

REGULAR MEETING OF SEPTEMBER 26, 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, Deputy Mayor Weinstein and Councilmembers Baratta and Trawinski.

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

POLICE PRESENTATIONS:

Manager Metzler announced that two presentations would be made to recognize the excellent police work done in connection with the 24 arrests that took place as a result of gang activity at the Empress Diner a few weeks ago and in connection with an incident involving a resident and a loaded weapon.

Chief Rose explained that Officers O'Shaughnessy and Macys responded to an alarm on Sunnyside Drive. Headquarters received a call from the female property owner advising that the male property owner may be drinking and a little violent. The officers found the home secure. Since there was no response to their knock on the door they began to leave. They then observed someone stepping out onto the porch and then going back into the house. They continued to try to get a response at the front door. They then hear footsteps from the side door and discovered a person coming around the side holding a gun. Chief Rose presented the gun which was a 357 Magnum fully loaded with the hammer cocked. The officers drew their weapons and ordered the man to drop his gun which he eventually did. They then were able to handcuff the man. Earlier in the day there had been a domestic violence incident at the home. A sawed off shotgun was found at that time. It is a testament to the officers that the situation was resolved with no injury to the officers or the homeowner.

Later that morning Officer Wassel, Taylor and Vasquez responded to the Empress Diner where an unruly crowd had gathered and a car was trying to get out of the driveway. The officers discovered that one of those in the car was severely wounded. A fight had occurred in the diner and additional people were still in the diner. Additional backup is requested from Fair Lawn, Elmwood Park, Ridgewood, Hawthorne, Paramus, Paterson, Bergen County Police Department and Bergen County Sheriffs. Officers Wood and Sgt. Metzler also responded. The situation was contained although some of those involved may have gotten away before the Police arrived. They arrested 17 males and 17 females for 49 charges including riots, disorderly persons, weapons charges and aggravated assaults. The investigation is continuing.

He commended Officers Nagle, Mecionis, Dawicki, Chin, Hickey and Yuskaitis under the direction of Captain Cook and Detectives Boone, Ferreira, Welsh and Corcoran and Detective Sergeants Messina and Annazone under the direction of Captain Serrao.

Manager Metzler commended Lou DiGeronimo for being able to coordinate the visit by the Police Officers from Great Britain through his organization Protected Protectors. Mr. DiGeronimo read a letter from Buckingham Palace in which the Queen sent her wishes. The letter was copied to the Mayor.

COUNCIL COMMENTS:

Deputy Mayor Weinstein expressed his gratitude to the Police Department for an amazing job. He thanked them for protecting the citizens of Fair Lawn.

Councilmember Baratta stated that she had the pleasure of being with the officers from Great Britain and Ireland on September 13. They had a great time. She thanked the Police Chief, the officers and Constable DiGeronimo.

Councilmember Trawinski thanked the Police Department for their efforts every day. He also thanked Constable DiGeronimo for bringing the British and Irish Officers to Fair Lawn to join the solemn commemoration of September 11.

Mayor Etler acknowledged the professionalism of the Police Department.

NOMINATION OF COUNCILMEMBER:

Attorney Kates stated that Deputy Mayor McCarthy submitted his resignation on September 12 which set into motion the statute which the Borough must follow. He explained the procedure that is set by the statute. He stated that the Mayor and Council has 30 days to select one of the names from the list submitted by the Democratic County Municipal Committee. Should they not reach a decision this evening the 30 days continues to run.

Councilmember Baratta moved that Larry Metzger be nominated as Councilmember. Councilmember Trawinski seconded the motion.

Councilmember Trawinski thanked Mr. Metzger for providing the bio that Councilmember Trawinski had asked for at last week's work session. Councilmember Trawinski was aware that he was a member of the Rent Leveling Board but he was not aware that he was an Army Vietnam era veteran, a member of the American Legion, the Property Maintenance Committee and is a member of the Knights of Pythias. These activities have allowed to him to support this nomination.

The motion did not pass with Councilmember Baratta and Councilmember Trawinski voting yes and Deputy Mayor Weinstein and Mayor Etler voting no.

Mayor Etler announced that the nomination would now go back to the Democratic County Municipal Committee. Councilmember Trawinski, however, requested that this matter be discussed again at the next work session since they have 30 days. He did not think they should abrogate their responsibilities so quickly. Mayor Etler, however, reiterated it is now the Democratic County Municipal Committee's decision.

Councilmember Trawinski asked Attorney Kates if the Mayor has the unilateral discretion under Fair Lawn's form of government to move this item to the County Committee. Attorney Kates replied that the Mayor does not although he does not think that was what Mayor Etler was saying. The 30 days has to run unless the Council declares itself in a deadlock. October 12 is the 30-day deadline.

Councilmember Trawinski then asked Attorney Kates if discussing this matter was appropriate for Closed Session under the personnel exception. Attorney Kates did not think it was. A case exists regarding a school board vacancy where the Gannett Newspaper challenged a Closed Session discussion. Although the appointment of a local government officer may be classified as personnel, the case indicates that when an elected position is being discussed, it should be in the open. He advised them not to do it as a closed session item.

Councilmember Trawinski wanted to understand Deputy Mayor Weinstein and Mayor Etler positions' on Mr. Metzger. Deputy Mayor Weinstein stated that he was appointed to the Council as a replacement for Sheri Adler. Prior to that Ron Mondello was selected to fill Bonnie Taplits seat when she resigned. In fact the Democrats on the Council at that time supported Mr. Mondello so that government could move along. He asked for the same respect this evening. He would nominate Joe Tedeschi again. Councilmember Trawinski had raised a question of a conflict of interest. He pointed out that in the case of Superintendent Fry serving as President of the Board Education, the Council when questioned by a resident indicating that there was no conflict of interest. He felt that Joe Tedeschi was the best person to fill the seat. He was baffled why Councilmember Trawinski and Councilmember Baratta would not accept their nomination to move government along.

Councilmember Trawinski indicated that he was willing to offer a motion to have the Council declared deadlocked and return it to the County Committee and not wait the full 30 days.

Upon unanimous motion of Councilmember Trawinski and a second by Mayor Etler the Council was declared deadlocked and the matter will now be returned to the County Committee who will make the selection.

MANAGER'S REPORT:

Manager Metzler announced that the fall edition of the newsletter was mailed today. He also advised them that they will be presenting many nationally and internationally known performers at the Community Center over the next few months. All of these performances will be brought to the Community Center by residents of Fair Lawn who want art and

culture added to the Borough. Deputy Mayor Weinstein thanked Ms. Moriarity and Mr. Roney for their work in helping to arrange these performances.

ORDINANCE: SECOND READING

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

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"

Councilmember Baratta stated that the Council worked together to pass this ordinance. There were numerous discussions before reaching this consensus. Deputy Mayor Weinstein felt this ordinance is an important step for the Council. The Borough Attorney will be monitoring the ordinance since it has been challenged in other communities. They are going to reinstate a safe haven program. They will be working with the Police Department and the Board of Education.

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

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 302-2006 adopting Ordinance No. 2060-2006 was unanimously adopted.

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 Deputy Mayor Weinstein and a second by Councilmember Trawinski, the time for public comments was unanimously closed.

RESOLUTIONS BY CONSENT #25-2006

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

- a. Resol. #303-2006 - Approval of Minutes:
Regular Meeting 5/23/06
Closed Session 5/23/06

Work Session 6/7/06
Special Meeting 6/7/06
Closed Session 6/7/06
Regular Meeting 6/13/06

b.

Resol. #304-2006 - Approval of Raffles & Bingo:

Temple Beth Shalom, Bingo
Lyncrest PTO, On-premise 50/50
St. Leon Armenian Church, Off-premise 50/50

- c. Resol. #305-2006 - Refund of Overpayment of Taxes
- d. Resol. #306-2006 - Auction of Surplus Equipment and Vehicles
- e. Resol. #307-2006 - Award of Bid: Project #2141 Municipal Building 9-11 Memorial
- f. Resol. #308-2006 - Authorizing Execution of Agreement with the County of Bergen Regarding Water Fillable Barrier Program
- g. Resol. #309-2006 - Authorizing Manager to Sign Contracts Regarding Entertainment at the Fair Lawn Recreation Community Center
- h. Resol. #310-2006 - Professional Services: Special Attorney
- i. Resol. #311-2006 - Professional Services: Green Acres Services
- j. Resol. #312-2006 - Professional Services: Computer Consultant
- k. Resol. #313-2006 - Authorizing Execution of Agreement with New Jersey Department of Transportation regarding Welcome Signs
- l. Resol. #314-2006 - Confirming Endorsement of CDBG Application: Bridge Haven Housing a project of AAH of Bergen County, Inc.
- m. Resol. #315-2006 - Confirming Endorsement of CDBG Application: Care Plus N.J.

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.

Arlene Rubinstein, 28 Rutgers Terrace, thanked Officers Donahue and Macy, the Fair Lawn Ambulance Corps. and the unit from St. Joes for their rapid response to her home last week. She thought that it was irresponsible of the Council to change the zoning of the Clairant property to high density housing because a developer requested it. A developer should have to follow the zoning ordinances. She expressed concern about the Mayor's attitude and his inappropriate demeanor toward the public. She did not think it was wise to add another councilmember who has an aggressive attitude toward the public. She thanked Councilmembers Baratta and Trawinski for their admirable behavior in serving the public.

Harvey Rubinstein, 28 Rutgers Terrace expressed concern over the Clariant development. He felt the Borough's planner should be telling the Council how the ordinance concerning town houses needs to be changed not the developer. He is being prevented from

protecting the Third Street homeowners because he will not be able to talk about proper setbacks, height restriction and traffic patterns during the Planning Board site plan hearing.

He asked the Council not to change the zoning but to require the developer to present fully prepared site plans to either the Zoning Board or Planning Board.

Kathy Moore, 13-16 Plaza Road expressed concern about crossing the dangerous intersection of Fair Lawn Avenue and Plaza Road coming from the train. She mentioned that a police officer ignored a transit bus that turned even though she as a pedestrian had the right of way. She expressed concern about the speeding on Plaza Road. She suggested adding speed bumps and a merge sign.

Manager Metzler stated that he has been advised that the traffic light is cycling properly. The Police Department has been doing enhanced enforcement. He assured them that they do not limit enforcement on either the County or State roads based on revenue. He will follow up on her concerns.

Stan Hayden, 12 Beekman Place thought the intent of the Historic Preservation ordinance was to save the historical properties still remaining. It was unfortunate that the Radburn community was inflamed by an article in the Radburn bulletin that indicated Radburn was going to be attacked. He urged them to reconsider the ordinance. Mayor Etlar indicated that the Historic Preservation Commission will only have the power to advise and categorize. Councilmember Baratta indicated that the Council decided that the ordinance will continue to be worked on. Deputy Mayor Weinstein indicated that he supports the Historic Preservation Commission as an advisory body.

Suzanne DiGeronimo, 16 Beekman Place was pleased that the Zoning Board by a four to three-vote stood up to a developer. She advised them that the State of New Jersey has reopened the cross acceptance process which will ratify the State's master plan. Fair Lawn has been reactionary on its position of development and traffic. She felt it was mandatory to update the master plan. Deputy Mayor Weinstein pointed out that the Borough was involved in the cross acceptance process two years' ago. They worked with the County.

Claude Beinstock, 39-11B Broadway urged the Council to support the underage drinking ordinance. Underage drinking is a serious matter which will not go away. He commended the Police Department for their efforts. He commended Councilmember Baratta for her leadership efforts on this matter. Councilmember Baratta advised that the ordinance will be on the next work session agenda.

Bob Gremilott, 1 Bristol Place objected to the development on the Clariant property which will increase traffic and strain the school system. He was concerned about the pollution on the property.

Craig Miller, 5 Ramapo Terrace felt that Plaza Road between Ramapo Terrace and Fair Lawn Avenue has become a speedway. He suggested the use the police message boards to remind drivers that the speed limit is 35 not 50.

Arlene Rubinstein, 28 Rutgers Terrace wondered how aggressively Richard Lustgarten, Esq. is defending the Landmark lawsuit. She wanted to be in the courtroom. Attorney Kates reported that no trial date has been set. A case management conference is scheduled for November 29. The discovery period has not run out. Ms. Rubinstein wanted to know why a motion to dismiss has not been filed. Attorney Kates did not know that such a motion was not filed. Ms. Rubinstein felt filing a motion to dismiss was the logical move since no site plan has even been filed.

Harvey Rubinstein, 28 Rutgers Terrace noted that the Zoning Board will meet on Thursday night about the McDonald's site. He urged the Council to keep the traffic problems in mind when they look at development.

Kathy Moore, 13-16 Plaza Road noted that the DEP is working with Anderson Mulholland to start the remediation at the Tops. They need a generator but PSE&G has not been able to supply one. The DEP is now at the top of the list. Two homes have vapor intrusions and have had to be vented. She has a canister in her basement to test the air again. She asked that they let PSE&G know how important it is to get that generator as soon as possible so they can start getting rid of the dangerous ground water.

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

ADJOURNMENT:

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

Councilmember Ed Trawinski

Deputy Mayor Steven Weinstein