

Borough of Tenafly

MAYOR AND COUNCIL

MINUTES

TUESDAY, MAY 29, 2012

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

ABSENT: None

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

At 9:05 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. Barzelatto, and all other members voting in favor,

BE IT RESOLVED that the Minutes of the May 8, 2012 Work Session and May 15, 2012 Public Meeting are approved as amended.

REVISIONS TO AGENDA:

Borough Attorney advised that item B on the Consent Agenda, Resolution #R12-226/ Authorize Refund/PB#1-05-25 Trust Account/Ari Realty Corp, is being removed from the Consent Agenda and moved to New Business. He further advised that Resolution #R12-244/ Authorize Amendment of Contract/Dedicated Project Services, LLC. and Resolution #R12-245/Censure of Councilmember Barry Honig are being added to New Business.

PUBLIC COMMENTS:

Johanne Gambrill, Ravine Road, questioned whether the BID budget and/or the BID bylaws would be discussed this evening. Mayor Rustin advised that neither topic would be discussed. Ms. Gambrill commented that the Welcome Committee already has a complete business list whereas the BID's list is outdated. She criticized the outsourcing of almost all services by the BID Director.

CONSENT AGENDA:

#R12-225/Approve Expenditures as of May 23, 2012.

~~**#R12-226/**Authorize Refund/PB#1-05-25 Trust Account/Ari Realty Corp.~~ *Moved to New Business*

#R12-227/Authorize Refund/Commuter Parking/Plotkin

#R12-228/Authorize Refund/Construction Escrow/TD Bank

#R12-229/Authorize Refund/Tree Mitigation Escrow/148 Stonehurst Drive

#R12-230/Authorize Refund/Various Bonds and Escrow/29 Mahan Street, LLC

#R12-231/Authorize Refund/Site Plan Escrow/Mt. Carmel Cemetery

#R12-232/Authorize Refund/Tree Mitigation Escrow/10 Prospect Terrace

#R12-233/Authorize Refund/Tree Mitigation Escrow/12 Poplar Street

#R12-234/Authorize Renewal of Plenary Retail Consumption, Plenary Retail Distribution, and Club Liquor Licenses/2012-2013 Term

#R12-235/Authorize Refund/Engineering Escrow/10 Nelson Place

#R12-236/Award Contract/Repair and Maintenance of Police Vehicles/2012-2014/Clinton Auto Service.

#R12-237/Award Contract/Repair and Maintenance of Traffic Signals and Related Equipment/2012-2014/Jen Electric, Inc.

#R12-238/Authorize Transfer of Funds to the Borough Tree Replacement Fund

#R12-239/Authorize Transfer of Funds to the Borough Tree Replacement Fund

#R12-240/Approve Raffle Application RA 1017/Habitat for Humanity of Bergen County

#R12-241/Approve Outdoor Seating Application/Simply Vietnamese
#R12-242/Authorize Execution of 2012-2014 Snow Plowing Program Agreement
#R12-243/Authorize Refund/Overpayment of Taxes - Various

Motion by C. Zinna, second by C. LaMastra 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. Warms:	aye
C. Kerge:	aye	C. Zinna:	aye

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

COMMITTEE REPORTS:

Councilman Honig

No report.

Councilman Warms

Mr. Warms reported that the Chamber of Commerce held its Sidewalk Deals this past weekend. He commented that it was a learning exercise as they were handicapped by weather and the fact that it was a holiday weekend. The Chamber will be evaluating the event to see what can be improved.

Councilman Barzelatto

No report.

Councilwoman LaMastra

Ms. LaMastra advised that the Employee Recognition Committee met earlier today. Borough Administrator Thompson-Chin provided an outline of the program and the committee will meet again to fine tune the program. They plan to begin by recognizing employees, volunteers, and retirements.

Councilman Zinna

Mr. Zinna reported that the full-time counselor in Youth Services has left and they will be replacing this position with two part-time positions. They are in the process of interviewing and are down to two candidates. They are proceeding with summer camp registration.

Councilwoman Kerge

Ms. Kerge announced that the Historic Preservation Commission has finished its Tenafly Design Guidebook and it will be available for purchase in the Building Department or can be viewed in the Library. Ms. Kerge advised that a trust account will need to be set up. Mayor Rustin added that the cost will be \$25 for a color copy and \$10 for black and white.

Mayor Rustin

Mayor Rustin advised that they are in receipt of the Engineer's report detailing the maintenance levels and ADA compliance for Tenafly's recreational facilities. He noted that the Borough Engineer did a thorough job and provided a true sense of what needs to be done to bring the parks up to standard. He commented that the governing body is determined to have all facilities ADA compliant.

Councilwoman LaMastra

Ms. LaMastra reminded Council that the Ambulance Corps Recognition Dinner is on June 16th at the Clinton Inn and asked that members of the governing body respond as soon as possible.

OLD BUSINESS:

2012 BID Budget

C. LaMastra advised that this item will not be discussed this evening. She asked that the BID budget and bylaws be listed on the June 26th Work Session agenda.

NEW BUSINESS:

A. Introduction of Ordinances

C. Warms moved to introduce and pass on first reading Ordinances 12-08 and 12-09 and setting the hearing for June 19, 2012 at 8:00 p.m. or as soon thereafter as the matter can be heard as the date and time and the Council Chambers of the Tenafly Municipal Center as the place for a hearing on said ordinances. Seconded by C. LaMastra:

The Borough Clerk read the ordinances into the record:

ORDINANCE NO. 12-08 - AN ORDINANCE REAPPROPRIATING \$188,861 PROCEEDS OF OBLIGATIONS NOT NEEDED FOR THEIR ORIGINAL PURPOSES IN ORDER TO PROVIDE FOR THE VARIOUS PURPOSES AS MORE FULLY DESCRIBED HEREIN IN AND BY THE BOROUGH OF TENAFLY, IN THE COUNTY OF BERGEN, NEW JERSEY.

ORDINANCE NO. 12-09 - AN ORDINANCE APPROPRIATING \$150,000 TO PROVIDE FOR IMPROVEMENTS TO COLUMBUS DRIVE IN AND BY THE BOROUGH OF TENAFLY, IN THE COUNTY OF BERGEN, NEW JERSEY.

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

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

C. Zinna moved to introduce and pass on first reading Ordinance 12-10 and setting July 10, 2012 at 8:00 p.m. or as soon thereafter as the matter can be heard as the date and time and the Council Chambers of the Tenafly Municipal Center as the place for a hearing on said ordinance. Seconded by C. LaMastra:

Borough clerk read the ordinance into the record:

ORDINANCE NO. 12-10 - AN ORDINANCE TO AMEND THE ZONING MAP OF THE BOROUGH OF TENAFLY ADOPTED ON JULY 10, 2007 AND TO AMEND AND SUPPLEMENT THE LAND DEVELOPMENT REGULATIONS OF THE BOROUGH OF TENAFLY TO DESIGNATE CERTAIN PROPERTIES WITHIN THE BOROUGH "HISTORIC" AS SET FORTH IN THE HISTORIC PRESERVATION PLAN OF THE MASTER PLAN OF THE BOROUGH OF TENAFLY AND AMENDING CHAPTER XXXV OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF TENAFLY, ENTITLED "LAND DEVELOPMENT REGULATIONS"

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

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

*C. Barzelatto stepped away from the dais.

B. #R12-226/Authorize Refund/PB#1-05-25 Trust Account/Ari Realty Corp

Motion by C. LaMastra, second by C. Warms that #R12-226 be approved.

C. Honig explained that his reason for pulling this resolution pertains to his issues with 7-11. He advised that he will not be voting for anything that will benefit Ari Realty.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	nay	C. Warms:	aye
C. Kerge:	abstain	C. Zinna:	aye

C. **#R12-244/** Authorize Amendment of Contract/Dedicated Project Services, LLC.

Mayor Rustin recognized C. LaMastra who read the resolution into the record:

WHEREAS, via Resolution #R10-398, adopted December 14, 2010, the Mayor and Council awarded a Contract to Dedicated Project Services, LLC, located at 3 Heather Lane, Glen Rock, NJ 07452, authorizing the Borough to enter into contract for construction management and equipment procurement services for a total contract cost \$73,500 to be billed at a cost of \$75.00 per hour; and

WHEREAS, via Resolution #R12-166, adopted April 24, 2012, the contract was extended through May 31, 2012; and

WHEREAS, based on consultation with the contractor, Architect, and Clerk-of-the-Works, in conjunction with the Police Chief and Borough Administrator there is still a need for project oversight and coordination to complete the remaining construction punch list items in order to obtain a permanent Certificate of Occupancy, test newly installed systems, interact with vendors, and train maintenance staff; and

WHEREAS, there are adequate funds remaining in the existing contingency line to complete the above listed tasks through the revised completion date of July 31, 2012 up to a maximum of \$10,000; and

WHEREAS, the Chief Financial Officer has certified that there are funds available for this purpose.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Tenafly, County of Bergen that it does hereby authorize the Borough Administrator to execute a contract amendment for Dedicated Project Services

BE IT FURTHER RESOLVED that this Contract Amendment shall extend the contract completion date to July 31, 2012, and amend the total contract price to \$93,500.

Motion by C. LaMastra, second by C. Barzelatto that #R12-244 be approved.

C. Honig remarked that Council was told that the last time the contract had been extended the project would be 100% completed by the end of May and the additional \$10,000 would be final. He advised that he will be voting no as he sees no reason to be additional spending money.

Borough Administrator Thompson-Chin noted that Janeen McDonald gave a detailed and lucid enumeration of the remaining activities. She advised that the project is still coming in under budget and they are still working within the 3% contingency.

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

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

D. **#R12-245/**Censure of Councilmember Barry Honig

Mayor Rustin read the resolution of censure:

WHEREAS, the Tenafly Mayor and Borough Council convened on Tuesday, May 29, 2012 for a regularly scheduled meeting of the Tenafly Mayor and Borough Council with said meeting date and time published in accordance with New Jersey's Open Public Meetings Act, *N.J.S.A. 10:4-6, et seq.*; and

WHEREAS, the Mayor and Council wishes to express its official condemnation and denunciation of the manner in which Council Member Barry Honig has conducted himself

recently, specifically, his communications with fellow Council Member Anthony Barzelatto's employer; and

WHEREAS, the Mayor and Council finds such behavior by Council Member Honig to be reprehensible, un-warranted, and lacking of common decency and reasonable behavior; and

WHEREAS, Council Member Honig, in communications with Council Member Barzelatto's employers identified himself as a Tenaflly Borough Council Member, which could have led Council Member Barzelatto's employers to believe that Council Member Honig was acting on behalf or in conjunction with the Tenaflly Borough Council in whole; and

WHEREAS, by identifying himself as a Council Member, Council Member Honig by his actions created the perception that the Tenaflly Borough Council approved of such communications; and

WHEREAS, in a letter to the *Suburbanite*, Council Member Honig inappropriately publicly criticized Council Member Barzelatto's relationship with his employer;

NOW, THEREFORE BE IT RESOLVED BY THE TENAFLY MAYOR AND BOROUGH COUNCIL THAT BARRY HONIG IS HEREBY OFFICIALLY CENSURED FOR THE MANNER IN WHICH HE CONDUCTED HIMSELF, AS A MEMBER OF THE TENAFLY BOROUGH COUNCIL, IN COMMUNICATIONS WITH THE EMPLOYER OF FELLOW COUNCIL MEMBER ANTHONY BARZELATTO AND IN COMMUNICATIONS MADE THROUGH IN THE MAY 24, 2012 EDITION OF THE *SUBURBANITE*.

C. Honig expressed his opinion that it is absurd to have a resolution placed on the table for a Councilmember who is exercising his freedom of speech. He advised that his letter was vetted multiple times by the editor and legal department of the *Suburbanite* and as such, he believes that this censure just goes to show the level of political bias that exists and makes a comedy of the governing body. He explained that he was given information indicating that a UN staff member is strictly prohibited from holding elected office, including local office, due to the special nature of working for a diplomatic organization. He advised that when he received this information, he wanted to be extremely careful to verify that this information was true and not a rumor. He described how he approached the UN legal department, not identifying himself as a member of Council, asked a generic question about UN staff members and whether or not they were allowed to hold elected office, and was told that staff members could not hold elected office. He then conducted his own research and was presented with some information that led him to believe that it was potentially possible for a staff member to hold an elected position. He was then referred to a document that has been turned over to Council and the Borough Attorney and this document stated that a UN staff member is not allowed to hold any elected position, including local position. As he wanted to be extremely certain that he had accurate information, C. Honig explained that he had asked whether a waiver can be granted to an individual under certain circumstances, but was told in communications that no such waiver can be granted because permission cannot be given. Although within the document it refers to certain classifications of employees to which these regulations apply, C. Honig explained that the legal representative to whom he spoke advised that these classifications had been modified to make one unified classification in 2009. C. Honig noted that he put this information out there because he believes that it is relevant. He maintained that he never indicated that he was representing the Mayor and Council or the Borough of Tenaflly because it would be inappropriate to do so without having received authorization from Council. He expressed his opinion that the issue is not the censuring of the messenger of the information, but instead whether C. Barzelatto is allowed to sit on the governing body given these particular regulations. He expressed that it was never his intent, nor is it now, to jeopardize someone's job and if such a waiver can be produced indicating that these regulations have been waived, the issue will be dropped and he will publish an article in the *Suburbanite* to clarify the situation. He advised that his intent, as it is with everything that he does on this Council which is often met with the ire of Mayor Rustin who constructed this nonsense, this resolution, is that he tries to bring issues out of the shadows which can sometimes make people uncomfortable. He stated that the Council can, of course, censure someone who was ferrying this information, went through all of the appropriate steps to do so, never represented that he was doing so on behalf of the Council, and in fact turned this information over to the Borough Attorney for his opinion as to what Council should do, which C. Honig commented that he would still like to hear.

Borough Attorney McClure responded that if C. Honig had given him more advance notice rather than sending this information in an email this afternoon, he would have given C. Honig advice and suggested that he not stick his nose in someone else's business. He stated

that C. Honig keeps mentioning the word regulations but these matters are private employer/employee policy issues that do not have any bearing on C. Barzelatto's right to serve on Council. Borough Attorney McClure then repeated C. Honig's comment that the fact that C. Barzelatto works for the UN makes this matter significant, but questioned who determines if a potential candidate's employment is significant enough to involve this Council. He then questioned how C. Honig was able to get the UN legal department to discuss an employee's personal situation with him. Although he advised that tonight is the first time that he is hearing this information and he had nothing to do with this resolution or anything to do with whether C. Honig represented himself to be a member of Council, he expressed his belief that any corporation would decline to discuss such information. He expressed his opinion that the only way that the UN legal department would talk to C. Honig is that he must have indicated that he was a member of Council and a fellow member of Council is employed there.

C. Honig advised that he asked generic questions about what employees can do and what is permissible. He then asked Borough Attorney McClure if the Councilmember worked for a company such as Goldman Sachs or Morgan Stanley and that individual was prohibited from running for Council, whether he would believe that that information is the interest of the Council or the public. Borough Attorney McClure stated that now C. Honig is mixing in an employer subject to certain governmental regulations such as FCC regulations and treasury regulations and he advised that the answer to the question is maybe. If federal regulations were violated or there was a binding effect on Federal or State government or subdivisions of State government, he stated that then certainly the information would be relevant. However, if the regulation was that Goldman Sachs did not want an employee holding a second job where you work after six o'clock, he expressed that that regulation would not be anything that would have to do with the governing body. He advised that a blanket statement cannot be made that every single personnel policy of every single employer has an impact on whether someone can run for Council. C. Honig commented that if someone is violating their employers rules to sit on the governing body, he believes that such information is relevant and the public has right to know.

Mayor Rustin remarked that C. Honig uses the terms of relevance and appropriateness, but what C. Honig may think is relevant others may disagree and it will be up to the consensus of this board to decide whether this resolution is relevant and appropriate. He pointed out that C. Honig commented that his letter was gone over and trimmed numerous times by the editor and the legal staff and Mayor Rustin expressed his opinion that that fact says something about C. Honig's letter. He clarified that no one is objecting to or suggesting that C. Honig did not have the right to have a letter published in the newspaper, but rather, what he finds most offensive about the letter is the fact that C. Honig publicly stated that C. Barzelatto has not been honest with his employer. He asked C. Honig how he would like to read in the newspaper that one of his employees has not been honest with him. He recounted C. Honig's explanation that some little birdie advised him that there may be a rule and C. Honig did his due diligence by going online to see the rules and realized that there might be something to this information. Mayor Rustin expressed his opinion that the difference between decency and indecency and maliciousness is decency would have been to go to C. Barzelatto and ask him for an explanation. He argued that indecency and maliciousness is to put the information out there for public consumption and leave C. Barzelatto to deal with his employer and leave him in position where employment, if not terminated, could be severely impacted. He expressed his belief that the governing body is going to take a look at C. Honig's actions and decide if they were appropriate or relevant.

C. LaMastra commented that she has listened very carefully to what C. Honig has had to say. She also noted the fact that C. Honig claims to have been very careful and diligent about the kind of information that he received and in how he used this information because he knew that it was of a sensitive nature and whenever an elected official makes a statement or takes action, it becomes public record. She stated that part of the reason that she will support this resolution is because of C. Honig's letter in the paper as she believes that it is conduct unbecoming of a public official to put that kind of information into the newspaper. She expressed her belief that the more appropriate action would have been for C. Honig to contact the Borough Attorney, Administrator, or Clerk in confidence and inform them of the information to ask what the appropriate course of action would be or to contact C. Barzelatto to see if the information is true. She commented that by allowing it to be digested in the paper, it only looks like political retribution during the primary season. She expressed her opinion that it is behavior that is inappropriate especially when it is impacting someone's livelihood. She commented that a person gives up a lot to serve on Council and to affect someone's livelihood is totally inappropriate.

C. Warms remarked that he objects to what C. Honig has done on so many different levels. He stated that C. Honig sending letters out and corresponding with a fellow Councilman's employer is beyond the pale. He criticized the fact that C. Honig then relayed the results of

his correspondence to the newspaper and fellow Councilmembers without giving his victim the chance to respond. He noted that although C. Honig may say that he has seen the regulations, C. Warms pointed out that C. Honig has shown Council one sentence out of context of this particular regulation and everything else that has been said is hearsay. He expressed his opinion that if C. Honig had an issue, it should have been directed to C. Barzelatto to give him a chance to respond. He asserted that C. Honig's actions go against the grain of Council, the Code of Conduct as it exists and should exist, and the tenet of public service. He commented that as elected officials, they present themselves to the electorate body and that body votes them in or rejects them based on what they present. He expressed his opinion that everything that C. Barzelatto has presented to electorate is true and yet in spite of that, C. Barzelatto is being attacked for it. He commented that this situation will make it very difficult for anyone else to consider serving on Council when they themselves and their livelihood could be threatened by a fellow Councilman due to a personal vendetta.

C. Kerge explained that she did not like fact that C. Honig's letter appeared in the paper and would have preferred that C. Honig had brought this subject up under For the Good of the Order as the Mayor did tonight with this concept of the censure. She noted that she was surprised when she saw C. Honig's letter in the paper. She expressed her belief that there are organizations, not just corporations and business organizations, having rules against employees doing anything political, even wearing a political pin, during political season. At this point in time, she believes that the situation of C. Barzelatto running for Council is between C. Barzelatto and his employer and the Council has to accept that fact. She commented that C. Barzelatto and his family have lived in Tenaflly for many years and have always been upstanding citizens of the town. She stated that no matter what has been said and done at this point, she is unsure whether she agrees that it is up to this governing body to sit as judges of the accused or if voting to censure another member is the appropriate thing for Tenaflly. She remarked that she is very uncomfortable with doing so because she does believe that people have the right to speak their views and C. Honig had the right to send the letter. Whether she would have written the letter or gone to C. Barzelatto, C. Kerge commented that everyone is different and as such, she expressed that she is just not comfortable voting to censure.

C. Zinna agreed that people have the right to print or write anything to the newspapers or the public as they see fit. He commented that during a political campaign, to a certain degree, everything is open season. He stated that whether he agrees with a fellow Councilmember's politics is one thing as that is political behavior. He expressed his opinion that C. Honig crossed the line from political behavior into official misconduct. He alleged that when one looks to deny someone a benefit and in C. Barzelatto's case, his paycheck, and it has nothing to do with one's work as a Councilmember, there are specific State statutes prohibiting this kind of behavior and requiring that Council do something about C. Honig's actions. He asked Borough Attorney McClure what Council should do, whether they should ignore their responsibility or report this situation to the Attorney General. Borough Attorney McClure responded that he is not sure that C. Honig's actions were a violation of the law. He commented that it was a bad decision and in bad taste as it went against behavior that one would expect from a Councilmember, but he would not go as far as to say C. Honig did anything illegal. He stated that he does not believe that this behavior is official misconduct as official misconduct is utilizing one's position as a public official for an improper purpose and he does not believe that there has been any real evidence of that behavior. He remarked that he wouldn't say that C. Honig's actions rise to the level of being something that it is prohibited by law although he does believe that they were in very bad taste and a bad decision. He commented that he wished that he had been consulted earlier as he believes that this situation would never have taken place.

C. Honig pointed out that he has been the subject of derisive remarks from C. Barzelatto in the last year as well as Mayor Rustin including the publication of the number of times that his alarm has gone off. He questioned how that piece of confidential information managed to be included in a public campaign piece. He expressed his opinion that this action being taken by Council is simply a clever political relations move to hide the essential issue. He noted that there is the opportunity here and now to clear the air. He asked whether a waiver exists that permits C. Barzelatto to serve on this Council. C. Honig expressed his belief that that question is the real issue, not whether he did investigative work.

Motion by C. Zinna, second by C. Warms that #R12-245 be approved.

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

C. Barzelatto:	aye	C. LaMastra:	aye
C. Honig:	nay	C. Warms:	aye
C. Kerge:	abstain	C. Zinna:	aye

MAYOR'S REMARKS:

None.

CLOSED SESSION

Mayor Rustin recognized Borough Attorney William McClure, who read into the record Resolution 12-246.

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. Assessment Agreement with City of Englewood

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. Zinna, seconded by C. LaMastra, and all present voting in favor, the meeting was adjourned to the Closed Session in the Committee Room at 9:52 p.m.

ADJOURNMENT:

As there was no further business to come before the Council, on a motion by C. LaMastra, second by C. Kerge, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 10:11 p.m.

Respectfully submitted,

Lissette Aportela-Hernandez, MPA, RMC
Borough Clerk