

Borough of Tenafly

MAYOR AND COUNCIL

MINUTES

TUESDAY, JULY 12, 2011

PRESENT: Mayor Peter Rustin and Council members Anthony Barzelatto, Barry Honig, Martha Kerge, Nadia LaMastra, Michael Lattif, and Jon Warms

ABSENT: None

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

At 7:48 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."

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

Motion by C. LaMastra, second by C. Lattif and unanimously carried,

BE IT RESOLVED that the Minutes of the June 21, 2011 Work Session, June 21, 2011 Closed Session (not to be released), June 28, 2011 Special Closed Session (not to be released), June 28, 2011 Work Session, June 28, 2011 Public Meeting, and June 28, 2011 Closed Session (not to be released) are hereby approved.

REVISIONS TO AGENDA:

C. Honig asked that Resolution #R11-236 authorizing a refund from PB# 1-10-13 and PB# 1-11-05 Trust Accounts to T. DeCarlo in the amount of \$8597.66 be removed from the Consent Agenda and placed under New Business. Council agreed to this request.

AUDIENCE REMARKS FOR AGENDA ITEMS:

None.

Oath of Office for Sgt. Christopher Bozzo, Sgt. Adam Kopesky, & Sgt. Ralph Lawrance

Borough Attorney McClure administered the Oath of Office to Sergeant Christopher Bozzo, Sergeant Adam Kopesky, and Sergeant Ralph Lawrance. Mayor Rustin commented that he recognizes that these gentlemen have very big shoes to fill as the sergeants whom they are replacing did a fine job. He remarked that the promotion process is very difficult and he has been pleasantly surprised by the wealth of well-qualified candidates that this department has to offer. He expressed his opinion that these three men are highly capable of doing this job and will continue the highest level of public service.

CONSENT AGENDA:

- A. **#R11-232**/Approve Expenditures as of July 6, 2011.
- B. **#R11-233**/Authorize Refund from PB# 1-08-04 and PB# 1-10-22 Trust Accounts to Huyler Sky, LLC - \$4495.25.
- C. **#R11-234**/Authorize Refund from PB# 1-11-06 Trust Account to G. Aivavzov - \$600.40.
- D. **#R11-235**/Authorize Refund Security Deposit Use of Kitchen in the Alliene S.D. Johnson Garden Room to A. Rosen - \$100.
- E. ~~**#R11-236**/Authorize Refund from PB# 1-10-13 and PB# 1-11-05 Trust Accounts to T. DeCarlo - \$8597.66. Moved to New Business~~
- F. **#R11-237**/ Approve Outdoor Seating Permit/Sushi Ten, Pam's Yogurt t/a Red Mango, Emanu-El Delicatessen, & Tenaflly Classic Diner
- G. **#R11-238**/ Approve Refund - 2010 Tax Court Judgment/21 Mission Way

Motion by C. LaMastra, second by C. Lattif that the Consent Agenda be approved as amended.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Lattif:	aye
C. Kerge:	aye	C. Warms:	aye

All members present voting in favor, the Consent Agenda was approved as amended.

PUBLIC HEARINGS:

A. Ordinances -

The Borough Clerk read into the record:

The following ordinance published herewith was first read by title only on May 24, 2011 and amended on June 28, 2011, and posted on the bulletin board of the lobby of the municipal center.

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 *FLOOR AREA RATIO*; AMENDING SCHEDULE B AND THE FOOTNOTES THERETO RELATING TO *MAXIMUM IMPERVIOUS COVERAGE*; AND AMENDING CHAPTER 35-804.4.a TO REGULATE THE CONSTRUCTION OF *BELOW GRADE GARAGES*.

Public Comments on Ordinance 11-08.

Litsa Milionis, Hickory Avenue, stated that she has been waiting two and a half years to put an addition onto her home and by passing this ordinance, it would allow her to finally do so.

Motion by C. Warms, second by C. Lattif that Ordinance 11-08 be passed on second and final reading and is hereby adopted and notice of same shall be published according to law.

C. Honig commented that C. LaMastra had proposed to have a committee to review all proposals for the land development regulations. He suggested tabling this vote until the committee meets to review the proposed amendment and asked for Council's opinion as to this suggestion.

C. Warms stated that this ordinance is the outcome of several years of work by the Planning Board and has been reviewed and developed by professionals who work with the Planning Board. He advised that these changes correct several inequities that favor builders and urged Council to pass this ordinance.

C. Kerge stated that although she did not initially agree with the ordinance when it was first introduced, she feels as though the Council has come to an agreement in regard to these two items. She believes that passing this ordinance is the right thing to do and she is prepared to vote in favor.

C. LaMastra explained that although there is no reason that the proposed amendment cannot be further discussed and reviewed by the committee, she sees no reason not to pass this ordinance at this time.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Lattif:	aye
C. Kerge:	aye	C. Warms:	aye

The Borough Clerk read into the record:

The following ordinance published herewith was first read by title only on June 21, 2011, and posted on the bulletin board of the lobby of the municipal center.

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

Public Comments on Ordinance 11-09.

There was no public comment.

Motion by C. LaMastra, second by C. Honig that Ordinance 11-09 be passed on second and final reading and is 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. Lattif:	aye
C. Kerge:	aye	C. Warms:	aye

The Borough Clerk read into the record:

The following ordinance published herewith was first read by title only on June 28, 2011, and posted on the bulletin board of the lobby of the municipal center.

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

Public Comments on Ordinance 11-10.

There was no public comment.

Motion by C. Barzelatto, second by C. Kerge that Ordinance 11-10 be passed on second and final reading and is hereby adopted and notice of same shall be published according to law.

C. Honig asked that Borough Administrator Thompson-Chin provide an explanation of this ordinance. Borough Administrator Thompson-Chin advised that in 2009, an ordinance was passed that would have provided a payment of cash benefits in the form of a rebate on their premium to those who waived health coverage through the Borough of Tenaflly. She further advised that the ordinance included a provision that a certain number of employees had to participate for this ordinance to take effect, but this number was never met and the ordinance was never implemented. She also stated that this ordinance did not comply with State regulations. She expressed her opinion that it is best to rescind at this time and revisit after looking at the impacts of the new statutes regarding employee health contributions.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Lattif:	aye
C. Kerge:	aye	C. Warms:	aye

COMMITTEE REPORTS:

Councilman Honig

Mr. Honig reported that the ADA Committee has not had a formal meeting, but there has been discussion regarding the swing for Roosevelt Commons; the committee had anticipated a different type of swing. Bob Beutel had advised that this swing would cost \$5,000. Mr. Honig reported that the ADA Committee may try to raise private funds or see if the Borough could fund the swing. He asked that anyone interested in helping should contact Borough Administrator Thompson-Chin or the ADA Committee.

Mayor Rustin questioned whether there are any funds in dormant accounts to which Borough Administrator Thompson-Chin responded that there are no additional funds. C. LaMastra asked about obtaining a grant. Borough Administrator Thompson-Chin advised that they can apply for a grant, but she believes that the swing requires further discussion. The Borough Engineer has concerns about this type of swing as there was an accident with one before and the JIF required that the Borough take it down.

Councilman Barzelatto

Mr. Barzelatto advised that the Tenaflly Fire Department is very busy and recently responded to the Mayor of Englewood's house fire. He also

reported that they are busy with motor vehicle accidents and odors of gas caused by propane tanks for barbecue grills.

Councilman Warmes

No report.

Councilman Lattif

No report.

Councilwoman LaMastra

Ms. LaMastra reported that Recreation had met the previous evening and discussed the future of the football program. She advised that four men stepped up to continue the program. She also reported that 385 children have registered for camp, down 50 children from last year. She advised that they are planning to look at the list to see if it is a demographic issue such as aging out to the teen camp. 64 resident children have been hired as camp counselors and those not hired have the opportunity to volunteer to receive credits at the high school.

Councilwoman Kerge

Ms. Kerge reported that the Board of Adjustment had met last night and they approved the medical office at 81 Hudson Avenue. T-Mobile asked to be adjourned to 9/12 and 123 Dean Drive, carried from 5/16, asked to be adjourned to 8/1. Community Synagogue continued with their revised site plan. She explained that as they use one block in Tenaflly and two blocks in Englewood, they require approval from both towns; Englewood has already given approval and their Tenaflly application has been carried to 8/1. The Diasparra Madison application has been carried to September. The Board memorialized the denial of 160 E. Clinton Avenue application. Mr. Rafferty purchased 114 Columbus Drive, home of the late Borough Historian, and he presented plans to keep the look of the house, but make updates to the rear.

Historic Preservation Commission met last week and are very busy finalizing the historic guideline handbook being completed by T. Robbins Brown. They discussed the bandstand and expressed their opinion that it was a very thorough job done in a timely fashion and expressed their appreciation to the Borough of Tenaflly, Alice Rigney, and Al Passera. They also expressed their concern about future footprints in Huyler Park and do not want the view of the Railroad Station to be affected.

C. Barzelatto commented that Mr. Rafferty's work is remarkable and it will be a great improvement for Columbus Drive.

Mayor Rustin

Mayor Rustin reported that the fireworks on July 2nd were spectacular and in his opinion, the best show to date. He also commented that the festivities earlier in the day were done extremely well. C. LaMastra and C. Honig thanked the Recreation staff for the tremendous job that they did in putting this event together.

OLD BUSINESS:

A. Recycling Center Police Regarding Construction Debris

C. LaMastra raised the issue of the change in the Recycling Center policy regarding construction debris. She explained that there have been complaints from residents that they have been denied from bringing some of their construction debris to the center for disposal. She expressed her opinion that residents doing small projects on their home should be allowed to dispose of that debris. Mayor Rustin suggested placing the rules regarding disposal of construction debris in the next newsletter and that there be coordination between the Building Department and the DPW to confirm whether a resident is doing work on their home.

B. Police Hiring Discussion at the July 5, 2011 Committee of the Whole

C. Honig stated that last week when Council was having a rather animated discussion of the police hiring proposal that he had put on the table, several audience members came up to him, and it was later noted on the video tape, that the Borough Attorney was passing notes and/or questions to C. Warms to ask him. He stated that this situation is troublesome on multiple levels. He stated that it's troublesome that the Borough Attorney who is supposed to be the attorney for this entire governing body and who took the trouble of reading the ordinance today where it talks about in 2-10.1 paragraph D the governing body both collectively and individually being able to go to speak to, or in writing, present issues to the borough attorney, that he may be writing questions to a councilmember to ask another councilmember. C. Warms interrupted and stated that as a point of order, he would like to see the questions to which C. Honig is referring. C. Warms stated that he received no questions from anybody and asked C. Honig if he is inferring that he cannot ask his own questions. C. Honig responded that of course C. Warms can come up with his own questions, but the issue is whether or not the borough attorney is acting in a manner that is impartial to all members of the governing body. He stated that he wants to be clear that his expectations of the borough attorney are not that he is going to agree or disagree with him all of the time, but that the matters are to be put on the table and that honest and impartial conversation and advice are given therein. He stated that he finds it very disconcerting that such activity went on and that residents of this town went to the trouble of highlighting it to me. He concluded by stating that what is particularly disturbing, actually being someone who is visually impaired and not being able to see this activity going on, is to have members of the town highlight it to me. He stated that he would like to hear from the borough attorney to give him some comfort level as to what is going on.

Borough Attorney McClure responded that those claims are absolutely untrue as he did not pass any questions to C. Warms. He stated that if the claim came from the people who were sitting behind him, all he heard them commenting on was, in their opinion, the absurdity of C. Honig's position. Borough Attorney McClure further stated that perhaps it was people across the table on the other side of the room who thought that that was what was

happening, but he stated that he did not pass any questions whatsoever to C. Warms. He remarked that those claims are completely false.

C. Warms explained that the question that he had asked of the Borough Attorney was one that in the past year, he learned from C. Honig. He stated that whenever the Council does something, they should ask the attorney whether he recommends it. He stated that C. Honig made a proposal to change the process of the police hiring and he asked C. Honig what the attorney had said about it. He stated that that was the question that he had asked and he did not need any help and it was essentially C. Honig who helped him think to ask it. He stated that C. Honig may not like the answer and clearly he doesn't.

Mayor Rustin asked if any notes were passed to C. Warms and C. Warms stated that he did not recall, but no notes were passed to him regarding the questions or what he should say or anything at all relating to those issues. C. Honig asked whether any notes were passed to him at all and C. Warms stated that he has no idea. Mayor Rustin asked Borough Attorney McClure whether he had passed any notes to C. Warms and Borough Attorney McClure responded he absolutely did not pass any notes about any questions to ask C. Honig. He stated that if he passed a note or wrote something down, he does not recall that, but it was certainly not to ask C. Honig a question. Borough Attorney further stated that if they are talking about when he was asking questions of C. Honig, then obviously not, so the answer is no.

C. Construction Management Services for the Recreation Restroom and Concession Stand Project

C. Honig stated that last week when discussing the fact Mr. Renaud offered to volunteer his time for construction management services for the Municipal Center Field Concession Stand and Restroom Project, Mayor Rustin had claimed that it was the first time he was hearing of this offer. C. Honig stated that Mayor Rustin had learned of this offer prior to last week's meeting at a Lions Club meeting. C. Honig expressed his opinion that administrative roadblocks have made the project seem more complicated than it is and caused the loss of a sincere offer from someone to save the Borough money. Mayor Rustin questioned the basis of C. Honig's claim. C. Honig responded that after a few meetings with the Borough Administrator, Mr. Renaud rescinded his offer as there was too much paperwork required by the Administrator.

NEW BUSINESS:

A. **#R11-239**/Approve Borough Administrator's Annual Salary Adjustment

C. LaMastra moved to adopt **#R11-239**/ Approve Borough Administrator's Annual Salary Adjustment. Seconded by C. Lattif.:

WHEREAS, pursuant to Resolution #R10-98 passed on February 23, 2010, the Mayor and Council of the Borough of Tenafly appointed Jewel Thompson-Chin to serve as Administrator for the Borough of Tenafly; and

WHEREAS, the terms of employment attached as Schedule "A" to Resolution #R10-98 provide that, upon receiving rating of "satisfactory performance" following a performance appraisal conducted by the Mayor and Council after twelve (12) months of service, the Administrator would be eligible for her salary to be adjusted up to \$145,000 per year; and

WHEREAS, the Mayor and Council conducted a detailed twelve-month performance appraisal as required by the terms of employment and the Mayor and Council have

determined that the Administrator has met or exceeded the applicable "satisfactory performance" rating;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Tenafly, County of Bergen, State of New Jersey, that the Borough Administrator's annual salary is adjusted up to \$145,000, effective as of March 1, 2011.

C. Honig expressed his objection to this resolution and stated that he is going to vote no to it. He stated that the reason has nothing to do with performance or satisfactory performance as satisfactory performance was indeed given. He stated that we are living in an economic time right now where we are asking the various departments to tighten their belts and not take raises. He stated that there are various cutbacks coming down from the State in terms of increased medical contributions and everybody in government at every level having to take less and accept less is just a fact of the time. He stated that our state is in big and deep trouble and for us to set the precedent where the governing body gives the chief executive a 3.5% raise while asking our rank and file employees to deal with less is inappropriate and is not exemplary of leadership. He stated that he would hope, notwithstanding whatever satisfactory work that is done, that the Council would not pass this resolution at this time so that the governing body can set an example. He also expressed his hope that the Borough Administrator would not want to have such a raise to set an example for her staff that she wouldn't ask them to do anything that she is not willing to do herself.

C. Barzelatto stated that he would like to say for the record that he does not believe that this body should have been the body to review the Borough Administrator. He believes that this review should have been done by the department chairs within the departments because they work with the Administrator on a daily basis. He explained that he only sees the Administrator twice a month and does not feel that he should be sitting here reviewing her. He expressed his belief that this public notice is ridiculous and is certainly an insult to the Administrator. He stated that C. Honig spoke that this is exemplary of her leadership and it just goes to show that this notice is ridiculous and should not even be coming before the governing body. He expressed his opinion that the Council should have handled this review amongst themselves instead of going to the public.

C. Kerge stated that she had a conversation with the Borough Administrator today because she wanted to make sure that she was understanding things correctly before she cast her vote this evening. She stated that she is also bothered by the fact that they are unable to give raises to any of the other administrative employees and yet they have this resolution that was created when the Borough Administrator was hired that set forth the terms of the two reviews. She explained that the first review covered up through September from the time that the Administrator came in the beginning of March of last year and that was an excellent review and she was given the \$5,000 as stipulated by the contract. C. Kerge further explained that that meant that the next review was due in February and covered the next five months and she stated that she was only here for two of those months. She stated that as far as she could tell, the Borough Administrator's performance was satisfactory and better than satisfactory so the Council was looking at a similar figure that would bring her up to the \$145,000 that is seen here. However, she stated that she is still bothered by the fact that Council's hands are not truly tied by what was done by the hiring resolution because the figure says "up to." Even though the Administrator's performance is satisfactory and better than satisfactory, C. Kerge stated that she just cannot bring herself to vote yes this evening based on the fact that Council is unable to give the other administrative employees a raise at this time. She stated that if the time should come that Council is able to do all of the above, then she would happily change her vote and offer to give the Borough Administrator the additional up to \$5,000 which would bring the salary

up to \$145,000. She stated that based upon those things, she will be casting her vote this evening.

Borough Attorney McClure stated that he would like to correct an opinion that he gave previously because he reread the background documents in connection with the Borough Administrator. He explained that at the session in which they discussed the wording as it was explained to him before he reviewed the actual documents, the reference was up to \$5,000 and he expressed an opinion based upon that reference. He stated that in fact, the resolution says that upon achieving a satisfactory performance rating for 2010 review, her salary would be adjusted up to \$140,000 and upon receiving a satisfactory performance rating in 2011, it would be adjusted up to \$145,000 rather than an up to \$5,000 adjustment. Borough Attorney McClure rendered a legal opinion that these were fixed numbers and if the person who drafted the resolution meant an up to \$5,000 adjustment, they would have written it in that way. C. Kerge asked why Borough Attorney McClure had not raised this issue during the pre-meeting and he responded that since the consensus was to increase the Administrator's salary up to \$145,000 anyway, he felt it was a moot point. However, because the issue is now under discussion and C. Honig is stating that perhaps the Council should not go forward with this decision, he feels he should reinforce the wording of the hiring resolution. C. Kerge expressed her opinion that everything that they are doing here is moot as the decision has already been made to which Borough Attorney McClure responded that Council is confirming that her rating was satisfactory.

Mayor Rustin stated that he does not think that it is a coincidence that the two people who have an issue with this adjustment are the two people who were not a part of the hiring process. Mayor Rustin stated that C. Lattif expressed it very clearly, but to put it in his own words, the Council promised that if the Administrator did the job at the level at which she has been rated, she would receive this money. He said that he believes that this feeling is what is sticking in the Borough Administrator's mind as well because she believes that it was promised to her and that is the way that the five members of the governing body that were present recall it. Mayor Rustin stated that he understands what both C. Honig and C. Kerge's points of view and agrees that it is a very tough call because of the nature of this economic situation and what we are looking for from other employees. C. Kerge expressed her opinion that this adjustment is more than a promise if the resolution is written the way in which Borough Attorney McClure is stating and this information is different than that provided last week as what was conveyed last week indicated that there could be a number in between.

C. Honig stated that they twice discussed this "up to" issue and the reason for needing to speak in public because as Borough Attorney McClure had previously indicated that "up to" meant that it could be \$141,000, \$142,000, \$143,000, etc. C. Honig stated that according to Mayor Rustin, Mr. Fehrenbach indicated that there was some latitude in terms of what the increment should be to both reflect the economic times as well as the performance. He stated that it makes sense because otherwise there would be no distinction between satisfactory, above average, and excellent. C. Honig also directed a comment to C. Barzelatto that if he reads 2-8.1, "The Powers of the Administrator", he will see that the ordinance lays out that the governing body is obligated to review the Administrator's performance annually and to set the salary according to the annual salary ordinance. He stated that it is, therefore, extremely appropriate for the governing body to review the Administrator's performance as they are duty-bound to do so based upon the ordinance. Mayor Rustin corrected C. Honig and advised that according to Greg Fehrenbach, the latitude was present should the review not be satisfactory. Mayor Rustin expressed that it was clear in Mr. Fehrenbach's mind that if the review was satisfactory or above, the salary would be raised to \$145,000. C. Honig asked whether the Mayor felt that it should be raised

to \$145,000 and the Mayor responded that he did as he was a part of the group that had promised that increase.

C. Kerge questioned whether she and C. Honig should abstain from this vote and Mayor Rustin responded that the governing body is a continually changing entity and one cannot abstain because they were not there. Instead, he advised that their vote should be based upon what they've heard and what they feel. Borough Attorney McClure advised that it was always contemplated that the decision would be made in March 2011 because that is when the cutoff date was for the evaluation. He explained that whoever drafted the resolution obviously contemplated that there could be a change in the Council, so the Council could make a decision as of that date. He advised that she and C. Honig sat with their fellow Council members and discussed performance at length so they certainly have sufficient background to make that decision.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	nay	C. Lattif:	aye
C. Kerge:	aye	C. Warms:	aye

B. **#R11-236**/Authorize Refund from PB# 1-10-13 and PB# 1-11-05 Trust Accounts to T. DeCarlo - \$8597.66.

C. Warms moved to adopt **#R11-236**/Authorize Refund from PB# 1-10-13 and PB# 1-11-05 Trust Accounts to T. DeCarlo - \$8597.66. Seconded by C. Lattif.:

C. Honig expressed his concern over a letter received regarding this contractor. He remarked that there seems to be a lot of tree removal taking place and he is concerned about whether it is being done appropriately. He asked that Bob Beutel meet with Council to step them through the process. Mayor Rustin advised that this resolution does not pertain to tree removal. C. Honig responded that he must have misread the resolution.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	aye	C. Lattif:	aye
C. Kerge:	aye	C. Warms:	aye

C. Other New Business

C. Barzelatto congratulated the Police Officers promoted and expressed his opinion that the great leadership within the department is continuing.

C. Barzelatto asked that there be a discussion at the August 2nd Work Session about the adhering to the 11:00 p.m. ending time for Council meetings as well as the conduct and behavior of Council members during Council meetings.

C. Barzelatto also made reference to an article that he read discussing Lubavitch's plans to expand their building in order to increase their schooling capabilities. He asked that Council consider this request carefully when it comes before them. C. Honig objected to C. Barzelatto's comments about Lubavitch.

AUDIENCE REMARKS FOR NON-AGENDA ITEMS

Mark Feldman, 133 Lylewood Drive, commented that \$1.8 million is currently in Open Space Trust Fund and there is no imminent plan to purchase property. He proposed that Council place a moratorium on the annual levy and asked that Council place a referendum question regarding this proposal on the November ballot.

C. LaMastra responded that Council had discussed this possibility at budget time this year and last year and had made a decision not to suspend the levy. Council decided to consider drafting a resolution for a referendum question at the August 2nd Work Session.

MAYOR'S REMARKS:

None.

The time required Council to commence the Closed Session. Council agreed to resume this Public Meeting upon conclusion of the Closed Session.

CLOSED SESSION:

Borough Attorney McClure advised that he would like to add a Closed Session matter under Attorney-Client Privilege entitled Kelly v. Braverman.

Mayor Rustin recognized Borough Attorney William McClure, who read into the record Resolution #11-240.

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
 - 2. Kelly v. Braverman
- B. Contract Negotiations
 - 1. Contract Updates
- C. Personnel
 - 1. FMLA Request – Borough Clerk

Minutes will be taken of the meeting and release 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.

On a motion by C. Kerge, second by C. LaMastra, the meeting was adjourned to the Closed Session in the Committee Room at 9:12 p.m.

The Mayor opened the Public Meeting at 9:49 p.m.

FOR THE GOOD OF THE ORDER:

C. LaMastra requested that the two items C. Barzelatto had asked to be listed for the August 2nd Work Session be combined into one item, code of conduct.

C. Honig raised the issue of Borough Administrator Thompson-Chin's memorandum regarding his conversation with the Labor Attorney. He stated that he read very carefully the powers of the Borough Administrator set forth in the Borough Code 2-8.1, 5, and 6. He stated that he also reviewed 2-10.1, the section of the Borough Code relating to the Borough Attorney as well as the labor attorney contract recently signed. He remarked that there is no mention of her having any authority over the labor attorney. In ordinance in Paragraph L, one department administrator cannot remove is borough attorney, 2-10.1 in paragraph d, borough attorney shall answer in writing any questions or individually. He expressed his opinion that this statement also applies to the labor attorney. He explained that in the labor attorney contract, it spells out what the administrator is permitted to do in terms of her negotiations and working with the labor attorney and there is no mention that a member of the governing body cannot have a conversation directly with the labor attorney. He expressed his opinion that an elected official being prohibited from consulting with an appointed attorney is ridiculous. He expressed another concern that the administrator has gravely overstepped her authority, having no power from any ordinance and expressed his opinion that there may have been a violation of attorney-client privilege. He questioned the grounds upon which the Administrator made her decision to tell an elected official that he cannot have a conversation with a labor attorney and to prohibit further conversation.

Borough Attorney McClure responded that the Borough Attorney represents collectively the governing body and when issues arise, it may be awkward for a member who needs to have immediate advice to have to go through the Borough Administrator. However, he advised that the Labor Attorney does not give individual legal advise to the individual council members because the nature of the engagement of the labor attorney is the borough as a whole and he specifically focuses on labor issues that are decided upon by the body as a whole. He advised that there should be nothing urgent that needs to be emergently answered by the labor attorney that arises with respect to an individual council member. In terms of the Borough Administrator, he advised that there was a resolution passed that individual Council members would not directly contact Borough employees or officials which include the Labor Attorney without first going through the Borough Administrator. C. LaMastra added that everything to which Borough Attorney McClure just referred is contained within the Code of Conduct which every member of the governing body signed when they took office. Borough Attorney McClure advised that he only receives additional compensation for litigation matters, but if he is contacted by a council member, it is a part of his retainer and no borough funds should be spent.

Mayor Rustin pointed out that C. Honig referred to himself as a client, but the client is not an individual member of the Council, it is the governing body as a whole and it is the governing body as a whole that makes these inquiries of the professionals. He added that no one gave a council member authority to run up a bill.

C. Kerge stated that she did not sign the Code of Conduct because she was not there when the Code of Conduct was drafted and did not contain her input. She remarked that she knows when she should acquire advice on something and when she should not speak. C. Hong advised that he, too, chose not to sign the Code of Conduct. C. LaMastra pointed out that although the Code of Conduct had been revised approximately four years ago, it has been in place for 20 years.

C. Warms remarked that one of the duties of the Borough Administrator is to oversee the labor relations activities and in his mind, means being the client representative.

C. Honig explained that he was prompted to contact the Labor Attorney because Borough Attorney McClure advised that he had had a conversation with the Labor Attorney regarding

C. Honig's police hiring proposal. As such, C. Honig expressed his opinion that he had the right to contact the labor attorney to verify that the labor attorney had in fact criticized his proposal and the reason for this criticism. He stated that when he had asked the labor attorney a question that the labor attorney advised would require a lot of research, C. Honig responded that he was not in a position to authorize this work and would only be done with the full consent of the governing body.

Borough Attorney McClure pointed out that C. Honig never asked about the Labor Attorney's criticism of the proposal to have the Chief Bruno and Police Commission advise as to why other candidates were not selected. Borough Attorney McClure advised that this part of C. Honig's proposal was the area with which Borough Attorney McClure took issue. He explained that he contacted the labor attorney as he felt that C. Honig's proposed provision impacted labor issues.

C. Honig expressed his opinion that the governing body needs to make clear ground rules and he stated that he would like the Borough Clerk to show who has signed the Code of Conduct. He expressed his belief that not allowing individual members of the governing to interact with the employees or officials is bad management.

C. LaMastra expressed her opinion that in order to get anything accomplished, the Council needs to work as a team and trust one another. She stated that it is her belief that the Council needs to work together for the benefit of the community and part of the reason for the code of conduct is so that each member understands their role within this organization and realizes that they cannot act individually.

ADJOURNMENT:

As there was no further business to come before the Council, on a motion by C. Kerge, second by C. Warms, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 10:29 p.m.

Lisette Aportela-Hernandez, MPA, RMC
Borough Clerk