

Borough of Tenafly

MAYOR AND COUNCIL

MINUTES

TUESDAY, APRIL 30, 2013

PRESENT: Mayor Peter Rustin and Council members Anthony Barzelatto, Barry Honig, Nadia LaMastra, Jon Warms, and Mark Zinna

ABSENT: Council member Kerge

ALSO PRESENT: Borough Administrator Jewel Thompson-Chin
Borough Attorney William R. McClure

At 8:09 p.m. Mayor Rustin read the Open Public Meetings Act Statement: "In compliance with the Open Public Meetings Act P.L. 1975, chapter 231, the notice requirements have been satisfied. Meeting dates for the year are listed in the Annual Agenda; copies are sent to the Record, Suburbanite, and Northern Valley News and posted on the bulletin board in the lobby of the Municipal Center."

Mayor Rustin advised that a Closed Session item is being added to the agenda.

CLOSED SESSION

Mayor Rustin recognized Borough Attorney William McClure, who read into the record Resolution 13-187.

BE IT RESOLVED in compliance with NJSA 10:4-12, the Mayor and Council of the Borough of Tenafly are going into Closed Executive Session to discuss the following matters:

- A. Litigation/Attorney-Client Privilege
 - 1. Latz v. Borough of Tenafly

Minutes will be taken of the meeting and released to the public at the time that the matter is resolved. After Closed Executive Session, the Mayor and Council will reconvene in the Richard D. Wilson Committee Room to resume the Public meeting.

On a motion from C. LaMastra, seconded by C. Honig, and all present voting in favor, the meeting was recessed to the Closed Session in the Committee Room at 8:09 p.m.

The Public Meeting resumed at 8:34 p.m.

The Salute to the Flag was led by Mayor Peter Rustin.

REVISIONS TO AGENDA:

Borough Attorney McClure advised that Resolution #R13-186/Authorize Execution of Pool Plan Agreement with Xerox and Board of Education for the Purchase of Toner Cartridges and Contract for Repair and Maintenance Services for Municipal Printer Devices is being added to the agenda under New Business.

PUBLIC COMMENTS:

David Simpson, 12 Woodland Park Drive, questioned whether issues have arisen with respect to the Nature Center lease that was adopted and if so, asked what affect these issues might have on the entire process.

Borough Attorney McClure responded that the lease was approved by way of resolution and will eventually need to be approved by way of an ordinance. He advised that the version of the lease that has been submitted was not approved as there are requirements from Green Acres with respect to renewals and other provisions that need to be changed. He further advised that there is a draft including these changes that has been approved by Deputy Attorney but have not yet approved by Council. Once the public comment period has concluded, there will be hearing on the ordinance approving the final version of the lease. He noted that the resolution stated that the lease was always subject to approval by Green Acres.

C. Honig inquired what would happen under the terms of the lease if the Nature Center could not come up with the necessary funds for this project.

Borough Attorney McClure advised that one of the provisions in the lease was that the Nature Center must raise all funds. Under the Local Lands and Buildings Act, he explained that it doesn't matter if the project is being contracted by the governing body or by its lessee, the Nature Center will still be subject to all the restrictions that the Borough would be subject to such as prevailing wage and fair contracting. He further advised that the Borough is ultimately responsible for this project.

C. Honig suggested that there be a protection written in the lease that the project will not commence without proof of the funds being raised.

Borough Attorney McClure responded that the lease is required to be in compliance with all local, County, and State law and as such, this project will not be permitted to go forward without adequate protections put in place.

Gerald Nigro, 5 Stonybrook Road, advised that he sent letter a letter to the Mayor and Council asking that a motion be made to have a referendum and inquired whether a motion is going to be made this evening.

Mayor Rustin responded that in order for a motion to be made, it would require someone on the governing body requesting to place this item on a work session agenda. In terms of Mr. Nigro's correspondence, Mayor Rustin advised that if Mr. Nigro did send correspondence, it will be placed on the May 7th Work Session agenda.

Mr. Nigro then asked when the three hydrology studies, traffic study, and certified business plan will be released.

Mayor Rustin stated that he will speak to Michael Neus and ask that those studies be released and in terms of the certified business plan, he is unsure whether they have one, but if so, he will ask that it be released.

Before the Nature Center is permitted to proceed, Borough Attorney McClure commented that the Borough should require that a performance bond is posted to provide protections should the contractor default.

As it came time to hold the Public Hearings, Mayor Rustin closed the Public Comment portion of the agenda. Public Comments will resume at the conclusion of the Public Hearings.

PUBLIC HEARINGS

A. ORDINANCES

ORDINANCE 13-10:

The Deputy Borough Clerk read into the record:

The following ordinance published herewith was first read by title only on March 12, 2013, and posted on the bulletin board of the lobby of the municipal center.

ORDINANCE NO. 13-10 - AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 35 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF TENAFLY, ENTITLED "LAND DEVELOPMENT REGULATIONS" AND MORE PARTICULARLY: AMENDING SECTION 35-801 "ZONE DISTRICTS"; SCHEDULE A – "SCHEDULE OF PERMITTED USES"; SECTION 35-201 "TERMS DEFINED"; SCHEDULE C – OFF STREET PARKING SPACE SCHEDULE; AND SECTION 35-604 "TECHNICAL REVIEW ESCROW DEPOSITS"

Public Comments on Ordinance 13-10

No one came forward.

Motion by C. Warms, second by C. Zinna that Ordinance 13-10 be remanded back to the Planning Board.

On a roll call, the vote was recorded as follows:

C. Barzelatto: aye
C. Honig: aye
C. Kerge: absent

C. LaMastra: aye
C. Warms: aye
C. Zinna: aye

ORDINANCE 13-11:

The Deputy Borough Clerk read into the record:

The following ordinance published herewith was first read by title only on April 4, 2013, and posted on the bulletin board of the lobby of the municipal center.

ORDINANCE NO. 13-11 – BOND ORDINANCE PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS BY THE BOROUGH OF TENAFLY, NEW JERSEY, APPROPRIATING THE AGGREGATE AMOUNT OF \$2,245,600 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$1,887,700 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF.

Public Comments on Ordinance 13-11

Mark Feldman, 133 Lylewood Drive, questioned whether unexpended funds were being moved from prior capital ordinances, specifically the Police Headquarters Project, to help fund these improvements.

Mr. Vinci confirmed that funds from the Police Headquarters Project are being used to help fund these improvements.

Mr. Feldman then inquired whether this account was finally closed out and a surplus determined.

Borough Administrator Thompson-Chin advised that it has not been closed out as there are still punch list items to be completed.

Mr. Feldman expressed his opinion that before reallocating that money to new projects, it should have been given back to the taxpayers.

Motion by C. Zinna second by C. LaMastra that Ordinance 13-11 be passed on second and final reading and are hereby adopted and notice of same shall be published according to law.

On a roll call, the vote was recorded as follows:

C. Barzelatto: aye
C. Honig: aye
C. Kerge: absent

C. LaMastra: aye
C. Warms: aye
C. Zinna: aye

ORDINANCES 13-12 & 13-13:

The Deputy Borough Clerk read into the record:

The following ordinances published herewith were first read by title only on April 16, 2013, and posted on the bulletin board of the lobby of the municipal center.

ORDINANCE NO. 13-12 - AN ORDINANCE TO AMEND THE FEE FOR THE USE OF BOROUGH POLICE VEHICLES FOR OUTSIDE EMPLOYMENT DETAILS

ORDINANCE NO. 13-13 - AN ORDINANCE APPROPRIATING \$72,000 FROM THE MUNICIPAL OPEN SPACE, RECREATION, AND HISTORIC PRESERVATION TRUST FUND OF THE BOROUGH OF TENAFLY

Public Comments on Ordinances 13-12 and 13-13

No one came forward.

Motion by C. LaMastra second by C. Barzelatto that Ordinances 13-12 and 13-13 be passed on second and final reading and are hereby adopted and notice of same shall be published according to law.

On a roll call, the vote was recorded as follows:

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Warms:	aye
C. Kerge:	absent	C. Zinna:	aye

B. Other: Amendment and Hearing of 2013 Local Municipal Budget

1. #R13-182/Read Budget by Title Only

Motion by C. Barzelatto, second by C. Warms that #R13-182 be approved.

C. Honig expressed his opinion that it is the third year that the Council has delivered a decent budget which is well under the 2% cap.

On a roll call, the vote on #R13-182 was recorded as follows:

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Warms:	aye
C. Kerge:	absent	C. Zinna:	aye

2. Public Comments on Hearing of 2013 Local Municipal Budget

Mark Feldman, 133 Lylewood Drive, advised that he attempted to review the budget books and was told that unlike in prior years, he was not able to receive that information until after budget passes. Although he was able to gain access to the budget summary, he criticized the Borough Clerk for calling the backup documents deliberative material and asked that Council reconsider this policy to allow for public inspection of those documents. Although he agrees with C. Honig that being under the 2% CAP is an excellent achievement, he expressed his opinion it could have been 0% if Council had not taken on the bond issue that required \$350,000 in amortization and if excess money from Police Headquarters Project was given back to taxpayers.

C. Honig responded that, in his judgment, not locking in at a historically low rate would have been a dereliction of Council's duty. He then questioned why Mr. Feldman could not review the budget books.

Borough Attorney McClure advised that those documents are backup documents and are considered deliberative materials, not subject to disclosure to the public until after budget adoption. He explained that in order prevent setting a precedent, the Borough Clerk was following letter of law as to what is considered deliberative and not subject to OPRA.

C. Honig asked whether a local policy can be set to allow for the review of these documents.

Borough Attorney McClure advised that allowing access to deliberative documents in one situation and not another would open the Borough up to a lawsuit.

Gerald Nigro, 5 Stonybrook Road, inquired whether the law states that taxpayers are not entitled to this information until the new budget has been adopted or if this decision is optional.

Borough Attorney McClure explained that when exceptions are made, it leaves the Borough open to challenge to gain access deliberative materials on another subject.

Mayor Rustin advised that the Council will discuss this policy when the Borough Clerk returns from sick leave.

Melvin Lubens, 33 Stonybrook Road, criticized the fact that there have been increases in the municipal budget in the last two years and questioned why the budget cannot be brought inline.

3. #R13-183/Adoption of 2013 Local Municipal Budget

Motion by C. LaMastra, second by C. Barzelatto that #R13-183 be approved.

On a roll call, the vote on #R13-183 was recorded as follows:

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Warms:	aye
C. Kerge:	absent	C. Zinna:	aye

All members present voting in favor, the #R13-183 was approved.

PUBLIC COMMENT (continued):

Melvin Lubens, 33 Stonybrook Rod, criticized the process that has been followed in the proposed Nature Center building and asked for more transparency.

Mark Feldman, 133 Lylewood Drive, inquired whether the Council has had the opportunity to discuss the comments made during the hearing on the Nature Center project and if this topic will be discussed at a future work session.

Mayor Rustin advised that should those discussions take place, they would take place at a work session.

David Simpson, 12 Woodland Park Drive, stated that he does not find a provision in the proposed Nature Center lease that they are to raise funds to cover the cost of project before they begin. He advised that he was unable to find a statute regarding bonding requirements and expressed his opinion that the lease should affirmatively call upon the tenant to take that financial responsibility.

Borough Attorney McClure agreed that there is never a 100% guarantee, not even when the Borough engages a contractor. He confirmed that all of the obligations that apply to a municipality also apply to its lessee.

C. Honig suggested that if this language is not currently in the lease, a requirement that a certain amount of funds be demonstrated before the project can begin be placed in the lease.

Council agreed that Borough Attorney McClure should have a conversation with the Nature Center and their attorney about placing adequate assurance into the lease that this project will be properly financed so that the Borough will not be held liable.

Edythe Kornfeld, 258 Highwood Avenue, expressed her disappointment in the Nature Center presentation. She noted that at least 35 people signed a paper that they were not able to attend the hearing and this paper has since disappeared. She commented that this project is major and residents have the right to hear about it, ask questions, and receive answers.

Mayor Rustin advised that anyone who was here at 7:30 p.m. was able to participate as there were empty seats at that time. Although with 20/20 hindsight he would have made the decision to move the meeting to the Tenaflly Middle school, the decision was made to stay in this room. He remarked that he will do his best to find the list to which Ms. Kornfeld referred.

C. Honig pointed out that Mayor Rustin went to the trouble of calling each member of Council individually to ask their opinion on moving the meeting. Although the Mayor had the intention of moving the meeting, C. Honig advised that the notice that was posted stated that the hearing was to take place in Council Chambers and if the meeting was moved at the last minute, it would have been a violation of the Open Public Meetings Act.

Mayor Rustin noted that the video of the hearing was posted on the Borough website the very next day and played on Channel 77.

C. Barzelatto advised that Mayor Rustin was very concerned about the room being full and that there were people outside. C. Barzelatto reiterated C. Honig's comment that the Mayor did contact every member of Council about relocating the meeting and advised that he waited right up to the last minute to make a decision. He remarked that it would have been a logistical nightmare if the meeting had been moved at that time.

Gerald Nigro, 5 Stonybrook Road, advised that he arrived shortly before 7:30 p.m. and there were cars circling the lot in an attempt to find parking. He expressed his opinion that speakers should be installed in the lobby to accommodate more people.

Johanne Gambrill, Ravine Road, expressed her belief that the reason for the undercurrent with this issue is that people feel that they are not being represented and the governing body has not been straight with them. She believes that space should have been devoted in the newsletter for those who are opposed to this project. She advised that she could not find space in the lot and had to stand outside the room for an hour. She noted that when people were allowed to come in as others left, someone from the Nature Center staff pointed to

board members and allowed them in, but a Police Officer stopped them and allowed her to come in. She questioned why there was a list for each side of who was permitted to speak during the public comment section.

Several members of Council clarified that this list was 20 people who allowed Mr. Feldman, Mr. Nigro, and Mr. Kollitides to represent them and even those people were permitted to speak after everyone else had the opportunity to speak.

Mayor Rustin remarked that the public has not been fair as far as the comments that have been made and the name calling that has gone on. He expressed his opinion that these are the reasons that it is so difficult to find people to run for local government.

C. Honig advised that he opposes the idea of a referendum. He believes that there are issues that warrant a referendum such as the Light Rail as it would have changed the nature of this town. He expressed his opinion that building an education center on less than 1% of the land, a building that is smaller than most homes in that neighborhood and for purpose of preserving and continuing nature education, in no way changes nature of Tenaflly. He noted that a referendum would require an enormous expense and would, in his opinion, be a waste of time, energy and money.

COMMITTEE REPORTS:

Councilman Honig	No report.
Councilman Zinna	Youth Advisory met a week ago. He advised that camp registrations are ahead of where they were last year and they expect 200 campers this year. The 5 th Grade Open House will take place on May 17 th .
Councilman Barzelatto	No report.
Councilwoman LaMastra	No report.
Councilman Warmes	The Chamber of Commerce held a meet and greet at the Elks Club this past C. Warmes commented that it was a nice event and well attended. The first Street Fair will take place on May 4 th and 5 th .
Mayor Rustin	Mayor Rustin reported that he sent a letter to all tree companies that work in Tenaflly to ask that they donate a crew and some time to assist the DPW in removing the tree debris along E. Clinton Avenue. He advised that three companies have already agreed and approval from Green Acres has already been received.

OLD BUSINESS:

None.

NEW BUSINESS:

- **#R13-184**/Award Contract – Earth Networks Inc. - Lightning Detection System – Borough and Board of Education Properties Project

Motion by C. LaMastra, second by C. Honig that #R13-184 be approved.

On a roll call, the vote on #R13-184 was recorded as follows:

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Warmes:	aye
C. Kerge:	absent	C. Zinna:	aye

- **#R13-185**/Authorize Shared Services Agreement with the Board of Education – Lightning Detection System – Borough and Board of Education Properties Project

Motion by C. Warm, second by C. LaMastra that #R13-185 be approved.

C. Honig remarked that this agreement shows that Tenaflly is trying to follow state mandates of having more shared services.

On a roll call, the vote on #R13-185 was recorded as follows:

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Warm:	aye
C. Kerge:	absent	C. Zinna:	aye

- **#R13-186/** Authorize Execution of Pool Plan Agreement with Xerox and Board of Education for the Purchase of Toner Cartridges and Contract for Repair and Maintenance Services for Municipal Printer Devices

Motion by C. Zinna, second by C. Barzelatto that #R13-186 be approved.

WHEREAS, the Borough of Tenaflly (“the Borough”) has the need to purchase printer supplies and provide for printer maintenance services for the operating offices of the municipality; and

WHEREAS, the Borough currently participates in a Pool Plan for copiers that entitles it to the use of on-site maintenance services for equipment located at Borough Hall under the existing Managed Services Agreement (#7025425-001) with the Tenaflly Board of Education (“the Board”) which provides for advantageous contract pricing; and

WHEREAS, increasing the level of services utilized under the existing shared service agreement with the Board will allow for on-site printer supply, repair and maintenance services; improved tracking of supplies; streamlined procurement; consolidated invoicing; and improved asset management for the Borough.

NOW THEREFORE BE IT RESOLVED by the Mayor and Borough Council of the Borough of Tenaflly, County of Bergen New Jersey that it does authorize the execution of a Pool Plan agreement with Xerox and the Board to purchase toner cartridges and contract for repair and maintenance services for municipal printer devices listed in the attached Managed Print Services Proposal for a term of thirty-six months, at a cost of \$1,550 per month, commencing on or about May 1, 2013; and

BE IT FURTHER RESOLVED that the Borough Administrator is hereby authorized to sign said contract on behalf of the Borough of Tenaflly.

On a roll call, the vote on #R13-185 was recorded as follows:

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Warm:	aye
C. Kerge:	absent	C. Zinna:	aye

MAYOR’S REMARKS:

- **Proclamation – Municipal Clerks Week – May 5 – May 11, 2013**

Mayor Rustin read the proclamation declaring the week of May 5th through May 11th as Municipal Clerks Week. He advised that the Borough Clerk is currently out on sick leave and wished her a speedy recovery.

- **Borough Newsletter**

Mayor Rustin explained that the Borough Newsletter is a tool used to disseminate information and is not used for participation by residents. He advised that the Nature Center has had a page in the newsletter for as long as it has been in existence to inform the public about happenings at the Nature Center. It was pointed out that no information had been provided to the public on the proposed project and the Nature Center used the newsletter as a means to communicate this information. He reminded people of the many ways that they can be heard should they not be able to attend meetings such as writing in the *Suburnanite* or contacting Council by letter, email, or phone. He stated that Council does its best to represent everybody and acknowledged that there are times that Council and members of the public are going to be in disagreement. He expressed his opinion that

the Nature Center did an excellent job with their presentation and those who disagree have been heard and will continue to be heard as comments are welcome.

Mayor Rustin thanked the CFO and Borough Administrator for the great job that they did in preparing the budget.

ADJOURNMENT:

As there was no further business to come before the Council, on a motion by C. Honig, second by C. LaMastra, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 10:01 p.m.

Respectfully submitted,

Lissette Aportela-Hernandez, MPA, RMC
Borough Clerk