WORK SESSION OF SEPTEMBER 16, 2014

Mayor Cosgrove called the meeting to order at 7:30 p.m.

PRESENT: Mayor Cosgrove, Deputy Mayors Dunay and Lefkowitz, Councilmembers Peluso and Swain.

ALSO PRESENT: Manager Van Kruiningen, Municipal Clerk/Deputy Manager Kwasniewski and Attorney Mondello.

WELLNESS PLAN 2015:

Frank Covelli, Risk Manager was present to give an update on the medical claims, which are $500,000 lower than last year. There has only been one shock claim as of August 31st whereas last year there were five. Prescription costs are currently $907,000 versus $933,000 last year. Based on prescription costs in 2013 of $1.4 million, he projected a total of $1.36 million for 2014. These positive trends set the stage for the discussion of the wellness program.

They considered bringing in the wellness bus so employees could have a physical during work hours. Under the Affordable Care Act there are no longer any deductibles or co-insurance for in-network physicals, but they are not seeing this translate into people actually going to the doctor for wellness visits.

Their medical program costs $3 million. As of August 31st there has only be wellness charges of $61,000, which is miniscule, although some lab charges were not coded as wellness and were not included. This means people are not going for a wellness exam and finding out that something is wrong ahead of time. The situation is compounded by the fact that there is low turnover at Borough Hall and most employees stay for a long time. It is less expensive to treat an illness the earlier it is caught.

Manager Van Kruiningen stated they have tentatively scheduled a bus to be present on Monday, October 27th and Tuesday, October 28th. They have increased the scope of testing. They can do 30 physicals per day at a cost of $7,500 per day. Mr. Covelli noted the bus, the $7,500 is against the claim fund and is a more cost-effective way to provide service than 60 people seeing their individual physicians. The soft cost to the Municipality is the employees will be doing this on Borough time.

Manager Van Kruiningen stated he would like to promote this for six weeks in advance. Mr. Covelli stated that informational flyers will be provided to employees, who need to schedule an appointment. If response is low they can adjust the schedule accordingly. Mayor Cosgrove asked if funds were budgeted. Manager Van Kruiningen stated they were.

Councilmember Swain stated that the program may seem expensive but if it saves a catastrophic illness it is worth it. Mayor Cosgrove stated that it is an investment as the Borough is self-insured. Councilmember Swain stated that the most important step is the follow up to make sure people seek treatment.

There was consensus to offer Borough employees physicals through the wellness bus on October 27th and 28th at a cost of $7,500 per day.

REVIEW OF TENTATIVE AGENDA:

Municipal Clerk/Deputy Manager Kwasniewski stated she is adding a resolution authorizing the execution of a NJDOT grant agreement for road re-surfacing on Plaza Road as well as resolutions authorizing the execution of contracts for three Community Development Block Grants: Senior Center hand railing, roadway improvements to various streets and handicap accessible curb cuts. She is also adding a resolution executing an agreement with Cablevision Lightpath for internet and phone service and a resolution regarding continuing disclosure applicable to bonds and notes.

She spoke to Attorney Mondello about a matter regarding pay-to-play that will be discussed in Closed Session.

The list of Police promotions was just received and the Manager needs time to interview the top candidates and send out letters. Due to the process required by Civil Service the promotions will be done at the October 14th Regular Meeting.

Councilmember Swain inquired about the work on Plaza Road. Manager Van Kruiningen stated the work was between Madelyne Place to Morlot Avenue. He met with PSE&G regarding the work they did on Plaza Road to Berdan Avenue and they are willing to pave curb to curb. Many of the Plaza Road issues are being resolved.

COUNCIL LIAISON REPORTS:

Councilmember Swain thanked the Manager for paving throughout her neighborhood.

The Green Team submitted their application for bronze certification with Sustainable Jersey. Even though they were certified as a bronze community previously, they have to reapply for bronze certification before they can achieve silver.

The RRIC sponsored a Pet Walk on Saturday, which was a big success. It was a nice community event. It would be nice if more businesses could participate.

Councilmember Peluso stated that the Pool Committee met last Monday. It was felt that more supervision was needed around the gates and pool, as members were seen changing diapers on picnic tables or bringing food on the beach. The Committee felt there should be adult supervision at the gates. He suggested asking the crossing guards to man the gates. Manager Van Kruiningen relayed the message to Superintendent Graff, who will look into this for next summer.

He distributed a list of suggestions submitted by Committee member Jay Morgenstern. Overall the Committee was happy with the improvements made at the pool this year. The water was beautiful, there were no mechanical issues with the pool and membership increased.

He and Manager Van Kruiningen attended the monthly meeting for the BIC, who has a new website. A representative from Juicy Platters was present and it was nice to get feedback from a new member. They asked him why he chose Fair Lawn and he said it was a great area, near a main artery. Residents from neighboring towns can easily get to store. Manager Van Kruiningen stated that Juicy Platters was getting to be so well known they was opening up a second store. Mayor Cosgrove explained that the owner and his sister were into wellness and serve healthy food.

Deputy Mayor Dunay reported that the Environmental Commission meeting was cancelled due to lack of quorum. The Property Maintenance Committee had previously requested name tags but at last week's meeting they decided not to pursue this. They also had issue with the Borough's policy for raised sidewalks but decided to forgo this as well. The Committee is moving ahead with their annual beautification awards.

Deputy Mayor Lefkowitz stated that the Open Space Committee and the Alliance for Substance Abuse Prevention were meeting next week.

Mayor Cosgrove stated that he and Manager Van Kruiningen attended the EDC meeting. NJ Transit has prepared a contract that has been reviewed and approved by Attorney Mondello. They are moving forward with the study regarding the Radburn Train Station and Radburn corridor that will include the Bergen County EDC. They also discussed the Promenade and its success.

He and Manager Van Kruiningen attended the Chamber of Commerce luncheon today and met Adele Badalamenti, the new Executive Director. The members spoke about the Pet Walk, which was a very successful event, and the Broadway Improvement Corporation's new website.

He spoke to Tom Toronto, who asked that the Council to lobby their legislators as the next round of funding is coming up for the affordable senior housing, and they

have been passed over previously due to Hurricane Sandy funding requests. They are ready to build. Many residents are anxiously waiting to apply for this housing.

Councilmember Swain suggested sending a letter from the Council. Mayor Cosgrove stated that he will put a letter together and have Municipal Clerk/Deputy Manager Kwasniewski distribute it for review before it is sent. Mr. Toronto has provided the names of 20 legislators that should be contacted. He will follow up by calling Senator Gordon as well as legislators outside of the area.

INTERSECTION IMPROVEMENT - FAIR LAWN AVENUE AND SADDLE RIVER ROAD:

Manager Van Kruiningen had delivered the letter that he received from the County. Engineer Garrison indicated that the engineering services will be about $35,000.

Mayor Cosgrove did not want to delay the work, but he wondered if they could proceed and ask the County to split the costs. Manager Van Kruiningen stated that they could try, as the agreement does not go into detail about funding responsibilities. Engineer Garrison also suggested trying to get the County to reimburse 10% or 20% of the costs. The cost is the Roadway Improvement budget. He recommended moving forward and asked for permission to pursue additional funding from the County.

There was consensus to authorize the shared services agreement with the County and to allow Manager Van Kruiningen to continue negotiations.

BANNING FRACKING IN FAIR LAWN:

Attorney Mondello stated that he has researched the issue and reviewed some of the cases brought to his attention by Councilmember Peluso.

They can pass a Zoning Ordinance prohibiting fracking in the Borough, although this comes with some caveats. State statute NJSA13:1M-15 requires that a copy of the ordinance be sent to the DEP and they will let the Borough know within 90 days whether they approve. Failure of the DEP to respond would be defacto approval. The ordinance would have to be sent to the Planning Board for comments or changes and also to surrounding towns. They would not have any authority to regulate how fracking is done. The process of creating an ordinance would take a minimum of six months.

They could pass a resolution establishing a moratorium on fracking and the transport of fracking waste. He drafted a resolution for a three year moratorium, which was circulated to the Council.

Councilmember Peluso thanked Attorney Mondello for looking into this, especially since there was confusion as to what they can and cannot do. He would prefer to see an ordinance. If they have been following Governor Christie's actions this week it is evident that the Governor wants towns to take control of their own municipalities. This is the message the Governor sent and they should deliver by banning fracking in Fair Lawn.

Deputy Mayor Dunay stated that he supported the resolution drafted by Attorney Mondello. Councilmember Peluso asked why he would not support an ordinance. Deputy Mayor Dunay referenced a line in the resolution taken from State statute that states "hydraulic fracturing is not occurring and is unlikely to occur in New Jersey in the foreseeable future". That being the case, he did not think they should spend thousands of dollars and use hours of the Borough Attorney's time to draft an ordinance. He felt the resolution protects the town and addresses the immediate fracking issues they face in Fair Lawn.

Councilmember Peluso stated that Deputy Mayor Dunay excluded the next sentence that says "nevertheless, the Legislator determines that it is proven and in the best interest of the people of the State of New Jersey to declare a moratorium on hydraulic fracturing in New Jersey in order to conduct an investigation into whether hydraulic fracturing could have or is likely to have an adverse impact on the air and water quality in the State". As for the cost, he asked Attorney Mondello how many hours it would take to draft an ordinance.

Attorney Mondello stated that it is not so much the cost but the fact that it would take a minimum of six to nine months to pass the ordinance. It is also routine to ask their Planner to opine on the ordinance. He has spoken to Cheryl Bergailo, who is conflicted due to her work with energy companies, so they would have to find another planner.

Councilmember Swain wondered if they could proceed with the resolution, although she would have preferred a moratorium for longer than three years, and simultaneously pursue the ordinance. Attorney Mondello stated that he used the term of three years because a resolution typically expires in a year or when the Council changes, whichever is sooner. He felt a three year limit was realistic and did not think anyone would file a lawsuit to revoke a three year moratorium.
Deputy Mayor Dunay indicated that he is unwilling to spend more money when they have a satisfactory resolution that will address the issue for a reasonable amount of time. He supported the resolution as drafted.

Deputy Mayor Lefkowitz thought the draft resolution accomplished the goal of protecting the residents' safety and addressed the concerns of residents who came forward, since fracking was currently a non-existent issue. If that changes they can take stronger action.

Councilmember Peluso asked the Council if they would be willing to proceed with the ordinance if he found a way to cover the costs.

Deputy Mayor Dunay moved the question on the resolution. Councilmember Peluso expressed frustration that Deputy Mayor Dunay kept stopping discussion. Councilmember Swain asked for clarification of Deputy Mayor Dunay's motion. Deputy Mayor Dunay stated that he would like to move for a vote on the proposed resolution. Councilmember Peluso felt his question deserved an answer. Mayor Cosgrove asked Attorney Mondello to provide a clarification.

Attorney Mondello stated that Councilmember Peluso has asked if the Governing body would consider drafting an ordinance banning fracking if he could find a way to cover the costs. There should be no impediment to that question being answered.

Mayor Cosgrove stated that he was prepared to vote on the moratorium. If Councilmember Peluso brings back a plan to cover the costs they can review it.

Councilmember Peluso made a motion, seconded by Councilmember Swain, authorizing Attorney Mondello to begin drafting zoning resolutions and to have Municipal Clerk/Deputy Manager Kwasniewski send the ordinance to the surrounding towns and planner, with the understanding that the costs would be paid from private funding.

Councilmember Peluso suggested sending a copy of the draft ordinance to the DEP to start their 90 day review period and proceed with the moratorium in the meantime. Attorney Mondello stated that they would need to do a separate vote on the moratorium.

Deputy Mayor Lefkowitz stated that she was not prepared to vote on Attorney Mondello preparing something that was not entirely clear to her. She is mystified because some people were upset that there wasn't a resolution and now they have it. She expressed concern about spending all this time on fracking when it does not yet exist. She supports the resolution. She asked for clarification on the financial aspect.
Councilmember Peluso stated there are many environmentalists and residents who care about this topic. He felt confident he could raise the funds to cover the costs. He stressed the importance of taking action now. Deputy Mayor Lefkowitz felt they were taking action. Councilmember Peluso noted that the moratorium would only be for three years. An ordinance would end it. He also agreed that this shouldn't have been a lengthy discussion – it should have been discussed and done.

Deputy Mayor Lefkowitz stated that residents who are happy with the three year moratorium will question spending thousands of dollars to have Attorney Mondello

prepare a draft ordinance. She is not prepared to vote on authorizing Attorney Mondello to proceed.

Mayor Cosgrove suggested they proceed with the resolution and, in the meantime, Councilmember Peluso can work on raising funding and come back to the Council with a plan. Councilmember Peluso stated that he wanted to see if funding was in fact the only issue preventing support of the ordinance so he did not waste time fundraising. Deputy Mayor Dunay thought that was ironic that Councilmember Peluso wanted to waste Attorney Mondello's time and the Borough's money. Councilmember Peluso stated it is was an easy question that Deputy Mayor Dunay should be able to answer.

Deputy Mayor Lefkowitz stated that she understood the proactive/reactive issue. They need to be aware of what goes on in their State and their region. If fracking comes up they will need to take action, but currently it is not happening. Councilmember Peluso stated that it was not happening in New York but they were taking action.

Councilmember Swain felt they were all on the same page. The resolution buys some time but an ordinance will allow enforcement if something did come up. She would like to see consensus on the resolution and then consensus to move towards the ordinance.

Mayor Cosgrove stated they needed to first vote on Councilmember Peluso's motion to proceed with drafting an ordinance to ban fracking while he secured private funding to cover the costs.

The motion was defeated, with Mayor Cosgrove, Deputy Mayor Dunay and Deputy Mayor Lefkowitz dissenting and Councilmember Peluso and Councilmember Swain voting in favor.

Mayor Cosgrove asked for a motion to proceed with the moratorium resolution. Councilmember Peluso asked to add the wording "Nevertheless the Legislators have determined that it is prudent and in the best interest of the people of the State of New Jersey to declare a moratorium to ban hydraulic fracturing in the State of New Jersey in order to conduct an investigation into whether hydraulic fracturing could have or is likely to have an adverse impact on the air and water quality in the State of New Jersey in the first paragraph, with State of New Jersey changed to Fair Lawn or Borough, to make it more in line with the Assembly version.

Attorney Mondello stated that the wording was already in the resolution, with the exception of the sentence "Nevertheless the Legislators have determined that it is prudent and in the best interest of the people of Fair Lawn..." which he will add.

Upon motion by Councilmember Swain and a second by Deputy Mayor Dunay, the resolution imposing a moratorium on fracking and including the additional wording suggested by Councilmember Peluso was passed.

BICYCLE ROUTE - BERDAN AVENUE:

Manager Van Kruiningen stated that he met with Traffic Safety Officer Franco and Engineer Garrison, who felt they could strategically place "share the road" bicycle markings on Berdan Avenue. Each marking costs $175 for a total cost of $2,450. This project would be budgeted through Roadway Improvements. Markings would be on both the east and westbound sides from Memorial Park through Saddle River Road.

There was consensus to place bicycle markings on Berdan Avenue.

POT HOLES:

Councilmember Peluso stated that he read an article that Newark uses a new vehicle that fills pot holes in 30 seconds. He wondered if Manager Van Kruiningen could find out the cost of the vehicle as pot holes were a big issue in Fair Lawn. It would be great if they could enter into a shared services agreement with surrounding towns.

PUBLIC HEALTH NUISANCE CODE REVISION:

Manager Van Kruiningen asked the Council's permission to sit with Attorney Mondello and Health Officer Wagner, as the Court has informed them that two small clauses in their Public Health Nuisance Code contain language that is unconstitutionally vague. This is a boiler plate ordinance that was sent from the State.

There was consensus to have Manager Van Kruiningen meet with Attorney Mondello and Health Officer Wagner to revise the Public Health Nuisance Code.

DISTRIBUTION OF GARBAGE/RECYCLING HANDBOOK:

Manager Van Kruiningen explained that several years ago they decided to distribute the Recycling/Garbage handbook through the Community News, which saved the Borough $1,500 per year. However, many residents call to say they did not receive a handbook because they did not get the Community News or did not see the booklet because it was mixed in with the ads. They ended up mailing out 500 to 600 books to resident at a cost of $0.78 per booklet.

They can do one of three things: continue the process as it is, return to mailing a full distribution to all residents or reduce the size of the handbook and make

residents download it from the website. They would print additional copies to have on hand in the Municipal Building. The current process does not seem to be working.

Councilmember Swain suggested placing a sticker on the Community News alerting residents that the Recycling Book is enclosed. She also felt the Community News should be delivered to all residents as not everyone is receiving it. Manager Van Kruiningen stated that the Community News is included in his Thursday addition of The Record and other residents have it delivered.

Mayor Cosgrove thought the sticker was a great idea but it may be costly. Manager Van Kruiningen will find out the cost as distribution does not take place until mid-December. Mayor Cosgrove felt that if the sticker is costly they would be better off mailing the booklets. Manager Van Kruiningen asked to place this on the next Work Session. Councilmember Swain suggested sending an email blast to residents notifying when the booklets will be in the Community News. Manager Van Kruiningen stated that he can also attach the booklet to the Borough-wide email.

BERGEN COUNTY PARK IMPROVEMENT GRANT:

Manager Van Kruiningen stated that applications for Bergen County Municipal Park Improvement Grants are due Friday, October 31, 2014. Grants require a 50% match from the Borough. They would also need to submit a resolution.

He recommended applying for minor improvements at Memorial Pool such as additional water sprayers, pergolas on the beach for shade or additional tables and chairs. The Central region of Bergen County, which consists of Fair Lawn, Garfield, Hackensack, Lodi, Maywood, Paramus, River Edge, Rochelle Park and Saddle Brook, must share $295,000.

Manager Van Kruiningen explained that there are new rules. Towns with active projects from 2011 and earlier that are not complete will not have their application reviewed. He was happy to report that they are in the closing stages of their projects and will be able to apply.

Councilmember Swain wondered if the grant would pay for a person to walk around the pool checking badges. Manager Van Kruiningen stated that the grant was for facility improvements. He was going to speak to Superintendent Graff and most likely apply for a $100,000 grant, of which the Borough would pay $50,000.

MISCELLANEOUS PUBLIC COMMENTS:

Craig Miller, 5 Ramapo Terrace felt they were losing properties such as Daly Field and the Vanderbeck House because past Councils and the Planning and Zoning

Boards are developer friendly. He expressed concern that the Borough gave in instead of protecting spaces.

Mayor Cosgrove stated that it was not fair to say that previous Councils did not try to fight the Landmark development, which they did for many years. When they lost in Court, the Judge applied Builder's Remedy against the town.

Mr. Miller suggested copies of the Recycling Handbook be available at the Library, Senior Center and the Recycling Center. Manager Van Kruiningen stated that booklets will be available at all Borough facilities.

Pamela Coles, 13-34 George Street attended the RRIC meeting, which took place at 8:30 a.m. in the Columbia Bank Conference Room. She felt meetings should take place in the early evening at the Municipal Building so residents who work could attend.

Councilmember Swain explained that the RRIC was an independent organization who has met at that time for many years. She will mention it at the next meeting, but she felt the time was designed to allow business owners to attend meetings before going to work. Ms. Coles wondered if they could alternate morning/evening meeting times so residents would have an opportunity to attend.

Deputy Mayor Lefkowitz suggested Councilmember Swain ask if RRIC could invite residents to a one-time special meeting. Manager Van Kruiningen noted that the Broadway Improvement Corp. holds an open district meeting, which takes place a half hour earlier than their regular meeting. Ms. Coles felt it would need to be more than a one-time meeting. RRIC is continually degrading rather than upgrading and she would like to give her input on a regular basis.

Mayor Cosgrove congratulated Ms. Coles. He watched the Boston College football game over the weekend and her son, who is a starting member of the team, played a great game.

Councilmember Swain suggested that Ms. Coles email her concerns to either her or Manager Van Kruiningen, as they both attend the meetings. Ms. Coles reiterated that she would like to be able to attend the meetings in person.

CLOSED SESSION RESOLUTION:

Upon motion by Councilmember Swain and a second by Deputy Mayor Lefkowitz, the following closed session resolution was unanimously adopted at 8:45 p.m.

WHEREAS; the Open Public Meeting act of the State of New Jersey permits the public to be excluded from certain matters to be discussed by the Governing Body; and

WHEREAS; the Mayor and Council of the Borough of Fair Lawn desire to discuss Personnel - Zoning Board of Adjustment, Rent Leveling Board; Anticipated Litigation – Harraka; and Attorney-Client Privilege - Pay to Play; and

WHEREAS; these matters are ones which permit the exclusion of the public from such discussions; and

WHEREAS; minutes will be taken during this closed session and once the need for confidentiality no longer exists the minutes will be available to the public.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Lawn that the public be excluded since these matters as set forth above are ones which permit the exclusion of the public from such discussions.

ADJOURNMENT

Upon motion by Councilmember Swain and a second by Deputy Mayor Dunay, the Work Session was adjourned at 9:30 p.m.

Respectfully submitted,

Joanne M. Kwasniewski, RMC/MMC
Municipal Clerk/Deputy Manager

The undersigned have read and approve the foregoing minutes.

Mayor John Cosgrove

Deputy Mayor Daniel Dunay

Deputy Mayor Amy E. Lefkowitz

Councilmember Kurt Peluso

Councilmember Lisa Swain