

Borough of Norwood  
Work Session  
May 29, 2013

The Work/Executive Meeting of the Mayor and Council of the Borough of Norwood was held on the above date.

Mayor Barsa called the meeting to order at 8:07 PM.

Mayor Barsa stated:

Adequate notice of this meeting has been provided in accordance with the Open Public Meeting Law, P.L. 1975, Ch. 231, setting forth the time, date, place and purpose of this Public Meeting through a legal notice published in the Record.

Present at Roll Call:

|                   |                               |
|-------------------|-------------------------------|
| Mayor             | James P. Barsa                |
| Councilman        | Thomas Brizzolara (8:20 P.M.) |
| Councilman        | Barry Scott                   |
| Councilwoman      | Marianne Orecchio             |
| Council President | Allen Rapaport                |
| Councilman        | Edward Condoleo               |
| Councilman        | Joseph Ascolese               |

Also Present:

|                  |                |
|------------------|----------------|
| Borough Attorney | Andrew Fede    |
| Borough Engineer | Daniel Kaufman |

**Consent Agenda:**

Mayor Barsa reviewed the items on the Consent Agenda and asked if any Council Member wished to remove an item. There being no request, Mayor Barsa requested a motion to approve the Consent Agenda consisting of the following items:

- 13:104 Authorizing the Tax Collector to prepare and mail estimated tax bills in accordance with P.L. 1994 c.72
- 13:105 Authorizing the Sale of Surplus Equipment at the County Auction
- 13:106 Granting a Solicitor's License to Cablevision

Motion was made by Mrs. Orecchio, seconded by Mr. Rapaport and declared carried upon the affirmative vote of all Council Members present.

**Items for Discussion:**

116 Millbrook Circle, Nancy and Keith Marks request to construct an 8' fence in their rear yard – The Borough Attorney referred to his letter dated May 22, 2013 pertaining to this matter (Attachment “A”). He explained that the ordinance pertaining to fences permits a height of six feet and not the requested eight feet and is separate from the Land Use Code. Since the Zoning Board of Adjustment can only grant variances for Land Use ordinances, the Construction Official had to refer this request to the Mayor and Council.

Following a lengthy discussion, it was the consensus of the Council that the Land Use Code be amended to include regulations for fences and swimming pools as well. Also, the Administrator/Clerk was directed to inform the Marks in writing that it was the decision of the governing body that a waiver to the height restriction for fences should rest with the Zoning Board of Adjustment and that the zoning code will be amended to include fences. Furthermore, they will be notified when the new amended ordinance is in effect so that they can make application for a variance with the Zoning Board of Adjustment.

2013 Salary Ordinance - Following Mr. Scott's question pertaining to the salary for part-time DPW workers, Mrs. McMackin advised that the range would be \$9 to \$16/hr. as listed for seasonal/part-time DPW workers. No other comments regarding the proposed ordinance, motion to introduce the 2013 salary ordinance at the June 12, 2013 Public Meeting was made by Mr. Rapaport, seconded by Mr. Ascolese and declared carried upon the affirmative vote of all Council Members present.

At this time, Mayor Barsa asked Dominick Congiusti, President of Norwood Fire Co. No. 1, to address the Council. Mr. Congiusti explained that the Fire Department is interested in refurbishing the 1985 Hahn truck for an estimated cost of \$150,000.00 rather than purchase a new one for approximately \$600,000.00. He further explained that the refurbishing has to be done according to NFPA standards and for a truck 25 years and older, it would have to be done to level 1 or level 2. Since the odometer reads 20,000 mile and the engine and transmission are in good condition, it would have to be refurbished to level 2. Mr. Congiusti circulated a book explaining the refurbishing process. He requested authorization for the Fire Department to proceed with drawing up the specifications for presentation to the Mayor and Council. Motion of approval was made by Mr. Rapaport and seconded by Mr. Brizzolara. On the question, Mr. Scott asked if there would be any cost incurred by the Borough for this process and was informed there would be none. On the motion, all Council Members present voted in favor. Mrs. McMackin recommended that the Fire Department reach out to other communities and request copies of their specifications.

Sanzari request to place rental signs on Borough Property – Mr. Rapaport asked that this item be postponed until he has the opportunity to discuss this matter with Mr. Sanzari, and the Council concurred.

At this time, Mayor Barsa initiated discussion pertaining to the recent complaints received regarding solicitation by Andersen Windows. He advised that after investigation by the Police Department, it was learned that a second unauthorized company aligned itself with Andersen Window's permit and their actions were the basis for the complaints. Mayor Barsa continued that the incidents associated with this permit have cause for the Council to review the ordinance and possibly amend it to limit solicitation to charitable organizations. Following a brief discussion, it was the consensus of the Council that the Borough Attorney be authorized to draft an amended ordinance for the governing body's review.

Engineer's Report –

Livingston Street – Phase 1: Mr. Kaufman reported that the County has been notified that the project is complete and their inspection is being awaited.

Livingston Street – Phase 2: Mr. Kaufman advised that the County will be reviewing the parking schematic and the Borough Attorney is proceeding with the required easements. He reminded that the Borough's grant application for this phase of the project was denied by the DOT.

Broadway Sidewalks: Mr. Kaufman reported that he and the Borough Administrator will be meeting with the County this Friday.

Carter Street Drainage: Mr. Kaufman advised that the preliminary plans are complete and will be ready for review.

Pump Stations: Mr. Kaufman explained there are still punch list items to be completed including replacement of the steps so that there is no interference with the flow.

Borough Attorney's Report - Mr. Fede advised that he had an item to report in Closed Session regarding progress with the property owners on Livingston Street.

Administrator's Report –

Pump Stations: Mrs. McMackin reported that she met with Neglia Engineering, Alan Schrader and the contractor to discuss and review the remaining punch list items and the prices being charged for what the contractor considers to be outside the contract. She continued that although the contractor is anxious to close the project, the Borough is not ready.

IIMC Conference: Mrs. McMackin thanked the governing body for permitting her and the Deputy Clerk to attend the IIMC conference which she described as a very educational and professional development experience. She explained that Clerks from all over the world attended and that the Clerk from Belgium advised that they have to prepare a six-year budget.

**General Public Comment:**

Motion to open the meeting to the public was made by Mrs. Orecchio, seconded by Mr. Rapaport and declared carried upon the affirmative vote of all Council Members present. No one wishing to be heard, a motion to close the meeting to the public was made by Mrs. Orecchio and seconded by Mr. Rapaport. All Council Members present voted in favor of the motion.

At this time, Mr. Scott reminded that at the last council meeting he reported that the Seniors would like a shuffle board installed and requested Council permission to submit a grant application under the Bergen County Open Space Trust Program with a deadline date of August 29, 2013. It was the consensus of the Council to move forward with the application.

Mr. Brizzolara referred to the previous discussion pertaining to the solicitation ordinance and moved to suspend all soliciting activity until the ordinance is amended. Mr. Fede advised this matter should be discussed in Closed Session.

**Closed Session:**

At 8:55 PM, Mayor Barsa asked for a motion to approve Resolution 13:107 authorizing the governing body to convene into closed session for the purpose of conducting interviews for the position of Police Officer, an amendment of the solicitation ordinance and easements on Livingston Street. Formal action may be taken upon reconvening into open session. The motion was made by Mr. Brizzolara, seconded by Mrs. Orecchio and declared carried upon the affirmative vote of all Council Members present.

Mayor Barsa reconvened the meeting at 9:56 PM and asked for a motion to approve the hiring of two Police Officers as follows:

Motion to approve Resolution 13:108 confirming the appointment of Domenick L. Ghione to the Norwood Police Department at a starting salary of \$25,456.00 was made by Mrs. Orecchio, seconded by Mr. Rapaport and declared carried upon the affirmative vote of all Council members present.

Motion to approve Resolution 13:109 confirming the appointment of Perry M. Duelfer to the Norwood Police Department at a starting salary of \$25,456.00 was made by Mrs. Orecchio and seconded by Mr. Rapaport. All Council Members present voted in favor of the motion.

Following a brief discussion, it was the consensus of the Council that the starting date for both be June 3, 2013 and they will be sworn in on that date. A formal ceremony to be attended by their families will be scheduled for the June 12, 2013 Public Meeting.

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**Adjournment:**

No other business to discuss, motion to adjourn at 10:00 PM was made by Mr. Scott, seconded by Mr. Condoleo and declared carried upon the affirmative vote of all Council Members present.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lorraine L. McMackin". The signature is written in black ink and is positioned above the printed name and title.

Lorraine L. McMackin, RMC, CMC  
Administrator/Clerk

**Archer & Greiner P.C.**  
ATTORNEYS AT LAW

BOROUGH OF NORWOOD  
RECEIVED

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May 22, 2013

Mayor and Council  
Borough of Norwood  
455 Broadway  
Norwood, NJ 07648

**Re: Keith & Nancy Marks, Request for Permission  
to Build Eight Foot Fence  
Our File No.: BOR104.91286**

Dear Mayor and Council:

This is an attorney-client communication that is confidential. It should not be disclosed to any third party without the consent of the majority vote of the Mayor and Council.

This letter will address the legal issues that I discussed on a preliminary basis with Lorraine upon my receipt and review of the agenda of May 29, 2013 and the documents relating to the above-referenced request.

The facts are as follows: On May 12, 2013, Mr. & Mrs. Marks sent a letter to the Mayor and Council requesting permission to build an eight foot high fence, instead of the permitted six foot high fence, in order to prevent deer from entering their property at 116 Millbrook Circle. Lorraine submitted the request to Paul Renaud for review, as the construction code and zoning official. On May 16, 2013, Paul issued a denial of the request.

The legal issue is whether the Mayor and Council or the Zoning Board of Adjustment has jurisdiction to grant a "variance" to permit a fence in excess of six feet. In my opinion the Mayor and Council has this authority and jurisdiction to grant the request.

The Borough's ordinance regulating fences is contained in the general ordinances at Chapter 120, and not in the land use ordinances. Among other things, the ordinance limits the height of fences to six feet. Code of the Borough of Norwood, §120-3(B). It also contains two provisions relating to the request at issue. Section 120-3 states that the Mayor and Council may grant "exceptions" to the ordinance's requirements "upon the application of a property owner and upon good cause being shown..." Id. at §120-7(B). The other section, 120-3(G), states that the Zoning Board of Adjustment has the authority to permit fences in excess of six feet in residential zones.

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When read together, these sections suggest that the ordinance permits the Mayor and Council to consider all requests for "exceptions" from the ordinance's requirements for fences, except for requests for fence height in excess of six feet in residential zones. I am of the opinion, however, that the ordinance may not vest the Board of Adjustment with jurisdiction to grant variances from the requirements of Chapter 120 because this Chapter is not part of the Borough's land use ordinance.

The Board of Adjustment exists pursuant to the provisions of the Municipal Land Use Law N.J.S.A. 40:55D-1 et seq. ("MLUL"). The Board's "powers stem directly from [the MLUL], and may not be in any way circumscribed, altered or extended by any municipal body." Duffcon Concrete Products v. Borough of Cresskill, 1 N.J. 509, 516 (1949). The MLUL permits the Zoning Board of Adjustment to grant variances only from the requirements of land use ordinances adopted pursuant to the MLUL. N.J.S.A. 40:55D-70(c) and (d). Therefore, Norwood Code's §120-3(G) is invalid to the extent that it attempts to vest the Zoning Board of Adjustment with authority to grant variances or exceptions from the requirements of the fence ordinance that is not part of the Borough's land use ordinances. See, Isihos Bros P'saip v. Franklin, 376 N.J. Super. 591, 595-596 (Law Div. 2000) (zoning board did not have jurisdiction over septic systems).

In conclusion, I am of the opinion that the Mayor and Council has the authority to consider this request under the provisions of Code §120-7(A) quoted above. I also recommend that Code §120-3(G) be amended to correct the defect discussed above.

Thank you. Please let me know if you have any questions.

Very truly yours,



ANDREW T. FEDE

ATF:er

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BOROUGH OF NORWOOD  
RECEIVED

Mr. & Mrs. Keith Marks

116 Millbrook Circle

Norwood, NJ 07648

(516) 672-0799

MAY 15 2013

ADMINISTRATOR  
BOROUGH CLERK

Mayor James Barsa & Norwood Town Council Members

455 Broadway

Norwood, NJ 07648

May 12, 2013

Dear Mr. Mayor & Council Members:

My husband and I reside at the above Norwood address. We are requesting permission to erect a fence consisting of 8 foot posts with epoxy coated steel rebar and 20 gauge epoxy coated wire mesh which will run 6 feet high. As an add on, we would like to place an additional 2 feet of wire mesh above the existing fence for a total of 8 feet.

The reason we wish to go the additional 2 feet beyond the traditional 6 feet is to prevent the deer from jumping over the fence. We are inundated by deer partly due to the water crossing on our property. I have a history of Lyme disease and am very concerned about the health hazard related to deer ticks. We would like to keep the deer off our property. After much research we feel the above fencing option can best meet our goal and budget.

Thank you for your consideration.

Sincerely,

*Nancy & Keith Marks*

Nancy and Keith Marks

*CC: Mayor & Council*