

WORK SESSION OF NOVEMBER 21, 2006

Mayor Etler called the meeting to order at 7:30 p.m.

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

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

CLOSED SESSION:

Upon motion by Deputy Mayor Weinstein and seconded by Councilmember Baratta 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 Pending Litigation and Attorney/Client Privilege; 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 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 8:25 p.m.

REVIEW OF TENTATIVE AGENDA (11/28/06)

Municipal Clerk Kwasniewski stated that she would like to add the award of bid for the disposal of solid waste, the approval of a raffle from the HSA Alexander Hamilton School, the swearing in of a new police officer and a change order for roadway improvements. Councilmember Trawinski asked if she had received the information from the Chief Financial Officer on the transfers. Municipal Clerk Kwasniewski stated that he had advised her that she will have it for their packages on Wednesday.

PROPOSED ORDINANCE TO PROHIBIT UNDERAGE DRINKING ON PRIVATE PROPERTY

Deputy Mayor Weinstein stated that the Mayor and Council agreed to pass the ordinance but he proposed several changes to the draft ordinance. He suggested that the

language in section 1 be changed to in the presence of or permission of the parent, grandparent or legal guardian. He suggested that the penalty for the first offense be a fine up to \$250 and court approved alcohol counseling and 20 hours of community service.

Councilmember Baratta pointed out that the proposed ordinance leaves it to the discretion of the judge. Page Two

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Deputy Mayor Tedeschi would like to see the revocation or postponement of their driver's license for three months. Councilmember Trawinski thought the court should have the discretion but would agree to up to three months.

Deputy Mayor Weinstein suggested that the penalty for the 2nd and 3rd offense should be increased to \$350.00 and the license should be revoked for six months.

The consensus was to make the changes and introduce the ordinance at the next meeting.

Deputy Mayor Tedeschi suggested that a copy of the ordinance be sent to the Board of Education and to the High School and Middle Schools.

RELIGIOUS AND HOLIDAY DISPLAYS ON PUBLIC PROPERTY

Deputy Mayor Weinstein felt that they need to be inclusive and to embrace the diversity of Fair Lawn. He believed that they should put the holiday displays on the Borough property. Councilmember Trawinski indicated that he changed his position from ten years ago because of the up dated opinion of the Borough attorney which is that if they allow the religious display they are not automatically opening the lawn to every secular group. He has heard the arguments that by embracing the religious diversity and celebrating that diversity they are violating the establishment clause of the constitution. However, he believes that they are doing the very thing that the founding fathers envisioned. If it is good enough for Trenton and the White House, it is good enough for Fair Lawn.

Councilmember Baratta indicated that personally she had no problem with the menorah on the Borough property. She wanted to be inclusive. Then she listened to opinions of others. Both sides made valid arguments. She welcomes the menorah.

Deputy Mayor Tedeschi stated that 12 years ago he thought it was a good idea. He still thinks it is a good idea. He lives here because of Fair Lawn's diversity. It makes Fair Lawn a stronger community. The strength of Fair Lawn is that they respect everyone.

Mayor Etler disagreed. He does not think it is a good idea. He strongly disagrees with putting religious icons on public property. They should not encroach onto government. Religion and politics should not mix. He respectfully disagreed with the other Councilmembers.

Attorney Kates indicated that they will need some form of regulatory scheme. Deputy Mayor Weinstein suggested that the Borough Attorney and Manager work together to draft standards that will allow a dignified display in front of Borough Hall.

The consensus was to allow religious displays on public property with Mayor Etler dissenting.

TOWING

Councilmember Trawinski stated that the Council had said they would revisit this issue.

Attorney Kates stated that he has not received any further communication from Citywide Page Three

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Towing. Chief Rose has notified Bennett Kay that they are suspended from the police towing list. Manager Metzler indicated that he has not received anything from Citywide Towing. Councilmember Trawinski suggested leaving it off the agenda until they are contacted by the tower or his attorney.

COUNTY DOG RUN

Deputy Mayor Weinstein reported that he has received several requests for a dog run. He suggested that the County Park off Saddle River Road would be an ideal location for a dog run. He suggested that they send a letter to the County requesting that a portion of the Park be used as a dog run. The consensus was for Municipal Clerk Kwasnieski to send a letter to the County Executive.

RESOLUTION REQUESTING THE COUNTY TO PURCHASE THE NAUGLE HOUSE AND THE RIGHTS TO THE VANDERPLAAT PROPERTY

Deputy Mayor Weinstein requested that they send a resolution to the County. A few months ago the Open Space Committee applied for funds from the County to purchase the property. Those funds could be used if the County was to purchase the Naugle House and the area around it could be use to rehabilitate the house. Councilmember Trawinski indicated that he supported adopting a resolution and requested that the Council put rezoning the property on a future agenda. The consensus was to adopt a resolution and put this item on the next available work session.

STATUS OF THE AUDIT OF THE COMMUNITY/RECREATION CENTER BY THE 501(c)3

Deputy Mayor Tedeschi stated the 501(c)3 is obligated to file an annual report. He has asked Mr. Cosgrove to speak to the Manager. Manager Metzler advised that they are in the process of doing the audit. He anticipated that it will be completed during the second week in December.

RESOLUTION REQUESTING THE PLANNED WITHDRAWAL OF AMERICAN FORCES FROM IRAQ

Deputy Mayor Tedeschi requested that they adopt a resolution urging Congress to form a bipartisan committee recommending the planned withdrawal of troops from Iraq. The resolution asks the highest government in the Country to look at stopping the killing and wasting billions of dollars that are needed here. This Council should ask its elected federal officials to consider this. If enough people ask for this, someone will listen.

Councilmember Trawinski indicated that he would have agreed with the request by Deputy Mayor Tedeschi before March 2006 but this is already taking place in Washington. An Iraqi study group has been formed to address these issues. In the past he has been told that it was not appropriate to ask the Freeholders to join the Council in supporting banning dual office holding because it was not a Fair Lawn problem. He thought the resolution is an insult to the elected representatives. They are the ones

and they are doing it. The President has finally got the message. He called two soldiers serving in Iraq and asked them how they would feel if Councilmembers in their town adopted a resolution calling for the withdrawal of American troops within six months. They said they thought it would be devastating and a morale downer. This still sounds like cut and run instead of turn and walk. In USA Today General Clark says a rigid timetable is a bad option. He did not think it was an appropriate position for this Council.

Deputy Mayor Tedeschi thought it was the responsibility of elected officials to carry this issue. The resolution says to find a way to systematically get out of Iraq. The Council has every right to voice its opinion. They represent the taxpayers who are paying for this war. It is the 19 and 20 year olds that are dying because they have loyalty. It does not mean it is right. The resolution just asks them to find a way.

Councilmember Baratta indicated that she liked helping solve their problems. She agreed with the majority of the resolution except for the ending language. She thought they already had a bipartisan committee. The resolution says what the committee is supposed to determine.

Deputy Mayor Weinstein felt that they could not compare the lives of those in Iraq to dual office holding. This is real life with real people dying. He supports the resolution.

Councilmember Trawinski indicated that he did not understand what the resolution is asking since the Iraqi study group has been formed. He asked that the resolution be amended to support the work of the Iraqi study group. Deputy Mayor Tedeschi declined to amend the resolution.

Mayor Etlar pointed out that more than 3,000 have been killed and 25,000 wounded. The Iraqi war was the single most important factor in the past election. It is chaos and the troops are in the middle of it.

There was a consensus to adopt the resolution with Councilmembers Baratta and Trawinski voting present.

REZONING 177 LINCOLN AVENUE

Councilmember Trawinski stated that he received a number of emails and concerns from the residents on the street that backs up to Lincoln Avenue. He reviewed the minutes and paperwork that led to the rezoning last December and was surprised that the applicant said they were planning to build eight luxury units. After the rezoning, they submitted a plan for nine. The Planning Board did not render a decision if it was consistent or inconsistent with the master plan. The master plan was less than clear. He felt they should zone it back to

B-2 and then next year look at it as a comprehensive study of the master plan.

Mayor Etlar pointed out that they had a number of meetings and the Planning Board reviewed it and recommended the change. The mechanics are before the Planning Board. He did not think it should be rezoned.

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Councilmember Baratta stated that she walked that property. The grade is terrible. The residents would prefer another commercial property. The development will be much higher. Parking is a problem. It is ill conceived.

Mayor Etlar stated that the application is before the Planning Board so any concerns should be presented to them. Deputy Mayor Weinstein felt the Council should not tamper with the process. The application is before the Planning Board. It is their job to take into consideration traffic studies. Councilmember Trawinski thought the applicant was abusing the Planning Board process. They have had a number of delays so now he application will be heard in December which is the worst month for the public. Townhouses on that site require variance relief. It is inconsistent with the Borough's planner. The Planning Board did not say that they found it consistent or inconsistent with the master plan. The Planning Board did not discuss the issue of consistency or inconsistency at all. The Council should look at it again based on the residents' concerns.

Deputy Mayor Tedeschi wondered if they were circumventing the Planning Board before they have even gone through the process. Councilmember Trawinski stated that when enough residents are concerned, it is proper to take the jurisdiction away from the Planning Board. Attorney Kates stated that in the planning process if the Mayor and Council receive notice that something is wrong with its ordinance, they have the right to channel public review. In the process of amending any ordinances the Planning Board's role is to receive, review and report on it. They deserve the opportunity to take a second look at the ordinance. It is perhaps interfering with the developer's right by doing it but case law allows it.

Deputy Mayor Weinstein indicated that he would support the Planning Board taking another look at it. Councilmember Trawinski stated the residents have some good points. He wondered if they could ask the Planning Board to listen to them before they review it. Attorney Kates said the Council can ask that but they cannot mandate it.

There was an unanimous consensus to ask the Planning Board to take another look at this matter.

SIDEWALK REPLACEMENT ASSESSMENT PLAN

Mayor Etlar suggested a subcommittee of himself and Deputy Mayor Tedeschi to meet with the Manager and the Borough Attorney. Councilmember Trawinski wanted to know why the Council would not do this as the Council.

The consensus was to have a subcommittee of Mayor Etlar and Deputy Mayor Tedeschi.

IHOP/MCDONALDS VACATING A PORTION OF CONNECTING ROAD BETWEEN 37TH STREET AND BROADWAY

Borough Attorney Kates gave an interim report. He has been working as a mediator to have some sort of dialog between the IHOP and the McDonald's property owners with the support of the McDonald's corporate counsel. There have been two meetings. IHOP and Page Six Work Session November 21, 2006

McDonalds have agreed to share the cost of a study of the parking lots with the objective of working out a safe and feasible settlement for the free flow of traffic. It will keep 37th Street closed. The Council has determined that it is a public nuisance and has reacted with a tough towing ordinance, closing off of the street and said to the property owners that they must resolve this matter.

Councilmember Trawinski noted that there are two more signs that he believes are not legal. Manager Metzler advised that he received a report from the Property Maintenance Officer stating that a violation went before the Municipal Judge. The resolution to that was that the violation was dismissed but McDonalds agreed to remove the cones on the exit between IHOP and McDonalds. Councilmember Trawinski thought they now have Jersey barriers. Manager Metzler will check it out.

INTERLOCAL AGREEMENT WITH BOARD OF EDUCATION - COOPERATIVE PURCHASING

Manager Metzler reported that on October 25 he received a copy of the agreement. He will be sending a copy of it to the Council. They are going to start out with shared purchases of computers, printer supplies, copy paper and cleaning supplies. The Borough will start maintaining their buses. The agreement will allow the Borough to take advantage to the Board of Education's photocopying facilities. He expects to have the final draft ready for the next meeting.

CDBG - FIRE COMPANY #3

This item was removed.

FAIR LAWN RESCUE WAY (TEMPORARILY RENAME PARMELEE AVENUE)

Manager Metzler reported that he received a letter asking that Parmelee Avenue be temporarily renamed to acknowledge the Rescue Squad's 50 years of service.

There was an unanimous consensus to temporarily rename Parmelee Avenue.

EMPLOYEE RETIREMENT LUNCHEON

Manager Metzler indicated that for the past 10 years they have had a retirement luncheon for the employees in December. He had received a few questions asking if Councilmembers should attend that luncheon. The consensus was that the Councilmembers should attend but it is an event for the employees.

ESTABLISH COUNCIL PRIORITIES

Manager Metzler wanted to know the Council's expectation of staff. The Council asks for items during the work session. Periodically a Councilmember calls about certain items that are important to him/her and that realigns the priorities. Deputy Mayor Weinstein felt the priorities should remain what is set at the work session. If Councilmembers have other

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requests, they should come after those items. Deputy Mayor Tedeschi pointed out that every Councilmember has oversight responsibility. If the council maintains its oversight and has the common sense to let staff do their jobs, everyone will be successful.

SPECIAL MEETING:

Upon motion by Deputy Mayor Weinstein and a second by Deputy Mayor Tedeschi, the Work Session was recessed to the Special Meeting.

Mayor Etlar reconvened the Work Session at 9:35 p.m.

CAPITAL BUDGET:

Manager Metzler noted that the Mayor and Council have received a copy of the 2007 capital budget. He asked if they could start their December 5, 2006 meeting at 6:00 p.m. and devote two hours to discuss the Capital Budget with the Chief Financial Officer. The work session could start at 8:00 p.m. instead of 7:30 p.m.

APPOINTMENTS FOR 2007:

Municipal Clerk Kwasniewski reminded the Mayor and Council that they need to start working on their appointments. With the financial disclosure documents required by the Pay to Play statutes and ordinance, she needs time to get notices out to the professionals that the Mayor and Council will be hiring and they have to return them to her 10 days prior to awarding any contract. She will distribute the list of the Boards and Committees as well as the list of the terms that are expiring. She requested that they at least begin the process at the December 5 meeting.

PUBLIC COMMENTS:

Jane DiPeveen, 14 Ryder Road was glad to see the resolution asking the County to purchase the Naugle house and the rights to the Vanderplaat property. She reminded them that a number of years ago the County approached the Borough and asked them to help pay for the purchase. Mayor Etler responded that he did not believe that to be the case. Deputy Mayor Weinstein advised her that they have applied for open space funds.

Ms. DiPeveen continued that she thought the rezoning of the Lincoln Avenue property was spot zoning. It is not in compliance with the master plan. The rezoning was R-3-1 which is for apartments. It does not permit townhouses. The height permitted is two stories but the plan is for three stories. This is another example of the problems that occur because the Borough does not have a master plan. She requested that they put money into next years budget to start the master plan process. She was delighted that they are looking at removing the buses from the Bergen Avenue school. There is no sidewalk at the Community Center. Manager Metzler will look into it.

Michael Obsuth, 1-21 37th Street stated that the barriers at McDonalds are still there. Manager Metzler assured him that property maintenance and zoning will be out there tomorrow.

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Mr. Obsuth continued that they could turn 37th Street into a cul-de-sac. Attorney Kates advised that they are trying to create a situation that works for the community but they are limited because it is private property. The matter is still before the Zoning Board. He does not know what the outcome will be. Mr. Obsuth objected to the site plan being delayed. Attorney Kates advised that they are going month to month at this point.

Lou Silvestro, 1-26 37th Street asked about the decision made by IHOP and McDonalds. Council. Attorney Kates stated there will be public discussion at the Council level first. Mr. Silvestro asked if there will be a permanent curb at the entrance that is closed. Attorney Kates advised that is one of the things under consideration.

Laurie Kern, 12-18 Sumner Place asked about the holiday display. Attorney Kates advised

that a consensus was taken to allow the display. He and the Borough Manager will be working on the guidelines. Ms. Kern stated that everyone knew it was a Christmas tree not a holiday tree. She did not care if they had no display but if they are going to have a display, then everyone should be represented. She disagreed with delaying someone's drivers license for a first offense even if the offender is not driving. Deputy Mayor Weinstein felt strongly that taking away the driver's license will get the attention of the Borough's youth. Councilmember Baratta added that it will be left to the Judge's discretion. Ms. Kern thought loss of a driver's license does not belong in this ordinance. Councilmember Trawinski stated that they heard from Sgt. Bastinek that the potential for the loss of the license would have more of an impact than anything else. The National Counsel on Alcohol and Drug Addiction in New Jersey indicated that loss of a license was the most important penalty as a deterrent.

Reverend Jeffrey N. Leininger, 1-16 67th Street, pastor at Warren Point Presbyterian Church wondered now that the Council has decided that there will be religious and holiday displays on Borough property what the definition of secular and religious symbols is and who will make that determination. He did not think any Christian would object to a menorah but they know that the Christmas tree is not a religious symbol. It is a secular symbol. It will be unfair to Christians if a menorah is placed next to a Christmas tree and they think the problem is solved. He made the point that a menorah is a religious symbol. If there is going to be a menorah, there should be a nativity scene.

Councilmember Trawinski stated the Manager and the Borough Attorney are going to establish the policy on how it is going to be done but the nativity scene is more than welcome. Attorney Kates stated that the cases say that religious symbols including a creche and a menorah in a secular setting are within the policy that the Mayor and Council have established tonight. Councilmember Trawinski stated that one sect of the Jewish community has said they will donate a menorah.

Manager Metzler stated that they need to develop a guideline of how many square feet for each group, the size of the display has to be determined and what the secular display will be. He would like to get it done for this year.

Marv Leavitt, 35-15 High Street was glad that three Councilmembers voted to bring the troops home. It was a good resolution. He continued that religious displays do not belong Page Nine

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on Borough property. He thought there might be a backlash which will result in everything being removed. He felt it would be a divisive action.

Joan Goldstein, 12 Bedford Place stated how nice it was to see Municipal Clerk Kwasniewski back.

Municipal Clerk Kwasniewski stated that she received many cards from the residents and she thanked them all very much for their kind thoughts.

Ms. Goldstein expressed her outrage at the cut and run language used by Councilmember Trawinski indicating that it was divisive. Councilmember Trawinski pointed out that it is a divisive war. She asked the County to put the dog run away from the path so that people who do not want their dogs in the dog run do not have problems. She appreciates the thought of the inclusiveness but she strongly believes that religious icons do not belong on public property. She wanted to know what a “dignified” display will be, what religions will be on display, what is going to be in the display and who gets to decide which religions get to be displayed. She thought there should have been another way to have a festive inclusive display that celebrates everything in Fair Lawn that is secular.

Attorney Kates stated that there are recognized religious and secular symbols by the courts. It will be a holiday display but it will not open the door for free speech issues.

Claud Bienstock, 39-11B Broadway supported the right of the menorah on public property as well as the nativity. He is not a religious expert but he supported the Council’s work on this issue.

Caren Frankel, 19 Hoitsma Court was shocked by the fight on the menorah which represents the culture of the Jewish people. The Jewish people give Fair Lawn a good name. She supported having the menorah to represent the Jewish population.

Rabbi Levi Neubort, 7-09 22nd Street stated that he respected the Mayor’s opinion and expressed his appreciation to Deputy Mayor Weinstein who gave the Council the opportunity to hear the diverse opinions on the menorah matter. He appreciated Deputy Mayor Tedeschi’s sensitivity and his consent to the menorah. Many politicians are only concerned about the voting public. He appreciated that Councilmember Baratta was concerned about the children’s feelings. He thanked Councilmember Trawinski for serving all of the religions in Fair Lawn. Five years ago he offered to donate the menorah. He renewed that offer. He started the campaign for the menorah to be included at Borough Hall to make a young American proud to be Jewish. The Council’s vote this evening has made a young Rabbi proud to be an American.

Pamela Coles, 13-34 George Street stated that it is vital to the future of the community to follow the master plan. They must set some funds aside for the master plan. She expressed concern about the shared services with the Board of Education since the Board of Education does not have very good oversight. She

thanked them for allowing the menorah at the Borough Hall. There are five major religions in the world. She did not agree with the underage drinking ordinance. She thought the burden is being placed on

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the children. The problem lies in the binge drinking and parties. They are not dealing with the problem but with the outcome. Education is vital.

Councilmember Trawinski stated that based on the comments from Sgt. Bastinek and a number of statistics that pointed out that youth alcohol usage had increased from 2001 to 46% for seven and eight graders. The average age that reported regular use of alcohol was 12 1/2 years old. The most common source of alcohol was the home.

Margot Brandes, 16-36 Raymond Street stated the Jewish Community Council of Fair Lawn worked with the Council to remove the creche. The menorah is a secular symbol not a religious symbol. They should not go back to having the creche.

Attorney Kates stated that the menorah is considered a religious symbol by the courts and it opens the door for the placement of the creche. Deputy Mayor Weinstein pointed out that the Fair Lawn Jewish Council recently voted to be neutral about the menorah.

Councilmember Trawinski stated that just because action took place in the past, does not mean that it should not be reviewed.

ADJOURNMENT:

Upon motion by Councilmember Trawinski and second by Deputy Mayor Weinstein, the meeting was adjourned at 10:40 p.m.

Respectfully submitted,

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

The undersigned have read and approve the foregoing minutes.

Mayor Martin Etler

Councilmember Jeanne Baratta

Deputy Mayor Joseph Tedeschi

Councilmember Ed Trawinski

Deputy Mayor Steven Weinstein