

REGULAR MEETING OF SEPTEMBER 12, 2006

Mayor Etler called the meeting to order at 7:30 p.m. Municipal Clerk Kwasniewski 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, Deputy Mayors Weinstein and McCarthy, Councilmembers Baratta and Trawinski.

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

Mayor Etler suggested a moment of silence for the victims of September 11, 2001.

COUNCIL COMMENTS:

Deputy Mayor Weinstein noted that a very important issue was resolved this past Friday. Judge Donahue of the State Superior Court ruled on the issue of whether or not the Democracy Ordinance should be put on the November ballot. He enjoined the Borough from doing so. Deputy Weinstein read a few highlights of that decision, noting that the DCA found no violations under State Law regarding the internal election process of the Radburn Association. A Referendum would establish whether there was a town-wide demonstration of popular support. However, the proposed ordinance does little more than obliterate the bylaws of the Association and attempt to circumvent the present statutory laws, and clearly the proposed ordinance contradicts State Law. Deputy Mayor Weinstein also noted that the legislative provided that it is the exclusive source to legislate in this field, therefore it preempts the municipality from ruling on this or passing that ordinance.

Deputy Mayor Weinstein stated that the Court found that the Association Bylaws do not suppress the Association member's right to free expression, therefore, no loss to free speech rights. Although the supporters of the proposed ordinance claim that Twin Rivers stands for increased democracy in homeowner's associations, they were wrong. Twin River clearly states that associations cannot infringe upon resident free speech rights, and that is not the issue in the matter currently before this court.

Deputy Mayor Weinstein also noted that the DCA never claimed that Radburn violated PREDA. Radburn election procedures do not violate State Law. Deputy Mayor Weinstein hopes that they can now move on.

Councilmember Trawinski wanted to wish the very best to Deputy Mayor McCarthy. He noted that Deputy Mayor McCarthy mentioned at the work session last week that he would be resigning his council seat due to his upcoming marriage. Councilman Trawinski noted that although things sometimes get testy among the council members, he always found

Councilman McCarthy to be a gentleman and a voice of reason, and that he will be missed.

Councilman Trawinski also noted that the Council had the privilege of completing their National Incident Management Training. He thanked the representatives from the State who came and provided the training. He believes that all Councilmembers found the training to be informative and enlightening, and feels that, in the event of a national emergency, all Councilmembers understand the rules and how to react.

Councilmember Trawinski does not believe the judge's decision resolves anything and that the march of democracy will continue in Radburn. He feels this was unfortunate. He does not believe there was a winner in the lawsuit, and will be placing on the work session the question of a non-binding referendum on the topic which would not be subject to a legal challenge.

Councilmember Trawinski feels the people of Fair Lawn should have an opportunity to express their sentiment on the topic.

Mayor Etler expressed his concern about this proposal following the same procedure.

Councilmember Baratta wished Deputy Mayor Owen McCarthy well, and stated that she would miss him on the Council. Even though she has only known him for a short time, she felt he had proved himself to be a gentlemen and that the town would miss him as well. She wished both Deputy Mayor McCarthy and his new wife good luck.

Deputy Mayor McCarthy expressed his thanks for her comments.

Deputy Mayor McCarthy read the following statement: Thank you Mr. Mayor. As most are aware by now, this will be my final meeting and I will be submitting my resignation at the conclusion of tonight's meeting. I will be getting married in sixty days and after exploring various options, my fiancé and I have elected to live in the Spring Lake area where my fiance maintains a private dental practice.

As I stated to Joanna, the Reporter at the Record, tonight is a bittersweet evening for me. While I certainly look forward to getting married and starting a family, it is difficult to walk away from the community where I have lived for 33 years and have been fortunate enough to serve on the Council for slightly less than three years. While I believe that there are individuals who have not always agreed with my views and decisions, I have always attempted to be courteous, respectful and attempted to understand the views of those who spoke before me even when we were in disagreement. Through this I relied upon a simple lesson taught to me by parents and teachers at St. Anne's, treat others the way you want to be treated. I hope that I have lived up to this principal while on the Council.

I am proud of the accomplishments and actions of the Council during my tenure. I believe that the changes the Council was able to obtain concerning health insurance and longevity pay for employees will result in thousands of dollars in savings to the Borough in the years ahead. I am proud that the Council was able to pass on a bipartisan basis, what my colleagues and I believe is the strongest pay to play ordinance in the County. It was

satisfying to speak with other elected officials and municipal attorneys and hear that other communities wanted to model their pay to play ordinances after the one passed by the Council.

I am proud of the continued support of our emergency services, including the police, fire, ambulance and rescue squads. As someone who grew up utilizing dozens of recreation programs offered by the Borough, I am pleased that the Council was able to maintain the level of support of our recreational programs which benefit residents of all ages. I know that as time goes on, all residents will be able to see first hand the benefits associated with the Community Center and all that it has to offer. I consider it a major accomplishment that the Council was able to obtain \$400,000.00 in grant money from the State for preservation of open space. I hope that the Council continues to steer the Borough in the direction of shared services with neighboring municipalities in the years ahead.

I would like to thank all of the Borough employees and volunteers for their services to the Borough and the assistance that they provided to me during my tenure on the Council. Particularly, I would like to thank Tom, Joanne, Marilyn, Michael and Richard for the assistance that they and their offices, which I had the most interaction, have provided to me.

I would like to thank my colleagues on the Council, past and present, for their aid and insight. It remains my hope that my colleagues will continue to work in a bipartisan fashion and keep the best interests of Fair Lawn at the front of all decisions that are made in the years ahead.

Lastly, I would like to thank my parents for all of the opportunities they provided me, particularly being able to grow up in a community like Fair Lawn.

Again, thank you and I am certain that I will be leaving the Borough of Fair Lawn in good hands.

Mayor Etler stated that Deputy Mayor McCarthy had been a good and effective member, and that he would miss him.

Deputy Mayor McCarthy thanked Mayor Etler for his comments.

Manager Metzler followed up on the comments made by Councilmember Trawinski regarding NIMS training (National Incident Management training), which is required by the Federal Government for elected officials and municipal department heads. He stated that it was mandated that this training be completed by October 1, 2006, but that the training with the Council was completed two weeks ago. He was advised that Fair Lawn is one in less than 10% of the communities of Bergen County that are now in full compliance.

As former Manager of Emergency Services, Manager Metzler felt that Fair Lawn has always been proactive as it applies to their emergency planning and response. He went on to say that it is no accident that they have had such success with their response and recovery efforts, and that it is worth noting this accomplishment. He is extremely proud as

an emergency planner that they, once again, find ourselves in that 10% category.

Councilmember Weinstein joked that he waited with his comments, just in case Deputy Mayor McCarthy changed his mind. He went on to say that it has been a pleasure working with Councilmember McCarthy. He has been a friend. It was a pleasure to campaign with him. He has been a confidant, and he will truly miss him. He stated that Deputy Mayor McCarthy brought a lot of integrity, and that he was always well balanced. He wished him well in the future.

Mayor Etler finished his comment by stating that Fair Lawn would be hosting about 25 police officers from Britain, known as Constabulary, who are on an exchange program with the NY Port Authority Police Department. They will be here for several hours in a "hands across the sea" act of friendship. It should be very interesting for everyone.

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. 2060-2006

AN ORDINANCE OF THE BOROUGH OF FAIR LAWN AMENDING THE CODE OF THE BOROUGH TO ADD A NEW CHAPTER 190 ENTITLED "SEX OFFENDER-FREE ZONE"

Upon motion by Deputy Mayor Weinstein and a second by Councilman Trawinski, Resolution No. 281-2006 introducing Ordinance No. 2060-2006 was discussed.

Attorney Kates explained that it was best to look at the whereas clauses, specifically whereas the Borough Council, in introducing this ordinance and presumably adopting it in two weeks, says that there is a community concern regarding the need to secure the safety of children from convicted sex offenders, and there are presently no state laws in the State of New Jersey which prohibit convicted sex offenders from residing or living or loitering near areas where children regularly meet and congregate. Because there is no uniform state-wide standard prohibiting convicted sex offenders from residing or living or loitering near those areas, the municipalities are addressing this issue through the enactment of ordinances providing those restrictions. The Borough Council is finding that, in order to protect the welfare of children, it is necessary to restrict places, within the Borough, where convicted sex offenders may reside, live or loiter. Loitering is a defined term, and this is in response to the Council's initiative to have this on its books.

Deputy Mayor Weinstein stated that, along with this ordinance, they had a discussion last week at the Work Session and that they have all done a lot of research on this topic. It has been the consensus of the Council also to move forward in establishing a Safe Haven Program here in Fair Lawn. He spoke with the Manager and Police Chief, and will reach out to the Board of Education and put together the Safe Haven Program for children. Children would have a safe place to go if they are in the business district, as stores would

have a sign in the window. He will look into this further and see what businesses will come on board in this regard. He also stated that Council is also going to look into educational programs on this problem and, along with the ordinance, feels that they are moving in the right direction.

Councilmember Trawinski stated that they also agreed to look into the local Amber Alert. He stated that they used to have, under Officer Glen Callons, a small tots Safe Haven Program at McDonald's, and said that this is what they were looking to build upon. He stated that no one believes that this ordinance by itself will stop the difficulties, but hopefully by building a broad-based program that accompanies this ordinance they can at least present the opportunity for people to learn about the potential for problems and maybe protect or save the life of a child. He applauded the other Councilmembers for supporting this ordinance, which was first discussed in January at the Re-organizational Meeting.

There being no further discussion, Resolution No. 281-2006 introducing Ordinance No. 2060-2006 was unanimously passed.

ORDINANCES ON SECOND READING:

Upon motion by Councilmember Trawinski and a second by Councilmember McCarthy, it was unanimously agreed to read the following ordinance by title and open the time for public comments.

Ordinance No. 2058-2006

AN ORDINANCE OF THE BOROUGH OF FAIR LAWN SUPPLEMENTING THE PROHIBITED USE CATEGORIES OF ARTICLE III, "ZONING REGULATIONS" OF THE CHAPTER 125, ENTITLED "LAND DEVELOPMENT", OF THE CODE OF THE BOROUGH OF FAIR LAWN 2000, MORE SPECIFICALLY SECTION 125-15, ENTITLED "USES PROHIBITED IN ALL ZONES"

Attorney Kates explained that the zoning ordinance lists several prohibitive uses in all zones and, although there is language in the ordinances that says any use not permitted is prohibited, the Council suggested this ordinance, as a matter of public policy, to specifically limit the use of living animals to test or otherwise be utilized in the production of pharmaceutical or other chemical or manufacturing processes. There are no incidences of this in the community, but as a matter of public policy and safeguarding, this ordinance is being introduced.

Mark Wolf, 14 Allen Place questioned whether this ordinance would prohibit any type of pharmaceutical research in Fair Lawn. Since New Jersey is heavily invested in the Pharmaceutical industry, he wondered if those ramifications have been studied.

There being no further comments, upon motion by Councilmember Trawinski and a second by Councilmember Weinstein, it was unanimously agreed to close the time for public comments.

Upon motion by Councilmember Trawinski and a second by Deputy Mayor McCarthy, Resolution No. 282-2006 adopting Ordinance No. 2058-2006 was unanimously adopted.

Upon motion by Deputy Mayor McCarthy and a second by Councilmember Trawinski, it was unanimously agreed to read the following ordinance by title and open the time for public comments.

Ordinance No. 2059-2006

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 94 ENTITLED "FEES", AND CHAPTER 223 ENTITLED "TOWING", TO REVISE THE FEE SCHEDULE FOR TOWING AND STORAGE, AND TO IMPOSE ADDITIONAL REQUIREMENTS FOR ALL TOWING OPERATORS AND BOOTING SERVICES DOING BUSINESS IN THE BOROUGH OF FAIR LAWN.

Frank Thissen, from City Wide Towing stated that it appears there is a lot of insufficiencies in the ordinance. The rates are only bringing them to the rates that were charged in the 90's, and there are a lot of loopholes. He has encountered numerous problems in the last ten years that he has been towing for this department, with no cooperation from the Police Department as far as complaints from other towers. These rates are not up to the standards of what is going on now. For example, there is nothing for cleanup, and yet they are required to cleanup. There should be at least a \$35.00 fee for cleanup, as it costs them money for Speedy Dry disposal. Also, when they tow cars to the yard that are involved in accidents they must crash wrap the cars, otherwise the insurance companies bill the towing companies for damages. AAA charges \$4.50 a mile and Fair Lawn is allowing only \$2.00 per mile. As far as private property removal, they need an administration fee because even with the Borough towed vehicles, the Borough is supposed to notify the banks that a car has been impounded. He towed an Explorer for the Police three months ago, and still cannot get owner information on it. The whole towing situation in Fair Lawn is out of control. Officer Franco is always too busy to discuss these items with him. It costs \$25.00 just to run the VIN number on the car. There are no fees for wenching or pulling the car off the road.

Mayor Etler stated that this was the problem that they had. People were literally being ripped off.

Mr. Thissen stated they were being ripped off by one company, and felt that was something the Police Department should have addressed. His company marks the tires and then checks for the time expired. He doesn't sit there and wait for them to leave their car and then tow it, like this other company did. He does not feel this will work unless the Police Department has proper control.

Mayor Etler discussed problems they have had: cruising or waiting on the property, and warehousing the cars on the street

Mr. Thissen felt it would be easier to put a time limit in the parking lot before they can

Also, if owner comes back before car is towed, he can release the car, but not without a fee. Once the car is in the air, it is the tower's car. He stated his fees are all within the guidelines.

Mayor Etlar asked what his exact objections were. Mr. Thissen felt the fees were a problem, but also felt he needed the help of the Police Department. Nothing will be solved with all these loopholes.

Councilmember Trawinski stated that it sounded like most of his concerns deal with the ordinance that deals with when the Police Department calls for a tow, predominately off of a public street. This ordinance deals with private streets. He was prepared to move forward with this ordinance tonight, but is also willing to have the tow company's attorney meet with the Borough Attorney and have the Manager bring those issues to the Police Department to see if there are any adjustments that need to be made. He also stated that the Towing Ordinance was last revised in 1988.

Deputy Mayor Weinstein agreed with that approach, and stated that he would be voting for this ordinance tonight to give the people on Broadway some relief. He welcomed hearing Mr. Thissen's comments through the Manager and Police. Mr. Thissen stated he wanted to continue to do things the right way.

Mayor Etlar stated that he wanted to move forward with this ordinance tonight, but would put the other issues on the fast track for a Work Session.

Councilmember McCarthy suggested that, rather than have a work session, Mr. Thissen or his attorney meet with the Borough Manager or Borough Attorney first.

Mayor Etlar agreed and said that they could amend this afterwards.

Manager Metzler stated that he wanted the Council to be aware that he spoke with Mr. Thissen back in January, and at no time did he express a concern about the Police Department and how they were handling towing. He also stated that they cannot fix a problem they are not aware of.

Lou Silvestri, 1-30 37th Street asked that the Council explain the definition of cruising, as to whether it was driving on the street or just waiting in the parking lot. Attorney Kates stated that it was a defined term in the ordinance and it's use of the public streets. The operation of a wrecker by a towing company along the public streets in any fashion intended to solicit or take advantage of the prospect of towing without being called to the scene or immediately engaged in a towing service. Sitting on a private lot is not within the control of this ordinance. It is with the consent of the property owner.

p. Resol. #299-2006 - Appointment to Fair Lawn Cable Television Board

RESOLUTION NO. 300-2006 - Approval of Raffles and Bingos

St. Anne PTG, Off-premise 50/50

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Upon motion by Deputy Mayor McCarthy and a second by Deputy Mayor Weinstein, Resolution No. 300-2006 was passed with Councilmembers Baratta and Trawinski recusing themselves.

PRESENTATION TO DEPUTY MAYOR MCCARTHY

Mayor Etler, on behalf of the Council and the grateful citizens of Fair Lawn, presented Deputy Mayor McCarthy with a plaque for his service to the Borough as a Councilmember / Deputy Mayor from January 1, 2004 through September 12, 2006.

MISCELLANEOUS PUBLIC COMMENTS

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

Robert Gulack, 4 Bancroft Place, read a prepared statement, which highlighted some of the following issues. Nearly 2,300 Fair Lawn citizens recently submitted a petition to put on the ballot a proposed ordinance guaranteeing democratic government in all of Fair Lawn's planned communities. The Borough Attorney had told them that, in his opinion, this ordinance was a proper subject for such a referendum. After the Borough Clerk certified that enough signatures were gathered, the referendum was then challenged in court.

Mr. Gulack continued that despite the fact the Borough Attorney wrote the court stating that this was the proper subject for a referendum, the Borough Attorney did not state why he agreed with this statement. He wrote only a single sentence, not a brief, thereby signaling the court to dismiss the petition, which is what the court did.

Mr. Gulack stated that the failure of the Borough Counsel to brief the court in a full and professional manner was a betrayal of the 2,300 Fair Lawn citizens who signed their names to the petition. It was also a betrayal to all of the residents that live in Fair Lawn because it denigrated their legal rights under the Faulkner Act. Under the Faulkner Act, if the residents want something done, and the politicians are refusing to listen, they have the right to put the matter to an open and democratic vote by the whole community. In this situation, presumption is that the Borough Council opposed the proposed ordinance, the attorney representing the Borough had an obligation to stand up for the legal rights of the Borough's citizens. He failed to do so and that is a disgrace.

Mayor Etler stated that no one in Radburn was denied their rights. He told Mr. Gulack what they submitted was illegal.

Mark Wall, 14 Allen Place, stated that Mr. Gulack consistently ignored the constitutionality of what he was proposing and the justice of what he proposed. He has attempted to act

on behalf of the community of Radburn who are more or less not in favor of what he is doing. It was a just decision by Mayor and Council to not pass a resolution. Despite all of this, they are continually belabored with harangues where they turned to everyone except the law. In time he hoped that Mr. Gulack will realize they all have to live under the law.

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Arlene Rubinstein, 28 Rutgers Terrace, stated the sale of Fair Lawn developments started with the Planning Board. They were given power to change zoning ordinances. She also spoke about an article in The Record about tainted sites in the state and how some of them have been erased. The Clariant site was taken off the list. She heard the Mayor had met with the developers years ago. Mayor Etler said the only time he met with them was when they did a presentation to the Council at the Work Session. Mrs. Rubinstein continued by saying the Mayor and Council should stand up to developers and don't do anything with the property. She asked them to stop changing the density zoning and leave the toxic site as it is. Mayor Etler said the Planning Board cannot change the zones, only the Mayor and Council can. Deputy Mayor Weinstein stated that the only meeting the Council had with the developer was at the Work Session. He informed her that the Naugle House development did not meet the requirements and Daly field is held up in Court.

Rita Golding, 14 Rutgers Terrace, asked if it would be possible for the town to offer training to the residents for emergencies. Manager Metzler stated the Borough has been offering CERT training for several years and it has been free. He suggested that she contact Ira Marks, in the OEM office. He encouraged everyone to look into it.

Mrs. Golding asked for an update on the Landmark case. Attorney Kates stated it was in the discovery mode and their should be a trial by the late fall. She commented to Radburn trustees that they stop tearing the town apart. They should give the Radburnites some say.

Claude Bienstock, 39-11B Broadway, spoke about a problem he had with the reporter from The Record. He said he called Mel Gibson's representative about the anti-sementic comments he recently made. He told Deputy Mayor McCarthy that he did a great job. He was a brilliant Councilmember and will be missed. Deputy Mayor McCarthy thanked him for his kind words. He informed Mr. Bienstock that Eric Hsu is no longer working at The Record.

Harvey Rubinstein, 28 Rutgers Terrace, thanked Manager Metzler for making sure the geese droppings were taken care of. He suggested they install a foot washer at Memorial Pool. He also suggested that the badge checkers pay more attention to what is going on. He discussed the Clariant site and how he voted against it because it was too dense. The developer wants to put a pool in. He thanked Manager Metzler for having the area by Topps Cleaners cleaned up. He suggested that notices be sent out to the property owners about keeping their sidewalks clear. Mayor Etler stated that Clariant has sixteen acres, thirteen of which are buildable. The developer wants a reflecting pool and a regular pool.

Howard Mark, 12-23 Ferry Heights, stated the Twin River Planned Community had an estimate cost of \$300,000 to fight for democracy. He asked why the Radburn residents who oppose the Radburn trustees do not pay instead of all of Fair Lawn residents paying for it. During a work session, the CCRF asked the Borough to pay for their legal defense to

Barry Winston, 19-11 Greenwood Drive, presented a gift to Deputy Mayor McCarthy on behalf of his resignation and wedding. He thanked him and wished him the best of luck.

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Joan Goldstein, 12 Edward Street, also wished Deputy Mayor McCarthy the best of luck in his upcoming marriage. She said she was glad to see Fair Lawn issues being discussed.

Harvey Rubinstein, 28 Rutgers Terrace, talked about the sewer lateral lines and the trees that cause the problem. He spoke about the school taxes being the problem. The schools are filled with children from the developments even though there were supposed to be no children in them when they were planned. In regard to shared service, he suggested getting rid of the Health Department since the County has one.

Julia Enerson, 12 Beekman Place, thanked Deputy Mayor McCarthy for the good job he did as a Councilmember. She spoke about Radburn's issues and how the voters voted for open space. She felt there were a wide range of views on the matter of democracy. She urged the trustees to move forward since they have much to heal. Councilmember Trawinski said the very remarks she made tonight would not be heard by the Radburn Trustees. Ms. Enerson stated she would love for everyone to get together to heal the community. If they join together, they will solve the problems. Deputy Mayor Weinstein felt this issue has pitted neighbor against neighbor. He is glad that it went to the Court because Fair Lawn took a neutral position. He asked that they move on since the judge had made a ruling.

There being no additional comments from the public, upon motion by Deputy Mayor McCarthy and second by Deputy Mayor Weinstein the time for public comments was unanimously closed.

ADJOURNMENT:

Upon motion by Deputy Mayor McCarthy and second by Councilmember Baratta, the meeting was adjourned at 9:16 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 Ed Trawinski

Deputy Mayor Steven Weinstein