

Borough of Tenafly

MAYOR AND COUNCIL

COMMITTEE OF THE WHOLE

MINUTES

TUESDAY, JULY 5, 2011

At 7:36 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."

Present: Mayor Peter S. Rustin

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

Borough Administrator: Jewel Thompson-Chin

Borough Attorney: William R. McClure, Esq.

Absent: None.

PUBLIC COMMENT:

Mayor Rustin read the following statement:

Public Comments: A total of 15 minutes has been allocated for this purpose. Citizens are welcome to address the Mayor and Council on any governmental item of concern to them, whether or not it is scheduled on the agenda below. Citizens must give their names and addresses when recognized to speak. Large groups are urged to select someone to represent them. The public is advised that these meetings are recorded and are subject to the Open Public Records Act.

Mayor Rustin advised that the meeting is also being videotaped and will be posted on the Internet.

Johanna Gambrill – 15 Ravine road – remarked that there are a lot of unwritten letters on the mowers and blowers, which are way too loud because they are not regulated enough. She said that she has observed over time that grass clippings are pushed on the street and onto other people's property, as well as work being performed on Sundays or after hours. She stated that no one gets caught and there are no penalties.

TO BE CONSIDERED

Leaf Blower/Noise Ordinance

Council reviewed the ordinance from Pelham Manor provided by Mayor Rustin. C. Lattif recommended banning all commercial landscape work on weekends and holidays, as well as to restrict the commencement time in an effort to have well defined restrictions. C. Honig advised that there needs to be clear communication of these restrictions, which need to have significant teeth for violations, to residents and landscapers. Council directed Mr. McClure to draft an ordinance that would restrict the hours commercial landscapers can use power tools to Monday through Friday from 8:30am to 6pm, with no commercial landscaping on weekends and holidays. C. Barzelatto reminded Council that the restriction should not affect the use of snow blowers. Mr. McClure advised that he would look into language concerning a storm clause. Mayor Rustin urged residents that if they see violations, to contact the police for enforcement.

Dog Park Committee Recommendation

Mayor Rustin reported that the Committee is requesting an agreement from the Council on a proposed location and then the Committee would come back with a specific plan, drawings, cost estimates, financing. The proposed location is 40 yards from the intersection of Riveredge Road and Jefferson Avenue in Roosevelt Commons. Other locations were evaluated, but were eliminated from consideration due to their proximity to homes. There was initial discussion rules of use, badge system, distance to the children's park and potential for allergies, maintenance and hygiene, and liability. Mr. McClure explained that claims can always be made, but the likelihood of substantial liability is remote. Mayor Rustin advised that he will chalk out the area for Council to evaluate and have the health inspector review the area as well. Council authorized the Dog Park Committee to proceed with a plan on a dog park at the proposed location and to submit a report to the governing body for further consideration.

Hiring of Police Officers

C. Barzelatto called for a vote to determine if there was consensus to discuss this topic before proceeding. C. LaMastra explained that on May 9th there was consensus to list this issue on the agenda and initial consensus was granted; however she said she was not ready to discuss the matter further since she did not have the opportunity to review the ordinances from other municipalities that C. Honig provided this evening.

C. Honig summarized that he gathered a sampling of police hiring ordinances from Cresskill, Alpine, Englewood Cliffs, Dumont, Closter, and Little Ferry. Among the 7 samples, Tenafly is the only one where the Mayor and Council does not offer advice and consent, do the candidate origination, or otherwise participate in the process other than the hiring of the chief. He explained that he is seeking discussion as current practice concentrates too much power to one or two people. He is recommending that Council consider an ordinance similar to the one used in Little Ferry that ensures the process is not politicized, power is not concentrated in one or two people, and has institutional longevity.

C. Kerge explained that there was a time that the Mayor and Council were heavily involved in the hiring process, but powers were transferred to the Borough Administrator over time. She stated that the governing body needs courtesy of advice and consent. C. Warms inquired if there is liability in the current process or will changes increase the Borough's liability. Mr. McClure responded that the proposed changes in hiring practices seriously increase the risk of lawsuits and that he reviewed this issue with labor counsel who concurred. He inquired if in this analysis was a claims history obtained to determine if there are any complaints or lawsuits on the hiring practice.

C. Honig responded that he did not obtain a claims history, but will do so. Mr. McClure explained that the term of “advice and consent” is for an appointment, not the hiring of personnel. The control the governing body has with the police department involves approval of expenses and budgetary issues, as well as approval of the size of the force.

Mrs. Thompson-Chin explained that the appointment and promotion process varies by rank. It was the consensus of the majority of Council was to have Chief Bruno attend the August work session to explain the current process of the hiring and promotion of members of the police department in order to determine whether to proceed further on this matter.

Oath of Office – Promoted Police Lieutenant and Sergeants

Council determined to conduct the meet and greet for the promoted officers next Tuesday at 7:00 p.m., before the public meeting where the officers will receive their oath of office.

Council recessed at 9:41 p.m. and reconvened at 9:50 p.m.

Municipal Field Concession Stand – Donations

Mayor Rustin confirmed that he received a commitment of a donation for the roofing and electric work of the concession stand. C. Honig advised that Mr. Paul Renaud is willing to volunteer his services as construction manager. Council directed the Borough Administrator to contact Mr. Renaud to discuss the project and determine if he has the insurance to cover the construction management service, before reaching out to Mr. Hals to determine if he wishes to release the Borough from the contract.

IT Contract

Mrs. Thompson-Chin presented the IT contract with the Board of Education, which is seeking a 2% increase since July 2009. C. Honig recommended including a service level agreement with a response time to reported problems, clarity on application support, and indemnity language. C. Kerge noted that the contract mentions exclusions, but does not list what is being provided. Mr. McClure suggested revisions to the language in the contract. Council authorized Mrs. Thompson-Chin, Mr. McClure, C. Warms, and C. Honig to review and recommend changes in the contract to the Board of Education.

Alternate Prosecutor

Mayor Rustin reported that he has the names of 3 to 4 candidates. He will check on their availability to serve as an alternate prosecutor and report on the status of filling this vacancy at the August work session.

Licensing of Massage Parlors, Masseurs, and Masseuses

C. Barzelatto recommended prohibiting massage parlors due to illegal actions that have occurred in certain locations. Mr. McClure cited that if massage parlors are outlawed through zoning restrictions, existing locations will be grandfathered. By having a licensing ordinance, this will allow the establishments to be monitored and give the governing body the authority to deny renewal or revoke the license of a noncompliant establishment. Mr. McClure advised that he will revise the ordinance for future consideration.

Sewer Easement – 240 Oxford Drive

Mrs. Thompson-Chin reviewed the correspondence that had been forwarded to the governing body in order to obtain approval for the involvement of the Borough Attorney in the upcoming talks to finalize an agreement with the Attorney for the property owners of 240 Oxford Drive to use private funds to pay for repairs to a borough-owned sewer line in order to strengthen the line's durability in order to protect the investment they are making in the renovation of their residential property. She advised that the former engineer recommended that Council with the property owners to make the proposed repairs. Similar requests have been granted in the past. He will continue oversight of the proposed line repair since the matter began as a Planning Board application for a residential property acquisition and pool installation. This recommendation was reviewed with the current engineer, Mr. Hipolit, who concurred with the recommendation and will coordinate with Mr. Hals. Council authorized Mr. McClure to meet with the property owner's attorney to develop an agreement that defines the project limits, costs, responsibilities, etc. to implement the sewer line repairs.

Auction Licensing

Council authorized Mr. McClure to draft an ordinance based on Chief Bruno's recommendation to update the licensing procedure regarding auctions and the licensing of auctioneers. Once the ordinance is introduced, the Borough Clerk is directed to notify the Clinton Inn of the changes since auctions are held in that establishment.

Request for Vacation of Phelps Avenue

Council reviewed Mr. Hals' recommendation and directed the Borough Clerk to advise the adjacent property owner of this request and to seek legal counsel to review and provide Council with their input.

ADMINISTRATOR'S REPORT

Smith School Study - Sidewalk Quotes

Mrs. Thompson-Chin reported that the outgoing and incoming borough engineers reviewed this issue during the transition meeting and agreed that Mr. Hals, PE, will obtain the price quotes for the four (4) sidewalks contained in the Smith School Pedestrian and Traffic Circulation Study. The quotes from prospective contractors are due to Schwanewede/Hals by Friday, July 15, 2011 in order to have the sidewalk installation completed in time for the opening of school in September 2011.

Joint Use Committee Meeting

Mrs. Thompson-Chin advised that the Board of Education needs more time in order to have an internal facilities meeting before a Joint Use Committee Meeting can be scheduled. She expects to hear from the Superintendent in early July with proposed meeting dates.

Pension and Health Benefit Update

Mrs. Thompson-Chin informed Council that she will attend a seminar coordinated by the NJLOM and DCA on implementing the new pension and health benefit rules on July 22nd. The health benefits contribution will be based on salary and type of coverage. If the current 1.5% contribution is greater than the contribution proposed under the legislation, then the greater amount will be collected. The calculations need to be conducted annually as the percentage of the contribution

increases. The contributions to health care will be effective in the August 15th payroll. The pension increase will be reflective in the October 15th payroll.

CORRESPONDENCE

B. Honig RE: Request to sponsor a concert in Huyler Park – 8/4/11
Mayor Rustin informed C. Honig that the concert can be conducted under the auspices of Tenafly Presents, but if he wishes to sponsor the concert on his own, he will need to provide insurance coverage for the event. C. Honig responded that he wished the concert to be conducted via Tenafly Presents. Council approved the event and will have the event listed in the August newsletter.

Weksler/Engle Street RE: Removal of trees along property line
Council directed the Borough Administrator to review this matter with the Director of Public Works and report back to Council.

S. Braverman RE: Reimbursement for cost of defense
Mr. McClure explained that Mr. Braverman was the former prosecutor and is being sued by a former litigant prosecuted in Municipal Court under the claim of malicious prosecution. According to the MEL and JIF, if a professional is not full time, he/she will not be covered even if the person is being used for rendering services for the Borough, as per state statute. Although Mr. Braverman needs to pay for his defense, the governing body is allowed to indemnify employees for this type of defense. Council agreed to pay for the cost of the defense in this case and directed Mr. McClure to draft a letter to the NJ League of Municipalities to voice their concern about this matter.

RESOLUTIONS for meeting of July 12, 2011:

- A. Approve Expenditures as of July 6, 2011.
- B. Authorize Refund from PB# 1-08-04 and PB# 1-10-22 Trust Accounts to Huyler Sky, LLC - \$4495.25.
- C. Authorize Refund from PB# 1-11-06 Trust Account to G. Aivavzov - \$600.40.
- D. Authorize Refund Security Deposit Use of Kitchen in the Alliene S.D. Johnson Garden Room to A. Rosen - \$100.

PUBLIC HEARINGS for the meeting of June 12, 2011:

A. Ordinances:

ORDINANCE 11-08 – 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 CHAPTER 35-201, RELATING TO *BUILDING HEIGHT, AVERAGE GRADE, STORY, AND FLOOR AREA RATIO*; AMENDING SCHEDULE B AND THE FOOTNOTES THERETO RELATING TO *COMBINED SIDE YARD AND MAXIMUM IMPERVIOUS COVERAGE*; AND AMENDING CHAPTER 35-804.4.a TO REGULATE THE CONSTRUCTION OF *BELOW GRADE GARAGES*

ORDINANCE 11-09 - AN ORDINANCE TO AMEND CHAPTER VII OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF TENAFLY, ENTITLED “TRAFFIC” IN ORDER TO PROHIBIT PARKING DURING CERTAIN HOURS ON CERTAIN STREETS

ORDINANCE 11-10 – AN ORDINANCE RESCINDING ORDINANCE 09-05 ESTABLISHING THE WAIVER OF HEALTH BENEFITS PROGRAM FOR ELIGIBLE BOROUGH OF TENAFLY EMPLOYEES.

B. Other: NONE

Minutes to be approved: June 21, 2011 Work Session
June 21, 2011 Closed Session
June 28, 2011 Special Closed Session

OLD BUSINESS

None.

NEW BUSINESS

None.

FOR THE GOOD OF THE ORDER

C. Kerge referenced a letter she received from a resident and inquired if the Borough is looking into the funding available for a study on merging the police department with a neighboring community. C. LaMastra responded that the deadline to request the funding from the county prosecutor's office had passed. Council requested that a discussion on shared services be listed for the first work session in September.

C. Kerge expressed her concern on the Police Chief's letters to the editor in the Suburbanite in that a hired employee should not be responding to an elected official in such a manner.

CLOSED SESSION

Mayor Rustin recognized Borough Attorney William McClure, who read into the record Resolution 11-231.

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. Attorney-Client Privilege
 - 1. Investigation Results – Status Update

- B. Personnel
 - 1. Borough Administrator Performance Evaluation – Further Discussion

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 adjourn this public meeting.

There being no further business to come before the Council, on a motion from C. LaMastra, seconded by C. Kerge, and all present voting in favor, the meeting was adjourned to the Closed Session in the Committee Room at 11:51 p.m.

ADJOURNMENT

As there was no further business to come before the Council, on a motion by C. LaMastra, second by C. Honig, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 12:32 a.m.

Lissette Aportela-Hernandez, MPA, RMC
Borough Clerk