

Borough of Tenafly

MAYOR AND COUNCIL

COMMITTEE OF THE WHOLE

MINUTES

TUESDAY, JUNE 14, 2011

The meeting was called to order at 7:04 P.M. with the reading of the Open Public Meetings Act statement by Mayor Rustin.

Present: Mayor Peter S. Rustin

Council members: Barry Honig, Martha Kerge, Nadia LaMastra, Michael Lattif,
Jon Warms

Borough Administrator: Jewel Thompson-Chin
Borough Attorney: William R. McClure, Esq.

Absent: Council members Anthony Barzelatto

DISCIPLINARY HEARING – RECREATION PERSONNEL.

Due to the amount of individuals in attendance, this portion of the meeting was moved to Council Chambers.

Mayor Rustin advised that the purpose of the hearing is to review an incident that occurred approximately three weeks ago and the Borough Administrator would provide an explanation of the process.

Mrs. Thompson-Chin advised that this hearing will be a review of the facts and circumstances that led to the disciplinary charges, which includes a report two formal complaints registered in person against Tony Favorito, Recreation Director, stemming from his behavior as the Head Coach in dealing with the players and officials related to a game cancellation that that occurred on Sunday, May 15, 2011 due to rain. At this time, Mr. Favorito is under suspension from his supplementary position as a coach for Recreation Department sponsored sports activities as authorized by Resolution #08-277, while the investigation is being conducted. This resolution only provided authorization to be head coach at no additional compensation. As Borough Administrator, she has the authority to issue suspensions with cause.

Mrs. Thompson-Chin reported that the charges involve (1) Conduct unbecoming a municipal employee; and (2) Due cause as interpreted by the Mayor and Council related to: a. disregard for the health and safety of the minor age softball players under his care; b. confrontational and argumentative behavior with game umpires; c. use of inappropriate language directed at and used in the presence of minors; d. disregard for the care, condition and maintenance of recreational facilities owned by the Borough of Tenafly and the Board of Education; and e. displaying a chronic lack of cooperation and disrespect for the needs and wishes of parents, volunteers, and other participants in the conduct and management of youth sporting activities. The potential actions involve (1) lifting the suspension, and restoring Mr. Favorito's coaching duties are with no further

action being taken, (2) lifting the suspension, and restoring Mr. Favorito's coaching duties and further disciplinary action is imposed, or (3) the interim suspension is continued pending an Administrative Hearing is convened under the direction of the Labor Counsel, and includes witness testimony, deliberations, and findings, of which one of the findings is potential termination.

Mayor Rustin stated that Mr. Favorito had the option to hold this hearing in Closed Session, but chose to have it conducted in a public meeting.

Mrs. Thompson-Chin reviewed the supporting documentation that had been compiled to provide a basis for reviewing the evidence and making a determination on how to proceed. The May 15, 2011 Policy Daily Activity Report cites that at 1135 hrs "DPW reports a dispute on Grove Street. Patrol responded, matter resolved". The amount of activity and the level of noise were so loud, it was heard at the Recycling Center, in which the recycling supervisor felt the need to contact the Police Department. According to the Police Incident Data Sheet, there were still 10 to 15 individuals at the scene, described the situation as "dispute was between a group of parents and umpires and Tony Favorito. Due to the rain, scheduled games were canceled. No complaints to be signed at this time, but the parents and umpires reported to patrol that Mr. Favorito was out of line and out of control for the way he handled the situation and spoke to them. They report this has happened in multiple situations".

After receiving these two documents, Mrs. Thompson-Chin requested that Mr. Favorito provide an incident report, which was read into the record. She described it as an honest overview of the incident, but was absent in the amount of details and was not a true picture of what occurred at the time of the incident.

Mrs. Thompson-Chin reported that she was contacted by two residents and met with them in person. She clarified that anonymous complaints are not accepted, but the identity of the residents was being held in abeyance until the Borough takes formal action. The first complaint dealt with re the Recreation Director's demeanor and judgment in connection with the Safe At Home Girls Softball Tournament held on Sunday, May 15, 2011, which described that two umpires declared that the field was unusable due to the wet conditions, Mr. Favorito reported called the Head Umpire via phone to complain about the decision and he overrode the decision of the umpires and personally declared the field to be playable, whereupon the game was started. Three girls were injured during the first half of the first inning and the game was cancelled by the Head Umpire. It was reported that Mr. Favorito could then be overheard yelling, cursing and screaming at the entire group of young female players and Mr. Favorito then moved toward the parking lot where another screaming match took place with the umpires. The citizen stated that the parents of the participating youth all know in detail about the conditions that the children are subjected to, but they are paralyzed with fear about retaliation against their children if they speak out. It was noted that Coach Favorito later apologized for his outburst to the team members at approximately 1:00 pm. The second complaint received dealt with the Recreation Director's On-going Behavior Related to the Management of Children's Sports and the citizen stated that the parents' greatest fear about speaking out is the threat of retaliation against their children because they believe that their privacy will not be respected and nothing will happen; which is what has happened in the past.

Next she reviewed information and correspondence concerning playing field conditions from the Board of Education. Groves were left in the varsity field and the junior varsity fields had deep footprints and grooves, which resulted in the entire infield having to be broken up and re-leveled. The double gate was left open all weekend. The total cost to repair the damage was \$217.24.

Since the Recreation Board had transmitted to the Mayor and Council their response to the incident earlier this afternoon and due to the role of the Recreation Board in administering the sports

activities managed by the Department of Recreation, the response was read into the record, which stated that half of the board members were resent and witness to the events that had transpired. The notice of possible disciplinary action that Mrs. Thompson-Chin had issued to Mr. Favorito on May 31st was read into the record.

Mrs. Thompson-Chin stated that she reviewed these materials, spoke with the people involved, and tried to be as objective as possible. She knows and likes Mr. Favorito, but is troubled by the idea and fairly constant issue that people are afraid of retaliation to their children as this is not an isolated incident. She recommended that Council proceed with disciplinary action. There are grounds for termination and the employee has a right to request a hearing.

Mr. McClure advised Council that they need to determine if the information presented rises to the level of conducting a formal disciplinary hearing which would include witnesses, Mr. Favorito would be involved and able to present his own witnesses, Mr. McClure would be the hearing officer, and Labor Counsel would act as the prosecutor.

C. Honig congratulated Mrs. Thompson-Chin for a professional and balanced presentation. He concurred that the charges and evident warrant the next step of a disciplinary hearing. Irrespective of personal feelings, it is important that the public understands that the governing body has a strong fiduciary duty to protect the town's interests and that all employees are reporting in a manner that residents and Council can be proud of. He mentioned that the meeting is being videotaped, but the camera will be shut off upon request of those who wish to speak.

C. Kerge asked the Borough Attorney that if Council votes to move forward, would the formal hearing occur this evening. Mr. McClure responded that tonight is reserved only for the Borough Administrator's report to Council. Should Council decide to proceed, the formal hearing will be held at a future date. He explained that Mr. Favorito has the right to confront his accusers. Anonymous comments cannot be used. Testimony will be used. Mrs. Thompson-Chin stated that she and Labor Counsel would become involved and reach out to the participants of the event for testimony.

C. LaMastra mentioned that she has heard five different versions of what had transpired. The complaint rises to a serious level where Council needs to proceed further.

C. Warms inquired that if Council decided not to hold a hearing, would this incident be in the employee's record. Mrs. Thompson-Chin responded that this matter would be in his personnel file.

C. Honig asked Mayor Rustin for his view on this issue. Mayor Rustin responded that based on the evidence presented, the governing body needs to go forward to the next step, but is not suggesting the results of the hearing.

C. Lattif stated that there is a great amount of information and that the Borough Administrator's recommendation bears considerable weight, but in fairness to Mr. Favorito, there should be an opportunity for fact finding and a hearing.

On a motion by C. Kerge, seconded by C. Honig and unanimously carried, Council determined to proceed to the next step in conducting a formal disciplinary hearing, to be scheduled at a future date.

At this time, Mayor Rustin opened the floor for public comment on this matter.

Bobby Thompson – 33 Leonard Avenue – commented on the amount of work that goes into the Safe at Home tournament and had never seen any retaliation by Mr. Favorito.

Mortie Cohan – 132 Sussex Avenue – said that the report was very prosecutorial and seemed that a decision has been made. Mrs. Thompson-Chin responded that it is her obligation to advise the employee and governing body is an option as a matter of due process. Mr. Cohan continued advising Council that Tony has been inclusive for the past 24 years and that this one incident does not merit his termination.

C. Honig noted that no one is talking about firing anyone or about a bad decision to play. What is being discussed is Mr. Favorito's reaction to the situation and that the police had to respond.

Drew Brewis – Heights Lane – commented that Tony's continuation as a coach is all of the kids' business and that Council should not take away the opportunity for kids to have Tony Favorito as a coach.

Jim Tataro – 14 Columbus Drive – described Mr. Favorito as being very passionate and that he tends to get carried away. Disciplinary action may be appropriate for this incident, but he should not be terminated as he is an asset to the town.

Sean Foley – 128 Tenafly Road – mentioned that the incident does deserve discipline but does not warrant termination.

Carl Foley – 128 Tenafly Road – characterized Mr. Favorito as a role model and friend.

Melanie Foley – 128 Tenafly Road – expressed her appreciation for the influence Mr. Favorito has had with her children and that he is the first to apologize for any mistakes.

Dan Barzelatto - 65 Day Avenue – spoke on behalf of himself and his siblings and stated that taking Tony away from coaching takes him away from kids and Tenafly.

Mark Bash – 230 Highwood Avenue – remarked how Mr. Favorito has turned children into success stories.

Matt McSherry – 3 Dunn Place – witnessed the incident at the tournament and walked with Mr. Favorito to his vehicle.

Mitch Casen – 26 Forest Road – described Mr. Favorito as being passionate and very remorseful and this incident should not shadow his body of work.

Adam Banzer – 125 Woodland Street – explained the valuable lessons he learned from Mr. Favorito.

Joe Spina – 192 West Clinton Avenue – commented that the people who are complaining about language did not hear the words for the first time from Mr. Favorito, the umpires were the one who handled the situation wrong, and how Mr. Favorito is here for the kids, not the parents.

Rob Cook – 157 Engle Street – expressed the lack of accountability when it comes to parents' bad behavior at games and how Mr. Favorito cannot be judged by one incident.

Courtney Thompson – 33 Leonard Avenue – read an e-mail from her daughter, Ashley, regarding how Tony helped her developed her confidence, character, and sportsmanship.

Bruce Elia, Jr. – no address provided – claimed that there is some disciplinary action that should be imposed, but hoped that Mr. Favorito is retained.

Bob Briscoll – 220 Riveredge Road – portrayed Mr. Favorito as the backbone of Tenafly in how he shows kids the old way of how to learn.

Andrea Sobel – 66 N. Brae Ct. – expressed that Tony taught her kids discipline, hard work, and respect.

Nicholas Coles – 140 Kent Road – described how Tony taught his 3 children who each have different personalities and instilled confidence, drive, discipline, respect, and encouragement.

David Waller – 280 Devon Road – claimed since only one person spoke out about cursing and raising his voice and that the police did not issue any citations, this situation seems to be a witch hunt; expressed concern over the costs that will be incurred by using the labor attorney for this matter; said that parents have personal agenda and Mr. Favorito should only be issued a warning.

Bridget Cohan – 132 Sussex Road – thanked Mr. Favorito for making her a phenomenal athlete and described the Safe at Home tournament as a source of pride and special event for players.

Bob Rush – 575 Knickerbocker Road – commented how more discretion could've been used in a tense situation, but beseeched Council not to terminate Mr. Favorito.

Brittany Elia – Columbus, Ohio – stated that the Safe at Home tournament is what girls' softball works toward and that there is nothing worse than going all the way and not being able to play the final game.

Jamie Rubin – 158 Westervelt Avenue – depicted Mr. Favorito as a tremendous advocate for young athletes, especially female athletes.

Mayor Rustin thanked the public for coming to the meeting and for their valuable input.

Council recessed at 8:48 p.m. to return to the Wilson Committee Room to review the remaining items of the agenda.

Council reconvened in the Wilson Committee Room at 8:56 p.m.

MEETING with Director of Public Works, Bob Beutel.

This meeting will be rescheduled for a future work session.

CORRESPONDENCE

Noorily

Re: Mobile shaved ice cart.

Drew Noorily explained that the shaved ice cart is portable and plans to mainly locate outside the swim clubs. Mayor Rust advised that he spoke with the health inspector about this matter and she did not have any concerns. Council granted permission for the mobile shaved ice cart.

Savas/South Park Drive

Re: Secondary Recommendations of the Traffic Consultants' Report

Mr. Savas stated that South Park Drive has been a one-way street for the 36 years that he has lived in his home and there is no need to spend money on Thatcher as he only observed 2 cars in the morning and 6 in the afternoon in the area. Mrs. Savas commented that in the 36 years she's lived at South Park Drive, there have not been any accidents to her knowledge and does not see why it is necessary to install sidewalks.

TO BE CONSIDERED

Smith School Pedestrian & Traffic Circulation Study – Recommendations.

Mrs. Thompson-Chin reviewed the recommendations that the consultants listed as Borough designated projects and reviewed them with the Police Chief, DPW Director, and Dave Hals. C. LaMastra noted that the Council needs to know if the Board of Education will implement their designated recommendations in order for Council to make its decision.

Mrs. Thompson-Chin provided a spreadsheet outlining the description of the projects to Council, which listed each project and whether it can be completed by September. With regards to continuing closing a portion of Downey Drive, this recommendation has been accepted and supported by the Police and is currently being implemented. In providing a crossing guard on Thatcher Road, this matter will be reviewed after sidewalks are installed. The crossing guard can be implemented based on pedestrian counts and reassignments of current personnel. In order to modify the one-way restrictions, the Police support returning to two-way traffic, but to implement this recommendation it must be done by ordinance after sidewalks are installed.

Mrs. Thompson-Chin advised that she spoke with the Construction Official regarding improving the sight lines at corners. The area will be surveyed by the Code Enforcement Officer as removal of excess vegetation that blocks street views can be done by issuing violation notices to homeowners under the Borough's property maintenance code. The Department of Public Works has committed to prioritize the Smith School area in an effort to keep the roads clear of leaves and snow. To enforce the speed limit on Leroy Street, the Police Department does not recommend use of speed humps. Instead, an electronic speed monitoring sign will be utilized.

Mrs. Thompson-Chin reported that there is funding to install sidewalks at four locations – Leroy Street, south side of Downey Drive between the school and Thatcher Road, north side of Downey Drive between the school and Thatcher Road, and east side of Thatcher Road, but due to the public bidding process the sidewalks will not be installed by September. She advised that Mr. Hals is working on the specs and refining the cost estimates to obtain quotes so that the Borough does not have to be locked in with one vendor. The consultant's report did not provide the methodology on how they derived on the cost for the sidewalks.

The installation of crosswalks and markings can be painted in-house and completed by the time school opens in September at a revised cost of \$3,000 instead of the study cost estimate of \$15,000. The study's recommendation on the installation of pedestrian crossing signs and street-level pedestrian crossing signs that was recommended by Chief Bruno can also be installed in-house by September. The no-idling initiative is a joint issue between the Borough and Board of Education. Although the study did not associate a cost, Mrs. Thompson-Chin estimated a cost of \$300 for signage.

C. Kerge stressed that Council needs to know if the Board of Education will commit to the items that can be easily implemented as outlined in the study. C. Lattif recommended that Council move forward with installing sidewalks on Leroy Street and the south side of Downey Drive between the school and Thatcher Road, since the other two locations are contingent on whether the Board of Education expands the on-site parking. He stated that to implement all of the Borough designated responsibilities would be rash and does not hold the Board of Education accountable.

The consensus of Council was to proceed with the installation of the sidewalks on Leroy Street and south side of Downey Drive as indicated in the study. The Borough Administrator was directed to communicate to the Board of Education Superintendent on the actions the Borough will undertake and to request that the Board of Education advise how they will proceed before the Council takes any further action.

Reject Downey Drive Sidewalk Bids.

Since the scope of the project has substantially changed, the bids received for the Downey Drive sidewalk improvements will be rejected. A resolution rejecting the bids will be listed for the June 21st consent agenda and the 3 lowest bidders will be notified accordingly.

Appointment of Police Officers.

C. Honig explained that the hiring of a police officer is a 25-plus year commitment with a significant community impact and multimillion financial commitment. He recommended at a minimum that the Council interview and approve the Police Commission's recommendations for all ranks. The sequence of events should be that the Chief and Borough Administrator interview a candidate, who is then interviewed by the Police Commission and the final decision is that of the Council through advice and consent.

C. LaMastra clarified that the Council does not get involved with the hiring of employees and the Police Commission does not hire at the rank of officer. Mayor Rustin expressed concern of opening decisions to politics.

C. Warms commented that the Council decides the hiring of a police officer once the governing body provides the Chief with the authority to hire by allocating funds for the position. He stated that there is a probationary period when a patrolman is hired where an officer can be dismissed.

C. Honig responded that once an investment is made on a police officer, it has material impact on the quality of life of residents, more than any other employee. C. Kerge agreed and said that at one time, prior Councils interviewed everyone that was hired.

C. LaMastra described the hiring process for police officer requires extensive testing, both physical and psychological. Mayor Rustin recommended having Chief Bruno come to a meeting to explain the hiring process.

C. Lattif noted that this was a valid proposal and that if Council moves in this direction, there needs to be an established question set that would survive from hire to hire with some modifications as conditions change.

The majority of Council directed Mr. McClure to prepare an ordinance for consideration at a future workshop.

Public Assistance Trust Fund.

C. LaMastra explained that some participants attend recreation programs at no cost due to financial reasons and cited the enrollment decrease for summer camp. She recommended that instead of cancelling the public assistance trust fund for Council to reallocate the funds for a purpose that will assist the community, such as enabling residents to participate in recreation programs.

The consensus among Council was to cancel the fund as initially proposed. This item will be listed to remove from the table and to vote on the resolution to cancel the fund at the June 21st public meeting.

Massage Parlors Zoning Ordinance.

Mr. McClure provided a model language regarding massage parlors. He stated that the language used in the ordinance had been approved by the Supreme Court as municipalities cannot legally outlaw massage parlors. The annual licensing requirement massage parlors will assist the police in enforcement.

This item will be listed for further review at the July 5th workshop.

Appointment to Historic Preservation Commission.

Mayor Rustin advised that he will appoint Sereno Denise as the second alternate to the Historic Preservation Commission since Janice Jacobs resigned from the position. He also advised that there will be an opening on the Environmental Commission and requested Council to submit any recommendations they may have for appointment.

Developer's Agreement for Ari Realty, LLC.

Mr. McClure advised that the purpose of the Council authorizing the execution of a developer's agreement is to ensure that the proper safeguards and adequate sureties are in place in the interests of the municipality. The approvals of the Planning Board and Board of Adjustment cannot be changed.

Council determined to table this matter and requested the Borough Clerk to contact the Planning Board secretary for a revised document since there is no registered business named Ari Realty, LLC and the checks were paid by Ari Realty, Inc. Also, Council requested an updated affidavit of ownership. Upon receipt of the revised agreement, Council will review this matter further.

C. Lattif expressed concern that the Planning Board has not communicated with Council on important issues, such as developments that impact the community.

Traffic Ordinance 7-15: Prohibited Parking During Certain Hours in Certain Streets.

Council reviewed the draft ordinance which prohibits parking on the west side of Tenafly Road during school hours on school days. Council authorized listing this ordinance for introduction on June 21st.

9/11 Committee.

C. Honig will provide a status on the 9/11 Committee after he speaks with former Mayor Moscovitz, when she returns from vacation.

Recycling Decals – Implementation of R# 11-161.

Council commended Patricia Hale for taking the initiative in reviewing the recent resolution for residents to obtain recycling decals. Council directed Mr. McClure to revise R# 11-161 according to the recommended revisions, including the restriction that the only utility bill to be provided is from PSE&G.

American Conference on Diversity	Re: Nomination of Greater Bergen County's Community Diversity Champion.
NJLM	Re: Oppose A-3285 – Cost Estimates on Bid Advertisements and Urge Swift Passage of S-2762/A-4084 – Commercial and Industrial Property Tax Refunds.
D. Wall/HPC Chairman	Re: PSE&G solar panels in Historic Districts.
Varon on behalf of Huang	Re: Request to vacate paper street.

RESOLUTIONS for meeting of June 21, 2011:

- A. Approve Expenditures as of June 15, 2011.
- B. Approve Renewal of Alcoholic Beverage Plenary Retail Consumption Licenses, Alcoholic Beverage Plenary Retail Distribution Licenses, and Club Licenses for 2011-2012 term.
- C. Oppose Senate Bill No. 1351.
- D. Authorize Refund from PB# 1-11-01 Trust Account to Paul Keyes Associates - \$496.50.
- E. Authorize Refund/Soil Moving and New Construction/59 Day Avenue/\$11,225.00 plus interest owed to date.
- F. Authorize Refund/Tree Mitigation Escrow/298 Woodland Street/\$3,000.00
- G. Approve Developer's Agreement/Ari Realty, LLC/Hillside Avenue & Highwood Avenue.
- H. Approve Outdoor Seating Permit/Café Angélique & Deli Express.
- I. Authorize Refund/Soil Moving and New Construction/221 Churchill Road/\$6,500.00 plus interest owed to date.
- J. Authorize Refund/Tree Mitigation Escrow/101 Deerfield Drive/\$4,200.00.
- K. Authorize Refund/Soil Moving and New Construction/101 Deerfield Drive/\$6,415.00 plus interest owed to date.
- L. Approve Agreement with Tenafly School District/Aesop Software
- M. Approve Amendment to Master License Agreement/QScend Technologies, Inc./Redesign of Borough Website.
- N. Approve Ice Cream Peddler License No. I-4-2011/Awawdeh

PUBLIC HEARINGS for the meeting of June 21, 2011:

A. Ordinances:

ORDINANCE NO. 11-07 - BOND ORDINANCE PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS BY THE BOROUGH OF TENAFLY, IN THE COUNTY OF BERGEN, NEW JERSEY, APPROPRIATING THE AGGREGATE AMOUNT OF \$794,500 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$754,500 BONDS OR NOTES OF THE BOROUGH TO FINANCE PART OF THE COST THEREOF.

B. Other: 2011 BID Budget –

Adoption of Budget and Confirmation of Assessment.

Minutes to be approved: May 24, 2011 Work Session
May 24, 2011 Closed Session

OLD BUSINESS

None.

NEW BUSINESS

- A. Confirm Appointment of Borough Engineer.
- B. Confirm Appointment of Borough Auditor.

FOR THE GOOD OF THE ORDER

None.

CLOSED SESSION

Due to the late hour, the following discussion regarding an update on labor contract negotiations will be reviewed after the June 21st public meeting.

ADJOURNMENT

As there was no further business to come before the Council, on a motion by C. Kerge, second by C. Honig, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 11:31 p.m.

Lissette Aportela-Hernandez, MPA, RMC
Borough Clerk