

## **REGULAR MEETING OF OCTOBER 10, 2006**

Mayor Etler called the meeting to order at 7:30 p.m. Assistant Municipal Clerk Bojanowski 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 Community News and posted on the Borough of Fair Lawn Website. The annual notice identified the times and locations of the Council meetings and Work Sessions.

**PRESENT:** Mayor Etler and Councilmembers Baratta and Trawinski.

**ABSENT:** Deputy Mayor Weinstein.

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

### **COUNCIL COMMENTS:**

Councilmember Baratta announced that the last day to register vote in the upcoming election is Tuesday, October 17, 2006. The Municipal Clerk's office will be open until 9:00 p.m. that evening. The October 17, 2006 work session will be held in the Council Chambers and the Rent Leveling Board will meet in Room 21. The October 24 Council meeting will be held at the Community Center.

Councilmember Trawinski thanked the Police Department for holding the Police Academy. He, Mayor Etler and Councilmember Baratta attended the opening session of their sixth class. He commended the citizens who participate in this outstanding program. One of the strengths of Fair Lawn is its volunteers and many of those who attend the Police Academy become volunteers for other programs.

Mayor Etler announced that the Court employees received a commendation from the Superior Court of New Jersey for the clearance of 97% of cases filed in Bergen County this fiscal year.

### **ORDINANCES ON FIRST READING:**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, it was unanimously agreed to read the following ordinance by title.

#### **Ordinance No. 2061-2006**

**AN ORDINANCE TO PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS THEREFORE**

Upon motion by Councilman Trawinski and a second by Councilmember Baratta, Resolution No. 316-2006 introducing Ordinance No. 2061-2006 was discussed.

Manager Metzler stated that this ordinance allows the Borough to accept the Open Space grant regarding the picnic pavillion.

There being no further discussion, Resolution No.316-2006 introducing Ordinance No. 2060-2006 was unanimously passed.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to read the following ordinance by title.

#### **Ordinance No. 2062-2006**

#### **AN ORDINANCE TO AMEND THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF FAIR LAWN, 2000, BY AMENDING AND SUPPLEMENTING CHAPTER 232 ENTITLED "VEHICLES AND "TRAFFIC", ARTICLE VII "TRAFFIC"**

Upon motion by Councilman Trawinski and a second by Councilmember Baratta, Resolution No. 317-2006 introducing Ordinance No. 2062-2006 was discussed.

Manager Metzler explained that this ordinance allows for the moving of the bus stop located in front of the municipal building in a westerly direction toward George Street so that it will no longer block the Mary Ann Collura memorial. It also adds a bus stop at Warren Road and Plaza Road because of the improvements being made to the commercial property at the corner of Fair Lawn Avenue and Plaza Road. The ordinance also finalizes making 37<sup>th</sup> Street one way onto Broadway.

There being no further discussion, Resolution No. 317-2006 introducing Ordinance No. 2062-2006 was unanimously passed.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to read the following ordinance by title.

#### **Ordinance No. 2063-2006**

#### **AN ORDINANCE TO MEND CHAPTER 220 OF THE CODE OF THE BOROUGH OF FAIR LAWN 2000 ENTITLED, "TOBACCO", SPECIFICALLY SECTIONS 220-2, 220-3, 220-10, 220-11 AND 220-12**

Upon motion by Councilman Baratta and a second by Councilmember Trawinski, Resolution No. 318-2006 introducing Ordinance No. 2063-2006 was discussed.

Attorney Kates explained that this will amend the Borough's ordinances to change the age from 18 to 19 the violation of selling tobacco to a minor. Councilmember Trawinski thanked Sgt. Bastinek as the juvenile officer and the other members of the Police

Department for their input.

There being no further discussion, Resolution No. 318-2006 introducing Ordinance No. 2063-2006 was unanimously passed.

Upon motion by Councilmember Trawinski, and a second by Councilmember Baratta it was unanimously agreed to read the following ordinance by title.

**Ordinance No. 2064-2006**

**AN ORDINANCE TO AMEND THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF FAIR LAWN 2000 BY AMENDING AND SUPPLEMENTING CHAPTER 125 ENTITLED "LAND DEVELOPMENT", MORE SPECIFICALLY SECTION 125-70 ENTITLED "CHECKLISTS"**

Upon motion by Councilman Baratta and a second by Councilmember Trawinski, Resolution No. 319-2006 introducing Ordinance No. 2064-2006 was discussed.

Councilmember Trawinski noted that he did not have attached to his copy of the ordinance the item referenced under subsection 125-70.h. He was willing to vote to introduce it this evening as long as he received it prior to the adoption. Attorney Kates replied that the actual language of the checklist is in section 3. He then asked what the contribution disclosure statement will say. Attorney Kates indicated he will attach it.

There being no further discussion, Resolution No. 319-2006 introducing Ordinance No. 2064-2006 was unanimously passed.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to read the following ordinance by title.

**Ordinance No. 2065-2006**

**AN ORDINANCE TO AMEND THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 125, ENTITLED "LAND DEVELOPMENT", MORE SPECIFICALLY SECTION 125-24 ENTITLED "B-1 RESTRICTED BUSINESS, B-2 GENERAL BUSINESS AND B-3 BUSINESS ZONES"**

Upon motion by Councilman Baratta and a second by Councilmember Trawinski, Resolution No. 320-2006 introducing Ordinance No. 2065-2006 was discussed.

Councilmember Trawinski requested that the Zoning Board and the Planning Board be advised that this ordinance and Ordinance No. 2064-2006 have been introduced. Attorney Kates should communicate to the Zoning Board attorney that the Borough has clarified the ambiguity in the zoning ordinance. Attorney Kates indicated that that has also been done and the ordinances must also be referred to the Planning Board for its statutory review and report.

There being no further discussion, Resolution No. 320-2006 introducing Ordinance No. 2065-2006 was unanimously passed.

### **PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the time for public comments on Agenda items only was opened.

There being no comments from the public, upon motion by Councilmember Trawinski and a second by Councilmember Baratta, the time for public comments was unanimously closed.

### **RESOLUTIONS BY CONSENT #26-2006**

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Consent Agenda 25-2006 containing the following items was unanimously passed.

- a. Resol. #321-2006 - Approval of Minutes:  
Work Session - 6/20/06  
Closed Session - 6/20/06
- b. Resol. #322-2006 - Approval of Raffles & Bingo:  
H.S.A. Glen Rock Middle School, On-premise 50/50  
Lyncrest Elementary School PTO, Bingo
- c. Resol. #323-2006 - Award of Bid: Fire & Fire Prevention Uniforms
- d. Resol. #324-2006 - Extension of Bid: Tree Trimming
- e. Resol. #325-2006 - Extension of Bid: Tree and Stump Removal
- f. Resol. #326-2006 - Refund of Tax Overpayments
- g. Resol. #327-2006 - Special Item of Revenue - Smart Future Award
- h. Resol. #328-2006 - Special Item of Revenue - Pandemic Influenza Preparedness
- i. Resol. #329-2006 - Special Item of Revenue - Municipal Court Alcohol Education
- j. Resol. #330-2006 - Special Item of Revenue - Domestic Preparedness Grant
- k. Resol. #331-2006 - Special Item of Revenue - Domestic Violence Training
- l. Resol. #332-2006 - Special Item of Revenue - Municipal Alliance Special Program
- m. Resol. #333-2006 - Special Item of Revenue - Recycling Grant
- n. Resol. #334-2006 - Audit Report
- o. Resol. #335-2006 - Confirming Endorsement of CDBG Application: Fair Lawn Jewish Community Council
- p. Resol. #336-2006 - Authorizing Issuance of Massagists Licenses - Julianne Doyley
- q. Resol. #337-2006 - Equitable Funding of Bergen County's School Districts
- r. Resol. #338-2006 - Reinstatement of the Education Mandate Review Study Commission

### **MISCELLANEOUS PUBLIC COMMENTS**

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

Suzanne DiGeronimo, 16 Beekman Place - Addressed the Council with regards to COAH, and the Clariant Development on Fair Lawn Avenue. Clariant needs to build 178 townhouses, and is invoking COAH, while the Landmark Developers are suing Fair Lawn to build 178 townhouses, also using COAH as their argument in point. Resident questioned COAH, and how it was affecting the quality of life in Fair Lawn, and likened it to the IRS. Resident feels the Ganz administration rushed in December, 2005, to fill out a COAH report, saying Fair Lawn is more dense than the density that currently exists, earning Fair Lawn a higher COAH assignment. Resident states that everyone is willing to pay their fair share, with emphasis on the word "fair share" and cannot understand why a higher density was reported where it did not exist. Resident went on to list examples of promised housing such as Dunkerhook Townhouses, Mack Brother units, etc. presented in 2005, before Clariant gave their presentation to the Mayor and Council. Resident again questioned the report of higher density than existed.

Mayor Etler responded that he did not feel that the was the case, and that COAH has their own set of demographics and can assign cases. He stated that it did not make sense that Fair Lawn would say they could use more COAH units. The State uses their own demographic people and they do go into towns and make assignments, and often those assignments are challenged. Three years ago the issue of COAH was brought before the Supreme Court and was re-affirmed twice. Mayor Etler stated that COAH is a State function and that we must abide by it.

Councilmember Trawinski stated that the Council has been advised by the borough attorney that they will get another "bite" at the COAH submission, and that is why he supported the re-engagement of the planner who was most familiar with Fair Lawn's COAH submission and she is scheduled to come next Tuesday night to talk with Council about how, or whether or note, the December submission should be revised. The next step in the process will be to hear from the planner and discuss it further among Council as to possible revisions.

Borough Attorney Kates stated that he just received notice that the Landmark plaintiff has moved for partial summary judgement in that case, and that briefs have been filed on both sides and is returnable for oral argument on October 20<sup>th</sup>. The effort by Landmark is to throw out (26:16 ?????) based upon the submissions.

Mayor Etler stated that it should say in the brief that Landmark has filed against the town, claiming that no houses will ever be built on the Clariant property.

Borough Attorney Kates stated that this case is coming to a head, and that COAH is up in the air in terms of whether Fair Lawn complies or not.

Stuart Shaw, 19-32 Chandler Drive asked Borough Attorney Kates for copies of the Landmark Pleadings, and was advised that they would be available in the Clerk's office the next day. He went on to ask if the Council had a closed meeting with the planner, can Landmark get copies

of those discussions.

Borough Attorney Kates replied that they could not obtain these reports without a Court Order and Council would attempt to protect the record. Planner would come in under attorney-client privilege and litigation.

Mr. Shaw questioned how the Council could be concerned with Clariant, when the general population does not want more town houses, and were willing to put their own money into open space. He also question why the town was looking to build not only more town houses, but with extra density and extra height.

Mayor Etler stated the height was 45 feet.

Mr. Shaw stated that it was his understanding that a special zoning code was needed for this height, and goes against what the residents want. He was told the town had to satisfy our COAH responsibility. He mentioned the article he showed Council listing 8 other ways to satisfy this responsibility and learned about 3 more additional ways at a COAH seminar he attended. He questioned again why we do not have builder fees in this town.

Mayor Etler advises him that it will be taken under consideration.

Howard Marks, 12 -23 Ferry Heights Place stated that, if you build a factory, you have to add houses. Since Kodak closed down, he wondered if Fair Lawn would now receive a credit for that loss.

Mayor Etler stated there would be no credit. You only get a credit for non-profit housing for people coming out of institutions, and there are several of these homes in town.

Borough Attorney Kates stated that if a loss of employment occurs within a community, the housing number does not come down in this round. The census number that we have to meet is based upon Clariant (population ??31:27). The discontinuance of the Clariant business will be reflected in the next round. There are also projections that relate to growth that now influence the number, so it is not just what exists but what potentially we can grow into.

Craig Miller, 5 Ramapo Terrace thanked Tom Metzler for notifying him that his e-mail was received. He wanted to give an FYI to the Board of Education, as they had a flat bed trailer on their football field, and he saw about 10 - 15 kids using the trailer as a seesaw, running from one end to another, while another kid was playing football and lying down near the trailer. There was a Board of Ed. member in the stand who did nothing about this. He feels trailer should be removed or secured. He also questioned if Fair Lawn would appeal the Landmark suit if it does not go in our favor, or let Landmark develop as planned.

Mayor Etler stated that they would make a decision based upon our attorney's advice. It would not necessarily be an automatic appeal, due to the cost factor.

**ADJOURNMENT:**

Upon motion by Councilmember Baratta and second by Councilmember Trawinski, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

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Marilyn B. Bojanowski, RMC  
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

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Mayor Martin Etler

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Councilmember Jeanne Baratta

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Councilmember Ed Trawinski

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Deputy Mayor Steven Weinstein