

BOROUGH OF OLD TAPPAN
MAYOR AND COUNCIL REGULAR MEETING
June 17, 2019

In compliance with the Open Public Meeting Law, notification of this meeting has been sent to our official newspapers and other publications circulated in the Borough of Old Tappan, and notice posted on the bulletin board at Borough Hall.

Please note fire exits located at the main entrance to the Council Chambers and in the rear of the Council Chambers.

MEETING CALLED TO ORDER: 7:30 p.m.

ROLL CALL:	Mayor John Kramer	Present
	Councilman Ronald Binaghi, Jr.	Present
	Councilman Guy Carnazza	Present
	Councilman Victor Cioce	Present
	Councilman Thomas Gallagher	Present
	Councilman Matthew Nalbandian	Present
	Councilwoman Jin Yhu	Present

Also Present:	Borough Clerk Jean M. Donch
	Borough Attorney Allen Bell

SALUTE TO THE FLAG

PRAYER – Councilman Victor Cioce

PUBLIC’S OPPORTUNITY TO SPEAK

Motion to open the meeting to the public – Councilman Cioce

Second – Councilman Binaghi

Discussion – None

On voice vote, all in favor, none opposed, the motion carried.

No Public Comment

Motion to close the meeting to the public – Councilman Nalbandian

Second – Councilman Gallagher

On voice vote, all in favor, none opposed, the motion carried.

APPOINTMENT OF POLICE CAPTAIN

Joseph Tracy

Mayor Kramer administered the Oath of Office to Police Captain Joseph Tracy.

STAFF APPOINTMENTS

Robert Rusch – Construction Code Official – 4 Year Appointment Building Inspector – 4 Year Appointment

Motion to accept the Mayor's appointment – Councilman Binaghi

Second – Councilman Cioce

Discussion – None

On voice vote, all in favor, the motion carried.

Alan Silverman – Fire Official – 2 Year Appointment Fire Sub-Code Official – 2 Year Appointment

Motion to accept the Mayor's appointment – Councilman Binaghi

Second – Councilman Gallagher

Discussion – None

On voice vote, all in favor, the motion carried.

Laura Bonnano – Payroll Accounting Clerk

Motion to accept the Mayor's appointment – Councilman Nalbandian

Second – Councilman Binaghi

Discussion – None

On voice vote, all in favor, the motion carried.

Karen Turner – Police Department Records Administrator

Motion to accept the Mayor's appointment – Councilman Nalbandian

Second – Councilman Cioce

Discussion – None

On voice vote, all in favor, the motion carried.

BOARD APPOINTMENT

Annette Caunedo – Municipal Alliance – 1 Year Unexpired Term

Motion to accept the Mayor's appointment – Councilman Cioce

Second – Councilman Nalbandian

Discussion – None

On voice vote, all in favor, the motion carried.

CONSENT RESOLUTION

Councilman Nalbandian read the Consent Resolution

Second – Councilman Binaghi

Discussion – None

Roll Call	Councilman Binaghi	Yes
	Councilman Carnazza	Yes
	Councilman Cioce	Yes
	Councilman Gallagher	Yes
	Councilman Nalbandian	Yes
	Councilman Yhu	Yes

PUBLIC HEARINGS

Open Space Trust Fund Grant – Stone Point Park Playground Equipment

Councilman Cioce described the ordinance and then made a motion to open the meeting to the public.

Second – Councilman Binaghi

Discussion - None

On voice vote, all in favor, the motion carried.

No Public Comment

Motion to close the meeting to the public – Councilman Binaghi

Second – Councilman Cioce

Discussion – None

Roll Call	Councilman Binaghi	Yes
	Councilman Carnazza	Yes
	Councilman Cioce	Yes
	Councilman Gallagher	Yes
	Councilman Nalbandian	Yes
	Councilman Yhu	Yes

Councilman Cioce read the resolution

Ordinance 1149-19 – Affordable Housing – Pearson Property– Resolution of Adoption

Councilman Carnazza described the ordinance and then made a motion to open the meeting to the public.

Second – Councilman Binaghi

Discussion – None

On voice vote, all in favor, the motion carried

Robert Inglema Jr., attorney representing the owners of the Bi-State Plaza Shopping Center, Block 1606, Lots 5 & 6, Old Tappan Road, Old Tappan, NJ. In the B-1 zone which immediately abuts the Pearson Property. Mr. Inglema focused on what he called a number of issues with the ordinance; form, manner of introduction, contents, inconsistency with the Master Plan and zoning regulations. If the ordinance is adopted as it is, a transformation will take place by cramming too many units and tall buildings 25 ft. from the property line that you don't have anywhere else in the town. The Fair Share Housing Agreement states 12 units per acre; what is being proposed is much more. Mr. Inglema stated that his clients have one story buildings, placing apartments over retail should be spread around, not crammed into one property. This proposal has a 50 ft. setback where 100 ft. is required. There is only a 10 ft. buffer. The ordinance should be tailored to the needs of the community.

Mr. Inglima called up Peter Steck, Professional Planner, 80 Maplewood Avenue, Maplewood, NJ. Mr. Steck was sworn in by Borough Attorney Allen Bell. Mr. Steck presented his qualifications that were accepted by the Mayor and Council.

Mr. Inglima asked Mr. Steck if he reviewed Ordinance 1149-19, and is familiar with the Land Use Laws, Master Plan, Reexamination Report, Zoning Ordinance, the agreement entered into between the municipality and Fair Share Housing. Mr. Steck responded he is knowledgeable of all and has reviewed same. Borough Attorney Allen Bell added that the Council will take notice of all documents presented.

Mr. Bell announced that Councilman Binaghi and Councilman Nalbandian are recused and have been recused of discussion on this ordinance from the beginning. Councilman Binaghi and Councilman Nalbandian left the dais.

Mr. Inglima proceeded to identify the documents; resolution authorizing settlement of the Borough of Old Tappan's judgement action regarding affordable housing obligation dated November 20, 2017; order entered by a Judge dated March 6, 2018; document entitled Fair Share Housing Center correspondence dated August 25, 2017, a 9-page document and a document Mr. Inglima received in response to an OPRA request signed by Mayor Kramer on November 20, 2017 regarding terms of the settlement agreement with Fair Share Housing. Mr. Inglima noted other documents relative to the matter and available for review by the Mayor and Council.

Mr. Steck testified that he is familiar with the agreement between the Borough of Old Tappan and Fair Share Housing and the provisions of the Pearson property for affordable housing. He reviewed the Planning Board resolution and is familiar with the proposed plans. He stated that there is nothing in the agreement that references anything other than residential use. He described how he felt that the ordinance is intended to effectuate affordable housing at the site and pointed out differences in regulation requirements.

Mr. Inglima provided a document prepared by Mr. Steck entitled Analysis of Proposed Old Tappan Ordinance #1149-19 consisting of 2 pages and marked as Exhibit O-1. Mr. Inglima distributed the Exhibit O-1 and the concept plan to the Mayor and Council.

Borough Attorney Allen Bell noted that Peter Wolfson, attorney for the owner of the Pearson property is present.

Mr. Steck proceeded to describe Exhibit O-1 that he prepared. He commented on setbacks as being troublesome, intrusions like balconies and definitions in the ordinance such as it is okay to park in a buffer area and that Bi-State has to address a 50 ft. buffer requirement. There are some favorable standards which he read. Mr. Inglima asked Mr. Steck if revisions to the ordinance are necessary in his opinion. Mr. Steck stated that it offers a unique set of uses. The B-1 zone can share in those benefits by modifying an existing site. Consistency with planning documents were discussed. Mr. Steck stated that the ordinance is not consistent with the Master Plan. Mr. Inglima asked if Mr. Steck recommended to table the ordinance. Mr. Steck recommended the Mayor and Council take

another look at it because of the inconsistencies.

Borough Attorney Allen Bell announced the order for hearing everyone present - developer's attorney, the Council, himself and the public.

Peter Wolfson, attorney for Pearson owners, addressed Mr. Steck saying that Mr. Steck stated that the ordinance is structured in such a way that the townhouses can have 3,4, or 5 bedrooms. Actually the ordinance states that a townhouse "may" have 3 bedrooms. Provision 255-111A was read for the record. Mr. Wolfson asked Mr. Steck if he reviewed 255-121. Mr. Steck replied yes. Mr. Wolfson asked Mr. Steck if he did a study of the non-conformities of the Bi-State sight. Mr. Steck replied no. Mr. Wolfson asked Mr. Steck if he did an analysis of the existing conditions of Bi-State. Mr. Steck replied no because it is not relevant to his findings on the ordinance. It is a development that is recognized by the Zoning Ordinance and the Master Plan. Mr. Steck stated that the development of the Pearson property will handicap the Bi-State property.

Mr. Wolfson had no further questions.

The meeting was opened to the public. There were no questions by the public of Mr. Steck.

Councilman Yhu addressed his comment to Mr. Inglima and Mr. Steck stating that they are aware of the COAH mandate placed upon the Borough. They replied yes. Councilman Yhu asked if they are aware of what a builder's remedy lawsuit is. They replied yes and Mr. Inglima defined it. Councilman Yhu commented that some surrounding towns have failed to meet their obligation and may be involved in a builder's remedy lawsuits. Mr. Inglima responded that is one of the consequences that can happen but the way he understands it is that the time period has been extended. The ordinance being approved this evening has a number of defects that the Council should be concerned with. Councilman Gallagher asked if the ordinance is satisfying with the 12 units per acre. Councilman Cioce added plus the 20%. Mr. Inglima stated that the 20% is one factor in the ordinance but the ordinance goes further than that.

Borough Attorney Bell questioned Mr. Inglima on his past representation of municipalities and land owners. Mr. Inglima responded that most have been as an objector in the early stages for land owners. Mr. Bell asked Mr. Inglima if he was familiar with the Supreme Court's decision on 3rd round certification for municipalities that was taken from COAH and moved to the courts. Mr. Inglima is familiar stating that his last client was the Sisters of Charities in Elizabeth and he is aware that the process is exclusively a court process. Mr. Bell asked Mr. Inglima if he reviewed Old Tappan's case, other than the settlement, in regard to its request for declaratory judgement certifying its third round obligation. Mr. Inglima responded that he is aware of the settlement but not sure if he is aware of all the documents in the process. Mr. Bell asked him if he was aware that the Council held a public hearing on the settlement. Mr. Inglima responded that he knew it is a mandatory process but that the ordinance was not available at that time and he is aware that municipalities engage in that process. Mr. Bell asked if he was familiar with UHACA (Uniform Housing and Affordability Control Act) and that the ordinance is subject to it. Mr. Inglima responded that the ordinance is silent to the introduction of commercial use, where it fits in the process, but he is aware

that the ordinance is subject to UHACA.

Mr. Bell referred to page 10 paragraph j. and read it. Mr. Inglima responded he is aware of this statement but the emergency connection is not the same as having convenient pedestrian flows. He expects that the Fire Department would comment on circulation within the site. Mr. Bell asked if Mr. Inglima is aware that the Council can approve the ordinance under the Municipal Land Use Law even though it is inconsistent with the Master Plan and Land Use Element as long as it is consistent with the Housing Element and Fair Share Plan. Mr. Inglima responded that the Municipal Land Use Law states that all ordinances have to be consistent with the Master Plan. The Housing Plan only mentions 20% and has no mention of mixed use or commercial use. Mr. Bell commented that there is nothing that prohibits a municipality from creating a buffer for the townhouses by putting in a mixed use building along Old Tappan Road. Nothing to prevent the municipality from re-zoning to do that. Mr. Inglima responded that if the municipality follows the proper adoption rules and there is a rational basis for it, the law makers can do what they want. Mr. Bell asked if Mr. Inglima felt that the proper adoption rules have not been followed. Mr. Inglima stated that the process is not over yet but up to this point, it was referred to the Planning Board and the Planning Board responded and he disagrees with the Planning Board's conclusion but up to this point, the procedures have been followed.

Mr. Inglima commented that the owner of the Pearson property did not appear in the litigation before the court on the declaratory judgement action, they were only the Fair Share Housing which are customarily invited as an interested party without intervening. There was one intervener on Central Avenue who appeared before the Planning Board pertaining to a different ordinance than the one that is being discussed this evening. What is before us tonight is an entirely different situation where someone is coming forward after the settlement has been put together and the settlement only says that the town has to give 12 units per acre with 20% set aside. Mr. Inglima asked the Council to pull the ordinance back and take a closer look at it.

Peter Wolfson, attorney on behalf of the owner of the Pearson property, thanked the Mayor and Council, Planning Board and professionals for their pursuit of a responsible response to their obligation that has been placed upon them by the New Jersey Supreme Court to create a reasonable opportunity for affordable housing in Old Tappan. A compliance meeting is being held next Monday to confirm that the process has been completed. Fair Share Housing is aware of Ordinance 1149-19 and has seen it. Mr. Wolfson requested that the Council adopt the ordinance this evening.

Mayor Kramer opened the meeting to the public.

Phillip Vogis, 151 Fernwood Drive, stated that we need to be sensitive to what we will build.

Michael Roth, 27 Lakeview Drive, commented that he had no idea this matter was going on; he commented on the height of the buildings and buffers, adding that the Mayor and Council have a responsibility to the town.

Sebastian Belfon, 12 Moeser Place, commented on his vague knowledge of the subject matter and

his families love of Old Tappan.

Kristen Santoro, 223 Birchwood Road, asked if there were considerations of the impact the development would have on the school system. Borough Attorney Bell responded that it has been considered by our Planner and the development is not 55 and over. Mayor Kramer added that yes, he has met with the Board of Education Superintendent. Ms. Santoro asked that the needs of children in town be considered.

Beth Schiffman, 121 Lakeview Drive, commented on insufficient buffer zones and the affect it will have on homeowners of Lakeview Drive.

Motion to close meeting to the public – Councilman Gallagher

Second – Councilman Cioce

Discussion – Councilman Cioce commented that we met necessary criteria by a certain amount of time. Borough Attorney Bell stated that the County gave a certain amount of time, a fairness hearing was held, a compliance hearing will be held on Monday, June 24th and if the ordinance is not adopted this evening, we would need to request an extension. Councilman Gallagher said that the public seem to have had questions about the affordable housing legislation process. He stated that a few months ago, he prepared a statement for the Planning Board that he would like to share with the public here this evening that may help explain some of the things the Borough had been faced with for the past 3 years. Councilman Gallagher read the statement.

Councilman Carnazza commented on the amount of work that was put into determining the Borough's obligation for Affordable Housing.

Councilman Yhu commented that should this be approved; he hopes the public would attend Planning Board meetings to discuss some of the concerns brought up this evening. He also shared a story on his vision of the American Dream. The Mayor and Council are at the will of Fair Share Housing and our obligations. If we do not proceed, a builder will proceed with a builder remedy lawsuit against the Borough.

On voice vote, all in favor, the motion carried.

Councilman Carnazza read the resolution.

Roll Call	Councilman Cioce	Yes
	Councilman Carnazza	Yes
	Councilman Gallagher	Yes
	Councilman Yhu	Yes

Councilman Binaghi and Councilman Nalbandian were recused.

Councilman Binaghi and Councilman Nalbandian returned to the dais.

Ordinance 1153-19 – Flood Damage Prevention – Resolution of Adoption

Councilman Binaghi described the ordinance and then made a motion to open the meeting to the public.

Second – Councilman Gallagher

Discussion - None

On voice vote, all in favor, the motion carried.

No Public Comment

Motion to close the meeting to the public – Councilman Binaghi

Second – Councilman Gallagher

Discussion – None

Councilman Binaghi read the resolution

Second – Councilman Gallagher

Roll Call	Councilman Binaghi	Yes
	Councilman Carnazza	Yes
	Councilman Cioce	Yes
	Councilman Gallagher	Yes
	Councilman Nalbandian	Yes
	Councilman Yhu	Yes

COUNCIL COMMITTEE REPORTS

COUNCILMAN BINAGHI – DPW / CONSTRUCTION

The DPW is busy chipping throughout town. Due to a retirement, we have appointed Robert Rusch as Construction Code Official and Building Inspector. Councilman Binaghi is sure he will do a good job filling these positions.

COUNCILMAN CIOCE – ENVIRONMENTAL / LIBRARY / HISTORICAL

The 125th Anniversary Event Committee will meet on Thursday, June 20th. After discussion and upon Council poll, it was decided not to have a beer garden at the event to be held in Stone Point

Park on October 19th.

COUNCILMAN YHU – SAFETY / SENIORS / AFFORDABLE HOUSING

Our long time Boy Scout Leader Mark Geerinck will be replaced. Last week I attended the Boy Scout's Achievement Awards. One scout will be beginning his Eagle Scout project in Stanaland Park. Councilman Yhu contacted the Girl Scout troop leader and asked to be informed about troop events. Met with Donna Geitz, Local Assistance Board. Attended the Senior Luncheon and will attend the Senior Advisory Committee meeting on the 20th and the Safety Committee meeting on the 19th. Councilman Yhu submitted a resident's name for Home Town Heroes.

COUNCILMAN GALLAGHER – PLANNING / ARTS & ENTERTAINMENT / FIRST AID

Concerts in the Park begin on July 3rd. Reviewed applications approved at the Planning Board meeting last week. Ambulance Corps held a demonstration this evening. They will purchase a new ambulance vehicle. They have answered 240 calls through May; the response rate for May was 100% of calls answered. They are on track to answer 575 calls this year. They are working with the Police Department on mass casualty training. The Corps has added 10 new members this year.

COUNCILMAN CARNAZZA – RECREATION / GOLF / HEALTH

Mayor Kramer and I attended a dinner at Seasons this evening and distributed 22 proclamations to the Girls Softball Team. We also distributed 18 proclamations for Track and Field and plaques for the coaches. The Mayor and I will attend a Board of Education meeting on Monday at which time we will do a presentation there.

COUNCILMAN NALBANDIAN – FINANCE / FIRE / SCHOOLS / ADMINISTRATION

Tonight we appointed Joseph Tracy as Police Captain, Laura Bonnano as Payroll Accounting Clerk and Karen Turner as Police Department Records Administrator.

ENGINEER'S REPORT

Borough Engineer Thomas Skrable reported as follows:

A pre-construction meeting will be held on Wednesday for the road program which will be under construction by the next Mayor and Council meeting in July.

This evening we awarded the Oakes Park Electrical Work.

MAYOR'S COMMENTS - None

ACTION ON MINUTES

Councilman Nalbandian made a motion to approve the following minutes:

- Closed Meeting, May 20, 2019
- Regular Meeting, May 20, 2019

Second – Councilman Cioce

Discussion – Councilman Gallagher abstained on both meetings.

OLD BUSINESS

Rockland Electric – Tree Cutting – Not Discussed

CDL Drug Testing Policy – Not Discussed

NEW BUSINESS

Ordinance 1154-19 – Amend Recreation Fees – Resolution of Introduction

Councilman Carnazza read the resolution.

Second – Councilman Gallagher

Discussion – None

Roll Call	Councilman Binaghi	Yes
	Councilman Carnazza	Yes
	Councilman Cioce	Yes
	Councilman Gallagher	Yes
	Councilman Nalbandian	Yes
	Councilman Yhu	Yes

PUBLIC’S OPPORTUNITY TO SPEAK

Motion to open the meeting to the public – Councilman Carnazza

Second – Councilman Binaghi

Discussion - None

On voice vote, all in favor, none opposed, the motion carried

No Public Comment

Motion to close the meeting to the public – Councilman Cioce

Second – Councilman Binaghi

Discussion - None

On voice vote, all in favor, none opposed, the motion carried.

Motion to adjourn by Councilman Gallagher

Second – Councilman Carnazza

On voice vote, all in favor, none opposed, the motion carried.

Respectfully submitted,

Reviewed and approved:

Sylvia Kokowski, Recording Secretary

Jean M. Donch
Borough Clerk

cc: Mayor and Council
Allen Bell, Esq.

Date Approved: July 15, 2019