

## **REGULAR MEETING OF APRIL 10, 2012**

### **CALL TO ORDER BY THE TOWN CRIER:**

Town Crier Tim Yuskaitis called the meeting to order at 7:33 p.m.

In accordance with the Open Public Meetings Act, annual notice of meetings from April through August 2012 was published in "The Record" issue of March 23, 2012. Notices were also posted on the bulletin board located on the first floor of the Municipal Building; copies were mailed to The Community News and posted on the Borough of Fair Lawn website. The annual notice identified the meeting location and the time of Council Meetings and Work Sessions.

**PRESENT:** Mayor Baratta, Deputy Mayors Cosgrove and Trawinski, Councilmembers Peluso and Swain.

**ALSO PRESENT:** Acting Manager Henderson, Municipal Clerk Kwasniewski, Assistant Municipal Clerk Bojanowski and Attorney Mondello

### **PROCLAMATION: 100<sup>TH</sup> ANNIVERSARY OF KUIKEN**

Town Crier Tim Yuskaitis read the Kuiken proclamation. The Mayor and Council presented the proclamation to the Kuiken family.

Doug Kuiken, on behalf of the Kuiken family, thanked the Mayor and Council for this tribute tonight. It is fitting because their roots run very deep in Fair Lawn. They all have a deep love for Fair Lawn even though some of them do not live here any longer. Some of them continue to come here every day to work. They love this community and are proud to be instrumental of the forming of Fair Lawn many years ago with their family founders and fathers. They very much appreciated the recognition.

Mayor Baratta stated here's to another 100 years of Kuiken Brothers in Fair Lawn.

### **DAYS OF REMEMBRANCE**

Municipal Clerk Kwasniewski read the proclamation.

### **PUBLIC AUCTION OF BOROUGH OWNED PROPERTY**

Attorney Mondello advised every one of the rules about a Borough auction. The first and foremost rule that has been advertised is that the Borough needs to have a 10% deposit that consists of cash or a certified check. They cannot accept a personal check. He explained that the Mayor will start the bidding.

There are minimum prices and if they want to bid they should approach the podium, giving their name and address and state the property on which they want to bid. He added that the bidder would only be responsible for 10% of the opening bids which are \$175,000 and \$150,000. The bidder would have until the close of business the next day to bring in the additional fund the bids be higher.. The Mayor and Council have the right to reject all bids.

Mayor Baratta announced the sale 9-06 Campbell Road, Block 5709.01, Lot 2. She called for an opening bid of \$175,000 and asked each bidder to clearly state their name and the amount of bid.

Seeing no bid, she closed the bidding on 9-06 Campbell Road.

Mayor Baratta announced the sale of 9-08 Campbell Road, Block 5709.01, Lot 3. She called for an opening bid of \$175,000 and asked each bidder to clearly state their name and the amount of bid.

Seeing no bid, she closed the bidding on 9-08 Campbell Road.

Mayor Baratta announced the sale of 97 Heights Avenue, Block 6806, Lots 59-61. She called for an opening bid of \$150,000 and asked each bidder to clearly state their name and the amount of bid.

Seeing no bid, she closed the bidding on 97 Heights Avenue.

Attorney Mondello advised that the Mayor and Council will at some point discuss the prices they were asking for each property. If they do decide to reassess what the minimum price should be, they must first offer it to contiguous property owners and then start the process all over again.

#### **COUNCIL COMMENTS:**

Councilmember Peluso stated that the Fair Lawn Substance Abuse program is putting together programs for the spring and summer. As they can see from what already has happened that children need things to do because they have seen how destructive the kids can be. They are working on a lot of programs to make sure to keep the children busy.

He mentioned the fire in Brookdale Park where the Fair Lawn Fire Department, Police Department, Rescue Squad and fire departments in Elmwood Park, Saddle Brook, Paramus, Glen Rock, Hawthorne, Rochelle Park and Paterson came to Fair Lawn's aid. That says a lot about our community and the surrounding communities. It is times like these that they see a tragic event and see how lucky they are to have these surrounding towns helping them out.

He sent his condolences to the Borough of Waldwick and also to the family of Marine Staff Sergeant Joseph D'Augustine who was killed in Afghanistan.

Councilmember Swain reiterated what Councilmember Peluso said about the fire, actually there were two fires, one in the playground and one in a home. All of the Fair Lawn fire fighters and the surrounding towns plus Fair Lawn Rescue did an outstanding job. She thanked them. Last week they just agreed as a Council to put into their budget a new piece of apparatus. She was very glad to know that the fire department will be protected and well versed in fighting fires.

April 22 is Earth Day. She encouraged everyone to acknowledge the earth and to see what they can do to make the world a more sustainable place. The Green Team will hold their Green Fair on May 22 in the D Cafeteria at the Fair Lawn High School. She hoped that everyone will come to see the vendors and exhibitors. They had a great showing last year, she hopes it will be even better this year.

Councilmember Swain mentioned that River Road Improvement Corp and Broadway Improvement Corp. are having great deals. She suggested checking on line or going to their website. A lot of businesses are offering discounts. It is a great way to shop locally.

Deputy Mayor Cosgrove stated two Elmwood Park fire fighters were injured at the house fire. One was not transported to the hospital but the other one was. He had burns. Today he spoke to the family who told him he was doing well and should make a full recovery. He thanked them for helping out yesterday. It was a very windy day and it was a stubborn fire. Unfortunately they lost the playground at Brookdale.

Deputy Mayor Cosgrove commented on the Kuikens being here tonight. He felt honored. Their families have been friends for over 100 years. It is a great privilege to see what this generation has done. They have built their company up to be one of the industrial leaders in the State when it comes to building supplies. He thanked them. When he ran the 75<sup>th</sup> Anniversary of Fair Lawn he came to realize that Fair Lawn came to be by Nick Kuiken. He was the one who sponsored it and pushed for it in 1924.

He mentioned the passing of John Bredehorst who was a bright shining star. He worked for the Borough of Fair Lawn as the Borough Electrician for over 25 years. He was a member of Fire Co. #3 and he served as Captain. He will be remembered mostly for the street hockey program. Anyone who was involved with street hockey loved him. He will be sadly missed. He expressed his

condolences to his wife, Cookie and the entire Bredehorst family and thanked them for John's service to the community.

Deputy Mayor Trawinski echoed all of the comments that preceded him on the firefighters and volunteers. Also, it is a good time to remind everyone that fires do happen and if they haven't changed their batteries on the carbon monoxide detectors and your fire and smoke detectors it is always a good time to do that. Don't ignore them.

Last night there was a meeting of the Planning Board which was a continuation on the Landmark hearing. Progress moves long slowly and incrementally on this hearing. He felt it would probably go on for another six months or so. There was very little new testimony taken. New concepts were provided particularly with respect to landscaping Plaza Road. Questions from the residents were answered by the applicant.

Also an application on Pollitt Drive Extension was approved in order to help the property owner rent that property easier. The reality is that an industrial park is becoming more of an office park. There were a myriad of conditions imposed by the board for the parking variance relief.

He mentioned the memorial that was planned for the 9<sup>th</sup> Anniversary of the passing of Mary Anne Collura on April 17<sup>th</sup> at 4:00 p.m. He asked that everyone recall what Mary Anne gave which was the ultimate sacrifice but also what the Police Officers do every day.

Mayor Baratta stated that the memorial service will be held Tuesday, April 17<sup>th</sup> at 4:00 p.m. in front of the Municipal Building at the Mary Anne Collura memorial. They were asked to reach out to the Governor's office to ask permission for the Borough to lower the flags at half staff on that day and the Governor has agreed to allow it.

Deputy Mayor Cosgrove and she had a busy weekend. They had a couple of grand openings. One was a grand re-opening of another fixture in Fair Lawn, Benny's Luncheonette on Saddle River Road. It was packed with a lot of people. They decided to go back to 1984 prices when they originally opened. Also, Sage Restaurant opened on Broadway in the old Campania location. She wished those businesses the best of luck.

Mayor Baratta mentioned the 45<sup>th</sup> Anniversary of the high school Marathon. It is scheduled for May 18<sup>th</sup> and 19<sup>th</sup>. She remembers when it was a whole weekend event. It is very important because with the money raised goes to charity.

**ORDINANCES ON FIRST READING:**

Upon motion by Deputy Mayor Cosgrove and a second by Deputy Mayor Trawinski, it was unanimously agreed to read the following ordinance by title.

**ORDINANCE NO. 2236-2012****AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 125, LAND DEVELOPMENT, BY REZONING THE OBS-2 ZONED AREAS IN THE VICINITY OF BROADWAY TO THE B-2 ZONE**

Upon motion by Deputy Mayor Trawinski and a second by Councilmember Swain, Resolution No. 135-2012 introducing Ordinance No. 2236-2012 was unanimously passed.

**PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY**

Upon motion by Deputy Mayor Trawinski and a second by Councilmember Peluso, the time for public comments on Agenda items only was opened.

There being no comments from the public, upon motion by Deputy Mayor Trawinski and a second by Deputy Mayor Cosgrove, the time for public comments was unanimously closed.

**MAYOR'S APPOINTMENTS:**

Mayor Baratta announced the following appointments to the Historic Preservation Commission – Michele Gehbauer (Class C) and Michael Rosenberg (Alternate 1).

**RESOLUTIONS BY CONSENT #8-2012**

Upon motion by Deputy Mayor Trawinski and a second by Councilmember Peluso, Consent Agenda #8-2012 containing the following items was unanimously passed.

- a. Resol. #136-2012 – Extension of Bid: Printed Supplies
- b. Resol. #137-2012 - Authorizing Entering Into an Agreement with County of Bergen for Emergency Notification System
- c. Resol. #138-2012 - Appointment to the Fair Lawn Borough Gardens Committee
- d. Resol. #139-2012 – Appointment of the Borough Manager

- e. Resol. #140-2012 - Approval of Minutes:  
Work Session 3/6/12  
Closed Session 3/6/12

**RESOLUTION NO. 141-2012 – OPPOSING S-1451 (OPMA)**

Upon motion by Deputy Mayor Cosgrove and a second by Deputy Mayor Trawinski, Resolution No. 141-2012 was discussed.

Councilmember Swain stated she would not going to support the resolution because she does believe in transparency in government. She does recognize there are issues with this bill but she had already expressed her concerns to Senator Gordon and will continue to express them. She has been told there are amendments that will be made. Hopefully everyone's objections will be heard and a bill will come out that is more pleasing to everyone involved.

Deputy Mayor Cosgrove stated he will support the resolution on this because our Municipal Clerk, Joanne Kwasniewski, is a recognized leader among the Clerk's Association of New Jersey. She made a presentation to the Council and expressed that this bill will be cumbersome, costly and unmanageable. He was all for transparency but he will vote in opposition to this bill which is for the Open Public Meeting's Act and also the next one which opposes the one for the Opra Request.

Deputy Mayor Trawinski stated he will be voting yes on this resolution which indicates the governing bodies' opposition to this legislation. He has no doubt that should he ever run for election again, somewhere, someone will say he voted no because he does not support transparency in government and open public meetings and all the other things that get warped and distorted in political campaigns. Nothing could be further to the contrary.

The people of this State need to understand that Municipal and County government is constrained by 2% budget caps and 2% tax caps. At the same time, Trenton, keeps imposing additional mandates upon State and County governments but does not give them the funding to be able to implement these mandates. This is one such piece of legislation. This legislation has a noble defined purpose but is actually doing the contrary. It is eliminating and making it harder for people to communicate to their government. He gave an example of a resident expressing an issue that was not on the agenda and asking the Council to please consider it and act on it. Depending on the nature of the request, they act on that request and instruct the Manager to implement that request or they even vote on a request. This legislation would prohibit that. This legislation would take away the Council's power to act on residents requests at a public meeting unless the resident first saw fit to contact them asking them to place it on an

agenda and then publish it in the newspaper. He explained the hardship of this which would be increase in cost and secondly the resident would have to come back to a second meeting that may not be convenient for them. He thought it discouraged public comments.

They are required by law to maintain minutes, now they would be required to maintain recordings. He does not have a problem with doing one of them but doing both is counter-productive. If the recordings have to be maintained forever as opposed to an established policy of the State of New Jersey, then why should they spend the time and effort to generate minutes and at the same time maintain the recordings.

Like any other governing body, they do their best to estimate time frames but they don't always know precisely how a debate or discussion will go. This law, if passed, will obligate them to publish the timeframe when they would reach certain things and then probably preclude them from discussing the matter should they be early on reaching that timeframe. It may even preclude them if they are late in reaching the timeframe.

This bill does not achieve the purpose it seeks to achieve. He too has voiced his opposition to the sponsor and through the New Jersey Association of Counties and the legislative leadership. If there were an honest genuine debate with Senator Weinberg over this legislation rather than attempt to ram it through and hoist this new burden and expense upon them and the taxpayers he would wait but every signal he has gotten back from the legislation is that this bill will move. He hopes and prays that is wrong. He hopes that this legislation gets amended. If Trenton is going to mandate then they should find a way to fund those mandates because at the end of the day, it is the taxpayers that pay for these unfunded mandates.

For all those reasons and the reasons articulated in the resolution and coupled with the fact that the Municipal Clerk is a highly respected member of the Clerk's Association and past president of the Clerk's Association, she is the one that brought this request to the Council, he will join in voting yes on this resolution thereby opposing this legislation.

Mayor Baratta said she was also going to support the opposition to this bill. She was glad that Councilmember Swain believed they were looking at it and are going to tweak it. She believed by sending this it will help move it along if enough municipalities come out opposing this. She understood the transparency but this bill is going too far. Fair Lawn is very good in the transparency. She understands from seeing other municipalities that something needs to be done. There may be things in the bill that are good but the main one that Deputy Mayor Trawinski mentioned is the ability for a resident to come up to the podium and bring

something to the Council's attention. That is a major problem that they did not know about and the ability to act on it and discuss it, even go into Work Session to discuss it further. This bill would take that ability away. That is not the transparency they want. She is also in opposition of this bill.

There being no further comments, Resolution No. 141-2012 was passed with Councilmember Peluso and Councilmember Swain dissenting.

**RESOLUTION NO. 142-2012 – OPPOSING S-1452 (OPRA)**

Upon motion by Deputy Mayor Trawinski and a second by Deputy Mayor Cosgrove, Resolution No. 142-2012 was discussed.

Deputy Mayor Cosgrove reiterated that he would vote in favor of this based on the presentation that the Municipal Clerk gave at their last Work Session and her recommendation to oppose this bill.

Deputy Mayor Trawinski stated for the reasons he articulated and his opinion on Resolution No. 141-2012, he will be opposing this legislation. His opposition goes beyond that as well.

There is an existing Open Public Records Act that in some respects has been a dismal failure. One of the failures is that the legislation required a Government Records Council. The GRC was supposed to act quickly on citizens requests when under the existing law the citizens were denied access to government records. Not only does the GRC not have a full membership or have failed to have one for two years, the GRC also takes years to respond to citizen's appeals. Rather than breaking things and imposing more costs, he thought it would be far more prudent to fully fund the GRC and enable it to do the job it was supposed to do under the original legislation.

The other thing this law does is create a change in the public policy of the State of New Jersey. It has been the policy of the State that government records that are part of New Jersey governmental entities should be available to anyone in New Jersey. This legislation says that government records maintained by government entities, as a matter of the public policy of the State of New Jersey are now available to anyone anywhere.

Right now there are a lot of businesses in New Jersey that are smart enough, lawyers especially to request all of the summonses and accident reports that happened within a certain period of time, so they contact these people to see if they need a lawyer. They get to run a for profit business at the expense of the taxpayers in every town. He asked Municipal Clerk Kwasniewski to explain the requests she receives. Municipal Clerk Kwasniewski explained that each Monday

there are between five and seven companies that send in a request for the accident reports for the prior week. Deputy Mayor Trawinski wondered if she received inquiries of how these people reached access to their records. Municipal Clerk Kwasniewski said that a number of residents have come in stating they had gotten a letter from an attorney telling them they know they had an accident and would be glad to help them. They are upset because that means the company has gotten their name and address and know they have had an accident. Unfortunately under the OPRA rules all of that information is public information. The only redaction is the driver's license number and a telephone number.

Deputy Mayor Trawinski stated there are companies in California that are pushing this legislation because they want to be able to access this information and more. They want to be able to ask information about adjustments in property taxes not because they are residents or not because the original legislation contemplated that citizens would request public documents but that they can engage in the business of selling their services for filing property tax appeals to residents. He has no problem with residents filing tax appeals but he has a huge problem if the taxpayers of Fair Lawn are paying for companies to run a for profit business under the guise of soliciting open public records.

If this legislation passes in this current form, the only thing missing from it is how quickly will they have to respond to the for profit businesses before they get sued and the taxpayers now have to foot the tab on the lawsuit.

Deputy Mayor Trawinski stressed that he has absolutely no problem or quarrel that the records of governmental entities should be available to residents and public in general but he has a huge problem if they are available to for profit businesses at the expense of the taxpayers. This is what Senator Weinberg and the other sponsors of this legislation are asking the taxpayers to pay for this at the same time they are compelling us to keep down the cost of government. It reminds him what both political parties did in the 70's and 80's where they made constant and persistent changes to pension laws that fattened pensions but never provided a way to pay for the pensions and now the next generation is stuck with the bill. If this legislation passes, our children and grandchildren someday will have to pay for it. There is balance here that needs to be achieved. This bill should be scrapped and gone back to the drawing board to achieve that balance. They recognize in this resolution that there are changes that they would be willing to support if the legislatures would provide the funding but they chose not to. For the same reasons he is not going to support this legislation and voting in favor of this resolution.

Mayor Baratta stated she will be voting to oppose this as well. Again to stress what the other deputy mayor's said, it is not only traffic accidents; it is also parking tickets, moving violation, etc. that are available to these companies.

There being no further comments, Resolution No. 142-2012 was passed with Councilmember Peluso and Councilmember Swain dissenting.

## **PUBLIC COMMENTS**

Upon motion by Deputy Mayor Trawinski and a second by Councilmember Swain, it was unanimously agreed to open the time for public comments.

Pam Coles, 13-34 George Street, stated that she lives in one of the original Kuiken homes. She thanked them for honoring them.

She wondered about the status of the cell tower. They have a contract but not a developer. She also wondered if there was a stipulation in the contract stating they had to have a developer by a certain time. Attorney Mondello advised her that was not in the agreement. The problem the contractor has is that he has not been able to secure a tenant, such as Verizon or AT&T. They use different frequencies and they want to make sure the tower is built according to their specifications. It is not a tremendous amount of money – less than \$30,000. Attorney Mondello said he would continue the dialog with the contractor and move this along. No one would want to encourage litigation.

Ms. Coles thanked Deputy Mayor Trawinski for explaining those two pieces of legislation being brought before them. Not only is a vote of no for this is hindering her rights and a vote no is for their taxes to be increased with higher costs. She saw that Deputy Mayor Trawinski was protecting her interests and the other residents interest and in a grander scheme, the residents of this State. She did not realize how much a vote of no would actually limit her freedom.

Daniel Dunay, 1 Hirschklau Lane, stated there was an article posted on Patch today that burglaries and larcenies are up 50% in Fair Lawn. He has no idea what the underlying cause is but he has to believe it has to be the morale in the Police Department. As someone who has worked in a situation with declining morale that he can personally say that the daily focus shifts from achievement to controversy. Individuals go to bed every night worried what the future holds and whether they will have a place in it and that is Fair Lawn's Police Department. He realizes the first instinct is to seek a change in management but the law goes to great length to protect the department's management from political activity thus it is this context that the settlement of retired Sergeant Messina took on new meaning. Here was an instance where this Council could quickly and definitively make a statement that they as a community are moving

past the challenges facing the department. It seems that at least, initially, the Council unanimously supported this direction. However, subsequently something changed and two members changed their minds instead calling for them to take the matter back to Court. Not only was this contrary from multiple expert attorneys but it would have prolonged this conflict. He wished to thank the majority of this Council for taking definitive action on this matter but more than that, he very much hoped that those two who voted no on the settlement will craft some definitive explanation for their last minute change of vote. Short of such an explanation, he is left with a sad conclusion that those two members have chosen to put politics ahead of public safety and especially in light of the statics reported on Patch today. He thought he spoke for many people in town when he says that public safety has to come first.

Brent Pohlman, 15-29 Chandler Drive, spoke about the current OPRA laws for prevailing parties to obtain attorney's fees. The Borough would be subject to further draining of the already limited coffers.

To follow up on Mr. Dunay's comments, he commended the Council majority for the courage of leadership and the courage to make a difficult decision. Leadership is more than cutting ribbons, planting trees and going to dances. Leadership is choosing between two difficult decisions, two decisions that no one likes. He was thankful that they had leadership on this Council that is willing to put the taxpayers of the town first as opposed to their own person political agenda.

As a labor and employment attorney, he has several CEPA claims on his desk and found the job done by Mr. Mondello and by the carrier is to take a jury award of \$850,000 and negotiate it down to \$550,000 is excellent. With a fee shifting provision that exists in these CEPA claims, the plaintiff's attorney could have dragged its feet and held the town over a barrel. If this matter proceeded to trial, it would be feasible to have a judgment in excess of \$850,000 or over a million. He is concerned because he can only think of two reasons as to why there would be a change from a unanimous decision to just three members voting in favor of the settlement. Someone could also acknowledge that this judgment was made by a jury and that this settlement must be entered into because such an acknowledgment would be acknowledgment of the failed past administration and if that is the reason that is just a continuation of failed leadership.

Mr. Pohlman stated that he saw in certain media that Councilmembers did not like the language of the settlement but he did not feel that was right to put the town at risk for an additional amount of money. While he is thankful they have a Council majority that made the difficult decision, he does believe the people of Fair Lawn have the right to know why two Councilmembers changed their mind

and specifically Councilmember Swain because she said she did not like the language or it was not in the best interest of the town risking \$750,000 and if there was different strategy out there or a different road they should have taken, she should tell the people of Fair Lawn about that.

He mentioned that Councilmember Swain and Councilmember Peluso voted not to condemn a statute that calls for Councilmembers having to set forth their reasons on voting on a certain measure. In light of her support for that statute he asked her to tell them tonight why she put the Borough at risk.

Mayor Baratta stated the language was changed because there was some archaic language that they thought should not be in the resolution. The Borough Attorney did change the language.

Deputy Mayor Cosgrove commented that he would not say why other people voted the way they did. He stated that last Friday when he voted in favor of the settlement for the Police Officer that it was irresponsible for him not to vote for this resolution based on the recommendation of the MEL's attorney and they voted unanimously to settle for a dollar figure and they went forward. He thought it would be unacceptable to put the Borough at risk because the MEL was only going to pay \$261,000 and they mentioned it could go over a million dollars and if it did go over, the Borough would have to pay for everything except the \$275,000 that they had agreed to. He was not happy about paying \$275,000 of the taxpayer's money because they did not get any services for it. They are fighting to keep things open, fighting to maintain the quality of life in Fair Lawn. He was not happy about this settlement but they did have to do this so that the Borough was not pushed to a point where it would affect the budget.

Councilmember Peluso thanked Mr. Dunay and Mr. Pohlman for voicing their concerns. There is some things in Closed Session that was not releasable yet but once all of that material comes out, he would be more than happy to discuss it with them. He was curious about the comment that this was for political purposes, no vote of his would be for political purposes. He was also curious of them wanting to know the reason for his vote. When at the Reorganization Meeting the majority of this Council would not let him speak; both of them were present but did not come to his defense. If they want to hear the Council speak on all these important matters, do it on a bi-partisan basis and speak of everything. Mayor Baratta said she looked forward to hearing that explanation.

Howard Mark, 12-23 Ferry Heights, stated the two bills very scary. He wondered who brought these bills up. Mayor Baratta told him Senator Weinberg and another co-sponsor.

Ruth Germans, 39-37 Sycamore Drive said there were a lot of issues tonight. She congratulated them on their 100<sup>th</sup> anniversary. She said that John Bredehorst was her neighbor and he was a gem of a person. She spoke about the fire at Brookdale Park and what a tragedy it was. Ms. Gormans shared her memories about the parks, the pool and the concerts held in the summer.

Ms. Gormans felt that the mini-bus service should be expanded because a lot of people in Fair Lawn use the bus but many people are not aware of it or aware of the gems that Fair Lawn has. She thought they should think outside the box. Mayor Baratta explained that information does go out to the residents about these services in the newsletter, the Community News prints the mini-bus schedule, it is posted in the Community Center Schedules and now there is Patch and it is also on the Borough website. They are trying the best they can. She appreciated all of the memories she shared with them tonight.

Pam Coles, 13-34 George Street, stated she did not know that the Messina settlement was going to be heard again in a public venue. Mayor Baratta said they had a Special Meeting on a Friday, March 30<sup>th</sup> at 9:00 a.m. in Room 201, it was a public meeting and the press was there. Ms. Coles said she wasn't aware that it wasn't going to be presented in this setting. Regardless of what party they are from, these lawsuits were filed under a different administration, the Swain and Tedeschi administration. They were heard and they were lost. She was curious to know the reason behind the two Councilmembers that would actually vote to not settle it, putting Fair Lawn in financial jeopardy and also putting the town at risk. It is common sense and good business, so she wondered why it went from a unanimous decision to a majority decision. It seems there is something else going on here. She would like an answer to that.

Councilmember Peluso stated once everything becomes open with the Closed Sessions, they will get a very specific answer from everyone here. Ms. Coles said it was done in an open venue so why can't he give an answer now. Councilmember Peluso said there were discussions within the Closed Session where they went into a lot of detail. Once the minutes become public, the residents will know why they took the stand they did. Councilmember Swain said that the minutes and everything that was discussed will be open once the minutes are approved. The minutes have not been approved yet. Pending Litigation is always in Closed Session. Ms. Coles said the resolutions were presented on March 13<sup>th</sup> and then it was tabled because Councilmember Swain had a question about the language.

Councilmember Swain found it interesting the only people that came to the podium tonight to talk about this are Republicans. Ms. Coles said it had nothing to do with Republican or Democratic. It is good business and that is why she wanted to find out. Councilmember Swain said she was with her on that and

that is why she did not think it was a good settlement. Ms. Coles asked Councilmember Swain why she would vote no to settle this to save the taxpayers' money putting Fair Lawn at risk financially. There could have been a possible \$1.2 million dollar settlement.

Ruth Gormans, 39-37 Sycamore Drive, stated she was hearing a lot of convoluted things. She thought it should be politics not as usual but unusual. What they need to do is heal why all these lawsuits and all the problems have happened from ten years ago and beyond. There should be a Code of Ethics within the Police Department. The Police Chief manages the department and needs respect.

Councilmember Swain stated that she voted against the settlement because she was never in favor of the settlement and paying \$550,000 and knows that Fair Lawn is responsible for half of that. It was not in the best interest of the residents of Fair Lawn. She was representing the residents. She is concerned about taxes and knows it is the number one concern for residents. There are years and years of documents that will be available soon. When they do many people will want to view them and come to the same conclusion she did.

There being no further comments, upon motion by Deputy Mayor Trawinski and a second by Councilmember Swain the time for public comments was unanimously closed.

Deputy Mayor Trawinski commented that he voted in favor of the settlement because in part, they as a Council in a prior Closed Session discussed the settlement, received the advice of the attorneys and were told how limited the case was. They were told that while they won the appeal, the only issue they won was not if they were liable but how much they would be liable to Officer Messina for. They received the advice of the Attorneys, given the posture of the case it was likely that Messina in another jury verdict would prevail against them. They also received information from the insurance carrier that if they decided to pursue it to a new trial, they would no longer share half the tab with the Borough. The Council discussed this and unanimously decided to settle and instructed their attorneys to advise the Court that it was settled. Once that was done, they had an obligation to go through the administrative act of memorializing that settlement. They were advised in the Closed Session if they did not they would likely be held liable for the attorney's fees in enforcing the terms of the settlement and the insurance carrier would no longer offer half the money. That would mean instead of taking \$275,000 out of the taxpayers money, they would take \$550,000.

They cannot take lightly what they do in Closed Session and then come back and change their minds when it comes to settlement of litigation. He will not

ascribe political motives to this. He will ascribe to the lack of leadership which is why for six years he sat in the minority and watched the Police Department deteriorate through no fault of its own but because of a lack of leadership on the part of the majority of the Council. Now, they have to fix that.

Deputy Mayor Trawinski fear was that the election campaign of 2013 with the vote on the change of mind on this settlement and coupled with the votes on the OPRA bill and OPMA bill has already begun. He hopes that he is wrong. The business of governing this town is far more serious than election campaign and election literature. He pointed out that in the last campaign that if one Republican was elected the Library would be closed, it is now April 10<sup>th</sup> and no one has suggested the Library would be closed.

Upon motion by Deputy Mayor Trawinski and a second by Councilmember Peluso, it was unanimously passed to direct the Municipal Clerk to immediately prepare the minutes and to release them forthwith.

**CLOSED SESSION RESOLUTION - PENDING LITIGATION: VERIZON AND HARAKA VS. JAY BENDER**

Upon motion by Deputy Mayor Cosgrove and a second by Councilmember Swain, the following closed session resolution was discussed.

Deputy Mayor Trawinski stated he is voting no on this resolution so as preclude the possibility that they go into Closed Session, decide something, think they are all in agreement and then change their minds in the future. His vote is a no.

Councilmember Peluso stated he would like to change his vote to a no and discuss it right here.

Mayor Baratta asked Attorney Mondello if Councilmember Peluso could change his vote. Attorney Mondello advised that he could not. The discussion cannot proceed in Open Session.

There being no further discussion, the Closed Session Resolution was adopted at 9:10 p.m. with Deputy Mayor Trawinski dissenting.

**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 Pending Litigation: Verizon and Haraka vs. Jay Bender; 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 the 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 Deputy Mayor Trawinski and second by Councilmember Swain the meeting was adjourned at 9:40 p.m.

Respectfully submitted,

\_\_\_\_\_  
Joanne M. Kwasniewski, RMC,CMC,MMC  
Municipal Clerk

The undersigned have read and approve the foregoing minutes.

\_\_\_\_\_  
Mayor Jeanne Baratta

\_\_\_\_\_  
Deputy Mayor John Cosgrove

\_\_\_\_\_  
Councilmember Kurt Peluso

\_\_\_\_\_  
Councilmember Lisa Swain

\_\_\_\_\_  
Deputy Mayor Trawinski