red. In an article in The Record he noticed that Fair Lawn Avenue and Saddle River Road were mentioned as a dangerous accident intersection.

Stuart Golding, 14 Rutgers Terrace, discussed the hand signal not working properly too. He does see a lot of people turning on red. He mentioned that on Sunday Radburn hung a plaque distinguishing Radburn as a historic site. He thought the Council should look into the Master Plan and have it designated as National Historic Site and what the boundaries are. The Zoning and Planning Boards should have a copy of that restriction relative to the property.

Master Plan - Radburn:

Councilmember Trawinski thought they should refer the Master Plan to the Planning Board to take a look at it again to include Radburn as a National Historic Site.

There was a unanimous consensus to refer it to the Planning Board.

CLOSED SESSION:

Upon motion by Deputy Mayor McCarthy and seconded by Councilmember Trawinski, the following closed session resolution was unanimously adopted at 9:50 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; 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;

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.

Adjournment:

Upon motion by Deputy Mayor McCarthy and a second by Councilmember Baratta, the meeting was adjourned at 9:50 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

Mayor Martin Etler

Councilmember Jeanne Baratta

Deputy Mayor Owen McCarthy

Councilmember Edward J. Trawinski

Deputy Mayor Steven Weinstein