

REGULAR MEETING OF JULY 21, 2009

Mayor Weinstein called the meeting to order at 8:15 p.m.

In accordance with the Open Public Meetings Act, annual notice of all meetings of the Borough of Fair Lawn was published in the Record issues of December 16, 2008. Notices were also posted on the bulletin board located on the first floor of the Municipal Building and the Maurice Pine Free Public Library. Copies were mailed to The Community News and posted on the Borough of Fair Lawn Website. The annual notice identified the times and locations of the Council meetings and work sessions.

PRESENT: Mayor Weinstein, Deputy Mayors Swain and Tedeschi, Councilmembers Baratta and Trawinski.

ALSO PRESENT: Acting Manager Kwasniewski, Assistant Municipal Clerk Bojanowski and Attorney Rosenberg.

MANAGER'S REPORT:

Acting Manager Kwasniewski stated that Family Fun Night and National Night Out will be held on August 4th at Memorial Pool. Family Fun Night begins at 6:30 p.m. and National Night Out at 7:00 p.m. Everyone is invited to attend.

She commended the Borough Engineer, DPW administration, Water Department, Roads Department, OEM, Health and the CERT Team for helping with recent water main break on River Road. She thanked the residents for following the directions on the reverse 9-1-1 call. The CERT Team answered between 300 – 400 phone calls. There were a number of calls from people who did not receive a phone call. She reminded residents

with unlisted numbers to register with the Borough as they do not have access to those numbers.

COUNCIL COMMENTS:

Councilmember Baratta thanked the residents who patronized the Farmers' Market; it has been very successful. They hope to add more vendors. The Market is held in the parking lot of New Song Church every Wednesday from 11:00 a.m. until 6:00 p.m.

She encouraged residents to attend National Night Out on August 4th and reminded them to leave their porch light on to let criminals know that we are united against crime.

Deputy Mayor Tedeschi thanked the Borough employees and volunteers who were involved with the water main break. They did a great job. It was clear that they learned from past experiences.

Deputy Mayor Swain thanked the Borough employees. She stated that everyone was able to pull together very quickly and get the message out to the residents.

There was a great response to the formation of the Green Team. She thanked the volunteers who signed up to participate. She will keep them posted.

Councilmember Trawinski also thanked the Borough employees and the residents for their cooperation. He thanked Ira Marks, Emergency Management Coordinator, for giving a comprehensive and timely after-action report on the situation. He thanked the Acting Manager for her early notification call about the water main break.

There is an ADA Committee meeting Thursday night at 7:00 p.m. The meetings are open to the public.

He noted that National Night Out, scheduled for August 4th, is a very successful event. He looked forward to seeing the representatives of the various Block Watches.

Mayor Weinstein thanked the Office of Emergency Management and the Borough employees. He complimented them on a job well done. He had spoken to many residents, who were very appreciative of how fast the message got out.

He congratulated the Fire Department for winning several awards at the July 4th parade in Ridgewood: second place for best color guard; first place for best appearance pumper, Engine No. 4; first place for best appearance truck – Engine No. 1; and first place for best appearing in parade uniform. They made Fair Lawn proud.

ORDINANCES ON SECOND READING:

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, it was unanimously agreed to read the following ordinance by title and open the time for public comments.

ORDINANCE NO. 2159-2009 (RESOLUTION NO. 258-2009)

**BOND ORDINANCE APPROPRIATING \$1,701,000, AND
AUTHORIZING THE ISSUANCE OF \$1,619,500 BONDS OR
NOTES OF THE BOROUGH, FOR VARIOUS IMPROVEMENTS
OR PURPOSES AUTHORIZED TO BE UNDERTAKEN BY THE
BOROUGH OF FAIR LAWN, IN THE COUNTY OF BERGEN,
NEW JERSEY.**

There being no comments by the public, upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain, it was unanimously agreed to close the time for public hearing.

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 258-2009 adopting Ordinance No. 2159-2009 was discussed.

Mayor Weinstein stated that the ordinance authorized bonding for improvements in the Capital Budget for the Recreation Department, DPW, Sewer, Roads Department, etc.

Councilmember Trawinski thanked the former Borough Manager, Acting Manager Kwasniewski and CFO Eccleston for delivering a Capital Budget that was within their means and consistent with past practices of the Borough. He thanked the Department Heads for bringing reasonable Capital Budget requests during difficult financial times, allowing them to give the residents a slight tax decrease.

Deputy Mayor Tedeschi noted that \$790,000 was allocated for sewer and storm water improvements. The average estimated life of the equipment and installation was 24 years.

There being no further discussion, Resolution No. 258-2009 adopting Ordinance No. 2159 was unanimously passed

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

**ORDINANCE NO. 2160-2009
(RESOLUTION NO. 259-2009)**

**BOND ORDINANCE APPROPRIATING \$294,000, AND
AUTHORIZING THE ISSUANCE OF \$280,000 BONDS OR
NOTES OF THE BOROUGH, FOR VARIOUS WATER SUPPLY
AND DISTRIBUTION SYSTEM IMPROVEMENTS OR
PURPOSES AUTHORIZED TO BE UNDERTAKEN BY THE
BOROUGH OF FAIR LAWN, IN THE COUNTY OF BERGEN,
NEW JERSEY.**

There being no comments by the public, upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to close the time for public hearing.

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 259-2009 adopting Ordinance No. 2160-2009 was discussed.

Mayor Weinstein stated that the ordinance authorized improvements in the Capital Budget for the water utility. Deputy Mayor Tedeschi stated that the estimated life of the project is 30 years. Councilmember Trawinski reiterated his thanks for the people involved in the Capital Budget process. He thanked Engineer Garrison for doing a wonderful job maintaining the water utility, ensuring that water services are delivered in a timely manner. Engineer Garrison is an integral part of the planning process.

Mayor Weinstein echoed Councilmember Trawinski's comments. He felt they were fortunate to have the experience of Engineer Garrison, who took the necessary precautions and deserved thanks for his handling of the water main break.

There being no further discussion, Resolution No. 259-2009 adopting Ordinance No. 2160 was unanimously passed

Upon motion by Councilmember Trawinski and a second by Deputy Mayor Tedeschi, it was unanimously agreed to read the following ordinance by title and open the time for public comments.

**ORDINANCE NO. 2161-2009
(RESOLUTION NO. 260-2009)**

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH
OF FAIR LAWN, 2000 BY AMENDING AND SUPPLEMENTING
VARIOUS CHAPTERS TO REVISE FEES AND PENALTIES**

There being no comments by the public, upon motion by Councilmember Trawinski and a second by Deputy Mayor Swain, it was unanimously agreed to close the time for public hearing.

Upon motion by Councilmember Trawinski and a second by Councilmember Baratta, Resolution No. 260-2009 adopting Ordinance No. 2161-2009 was discussed.

Acting Manager Kwasniewski stated that this ordinance set the fee that will be charged for a copy of a 3.5 floppy disk, an audio cassette and a CD/DVD at \$5.00, which was mandated by the State. Some departments, particularly the Police Department, had been charging a higher fee; some departments charged less.

There being no further discussion, Resolution No. 260-2009 adopting Ordinance No. 2161 was unanimously passed

**PUBLIC HEARING ON THE BERGEN COUNTY OPEN SPACE RECREATION
FARMLAND HISTORIC PRESERVATION TRUST FUND APPLICATION –
ACQUISITION OF NAUGLE HOUSE:**

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski the public hearing was open.

Mayor Weinstein stated that the deadline for the County Open Space Grant for the acquisition of the Naugle House was July 31, 2009. The Council was attempting to get everything in order so if the grant is approved, they can move forward with the purchase of the Naugle property.

PUBLIC COMMENTS:

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to open the time for public comments:

Felice Koplik, Historic Preservation Commission Chairperson, 6 Reading Terrace stated that the Commission wanted to thank the Council for filing this grant application. The Commission supports any activity that would preserve the historic Naugle House and the surrounding 1.76 acres. The Naugle House is unique in that the buildings and the site are historically intact; a rare asset. The grant money would assist in the purchase of the Naugle House and enable them to save this valuable site.

Mayor Weinstein thanked Ms. Koplik and the Historic Preservation Commission for their hard work and for encouraging support of the Naugle House throughout the community. This has helped this project proceed. She did a great job.

Councilmember Trawinski thanked Borough Attorney Rosenberg for pointing out an opportunity for the Naugle House that did not otherwise exist. He deserves equal credit for the Council's pursuit of this matter. He echoed Mayor Weinstein's comments and thanked Ms. Koplik and the Historic Preservation Commission.

Ms. Koplik thanked Attorney Rosenberg for bringing this idea to everyone's attention.

Pam Coles, 13-34 George Street thanked the Council for becoming partners with the Historic Preservation Commission. The Commission is committed to working alongside the Council; they are willing to provide any information, assistance or documentation the Council or Attorney Rosenberg needs to support the application.

The Naugle House is one of their historic treasures. All their historic sites are of economic viability to the town. The only one remaining is the Naugle House. Fair Lawn is one of the few towns in Bergen County to have such a rich collection of historic sites. She stressed that they needed to keep the Naugle House as part of that collection and value it for the treasure that it is.

Mayor Weinstein stated that another partner they have is the County. He acknowledged the County Executive and the County's Superintendent of Parks. He and Attorney Rosenberg met with the Superintendent of Parks and were encouraged to proceed with this project; they left with a good feeling.

Ms. Coles inquired if this grant was through the Open Space Trust Fund. Councilmember Trawinski stated the grant was through the Open Space and Recreation Farmland Historic Preservation Trust. He suggested that Ms. Coles and the Commission make the Bergen County Freeholders aware of how much support there is for this project. He noted that Freeholder Ganz was aware and has been supportive, but he felt the other Freeholders needed to know. Ms. Coles stated that she would

reach out to them. Mayor Weinstein stated the Council was working on many ideas regarding the Naugle House; this was step one.

Ms. Coles stated that she was already thinking of the future. She encouraged the Council to reach out to the Commission when it came time to discuss the historic integrity and restoration of Naugle House. Mayor Weinstein assured her that the Commission would be contacted.

Jane Diepeveen, Borough Historian and Trustee of the Fair Lawn Historic Site Preservation Corporation, 14 Ryder Road stated that she was delighted that the Borough was taking these steps to acquire the Naugle House. She hoped they would be successful as they have lost many historic buildings. The Hopper-Strehl house, the Henry Hopper House, the Isaac Hopper House and their original Borough Hall are all gone. At one time, Fair Lawn had more pre-Revolutionary houses than any other town in Bergen County. She is extremely pleased that they were taking steps to save this house.

She inquired if this meant that Mr. Neidani would not build on this property. Mayor Weinstein stated it did not mean that at all. They were merely putting their side of the table in order so that they will be prepared if good things happen. Ms. Diepeveen questioned the resolution. Acting Manager Kwasniewski explained that they were applying for \$600,000; the Borough would be required to provide matching funds. Ms. Diepeveen wished them good luck. Councilmember Trawinski thanked Ms. Diepeveen.

Howard Mark, 12-23 Ferry Heights inquired if this project pertained to one or two lots. Mayor Weinstein explained that it was the entire piece of property.

Larry Koplik, 6 Reading Terrace, 6 Reading Terrace noted that the Historic American Building Survey was done during the depression. Even back then, the Naugle House was recognized as an important historic landmark, and was completely documented with a report and drawings. It is very interesting to look at because there are beautiful drawings made by architects who were out of work during the depression.

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski, it was unanimously agreed to close the time for public hearing.

PUBLIC COMMENTS ON CONSENT AGENDA ITEMS ONLY

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

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

RESOLUTIONS BY CONSENT #21-2009

Upon motion by Councilmember Baratta and a second by Deputy Mayor Tedeschi, Consent Agenda 21-2009 containing the following items was unanimously passed.

- a. Resol. #261-2009 - Approval of Minutes:
 - Work Session – 3/17/09
 - Closed Session – 3/17/09
 - Budget Meeting – 3/24/09
 - Regular Meeting – 3/24/09
 - Work Session – 3/24/09
 - Closed Session – 3/24/09
 - Special Meeting – 3/24/09
 - Closed Session – 4/7/09
 - Work Session – 4/7/09
 - Closed Session – 4/7/09
- b. Resol. #262-2009 - Refund of Overpayment of Taxes
- c. Resol. #263-2009 - Confirmation of Fire Board Actions
- d. Resol. #264-2009 - Participation in Ridgewood's Contract for the Purchase of Auto Parts
- e. Resol. #265-2009 - Authorizing Issuance of Massage Establishment and Massagists Licenses – Sunny Health Center
- f. Resol. #266-2009 - Authorizing Issuance of Massage Establishment and Massagists Licenses – Healthy & Beauty Way Group, Inc.
- g. Resol. #267-2009 - Appointments to the Fair Lawn Borough Gardens Committee
- h. Resol. #268-2009 - Creation of and Appointments to the Green Team Advisory Committee
- i. Resol. #269-2009 - Application to Open Space – Naugle House
- j. Resol. #270-2009 - Application to Open Space – Skate Park
- k. Resol. #271-2009 - Appointment of the Volunteer Economic Development Administrator
- l. Resol. #272-2009 - Urging Legislation to Allow Civil Service Municipalities to Use Alternate Route to Hire Police Officers

PUBLIC COMMENTS

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

Bob Gulack, 4 Bancroft Place stated that the most important and fundamental right for a citizen was the principle that the Government has no power to tell the individual citizen what he or she may say. At the last meeting, he was told by Mayor Weinstein on the record that he would not be allowed to comment further on a particular topic and would be cut off if he attempted to do so, as Mayor Weinstein did not agree with his comments. Contrary to Mayor Weinstein's comments, there is no legal power under national, state or local law that empowers a Mayor to tell the citizens what they can

speak about during a public comment period. The threat to cut him off was a violation of the law, and only serves to intimidate other citizens. The people of Fair Lawn deserve to hear a retraction and apology from Mayor Weinstein.

He mentioned the Third Circuit Court of Appeals case *Monterro vs. City of Elizabeth* (436, F3rd-397). Therefore, if any public official acts with intent to suppress speech on the basis of viewpoint, he or she violates clearly established law. He personally brought the relevance of the first amendment to Mayor Weinstein's attention at the time this occurred, but he refused to take the hint that his actions were in violation of his fundamental Constitutional rights, and the rights of all Fair Lawn citizens.

He hoped that the free speech granted by the first amendment would be made clear to everyone this evening. Free speech was a right that was being protected by our military forces who are currently risking their lives. He will use his constitutional right to critique the Borough's handling of the Landmark case by continuing with his comments.

He felt the residents of Fair Lawn had a right to know certain basic facts. He asked the Council if any of them knew that by submitting a plan calling for the construction of as many as 162 units, they were conceding the only legal issue that remained in the case and that by failing to put in an expert report on traffic issues and Radburn design issues that they were waiving their right forever to submit expert testimony.

He concluded by saying that with regards to the first amendment issue, he wanted to be a gentleman and meet Mayor Weinstein half way. He offered Mayor Weinstein a deal: Mayor Weinstein will promise never to say anything that he disagrees with and he will promise to try and not say anything Mayor Weinstein disagrees with. He hoped that Special Counsel Lustgarten will be made available to answer his questions. Mayor Weinstein stated that Mr. Gulack will have an opportunity to ask questions of Special Counsel Lustgarten, but not open up their strategy to the public. Mr. Gulack felt residents should have been told that Special Counsel Lustgarten would be here tonight.

Joan Marks, 0-54 Yost Place stated that Mayor Weinstein's letter in the Community News declared that the Recall Petition was an impeachment of a duly elected official. She asked him to explain the meaning of impeachment. Mayor Weinstein stated it is looking to take someone out of office for a dire reason that at this point does not exist. Ms. Marks stated that impeachment is a specific process that only a legislative body can do, such as the New Jersey State Assembly bringing a charge that is heard by the Senate. A recall is the process that voters are allowed to use. It is given to them by the Constitution of New Jersey under Article 1, Section 2b. They have the right to put a question on the ballot simply stated "Should an official be removed, yes or no." The Recall Committee is following the rules to have this question placed on the ballot. Mayor Weinstein stated that he never challenged their right to do a recall. He felt this was an impeachment process that he did not believe in; he was entitled to his opinion.

He was concerned that people who were looking for a fun time by attending the July 4th Fireworks, were asked to sign a petition without all the information being presented.

Ms. Marks stated that the Recall Petition was explained to everyone. Some people asked for more information. The committee members were quiet and respectful. Mayor Weinstein stated that he spoke to people and they were not getting all the information. Ms. Marks stated that only one person had a problem.

Barbara Gremillot, 1 Bristol Place stated that on July 12th Deputy Mayor Tedeschi's letter to the Editor was published in The Record. She read her response letter, as it was never published in the paper, which stated that Mr. Tedeschi changed his party many times and that the reason for the recall was because of his conduct and because he is not keeping with the standard of ethical behavior expected of an elected official.

Mayor Weinstein asked Ms. Gremillot if she was attempting to recall Deputy Mayor Tedeschi because he switched parties. He asked for reasons. Ms. Gremillot referenced Sheri Adler, indicating that it was Deputy Mayor Tedeschi who urged Keith Brown to let everyone know that Ms. Adler had not paid her taxes.

Deputy Mayor Tedeschi stated that he left the Democratic Party in 2003 and became Independent because he was not allowed to go back to being an undeclared voter as per the County Clerk, Cathy Donovan. He became a Democrat in 2005. He wished they had put something on the Recall Petition, because they are running it based on innuendo, incomplete thoughts, half-truths and absolute untruths. If Mrs. Gremillot did not like his politics, that was her choice but he did not think it was grounds for recall. He has been elected as a Democrat and a Republican in Fair Lawn. He believed that was a demonstration of the public's trust in his credibility and the things that he has done over the last 20 years.

Bill Ruggles, 2-10 Saddle River Road stated that he appreciated Deputy Mayor Tedeschi confirming his right to write letters to the editor. He felt that the Community News sanitized articles. When he submitted names they were always eliminated, but the various names that Deputy Mayor Tedeschi quoted were included. He suggested that Samantha, the Community News reporter investigate the minutes that he researched. He encouraged residents to view the minutes at the Recall Petition website www.Joemustgo.net.

He stated that Deputy Mayor Tedeschi was a Republican in the 1990's and served with distinction. He indicated that Keith Brown is prepared to come in and show the handwritten notes and other evidence. He suggested they review the minutes from the 1990's regarding Police issues. He felt that former Councilman Vic Amato, former Managers Burt Kendall and Tom Metzler and former Councilman Marty Etlar were casualties of Deputy Mayor Tedeschi's ousters. He wondered if Chief Rose would be next.

Deputy Mayor Tedeschi stated that Mr. Ruggles admitted to not doing anything for Fair Lawn for 20 years and only woke up about one and half years ago to the notion of being involved. He stated that while he was serving the people of Fair Lawn, Mr. Ruggles was taking a nap. He is wrong about many things and is distributing flyers based on false hearsay.

Ruth Gorman, 39-37 Sycamore Drive stated that she was the sister of Bill Gorman former Chief of Police. She stated that as soon as her brother became Chief, Mayor Tedeschi started to find problems with things. She said that Deputy Mayor Tedeschi recruited police officers, behind her brother's back, who would find problems with the Chief.

Mayor Weinstein asked Attorney Rosenberg if this was considered hearsay. Attorney Rosenberg stated that Ms. Gorman had first amendment rights and Deputy Mayor Tedeschi was a public figure. There is, however, a certain line of defamation that should not be crossed.

Ms. Gorman stated that the Police were very important; they put their lives at risk. Her brother did not deserve the treatment he received, as he was a decent, law abiding person. He was treated very badly.

Deputy Mayor Tedeschi stated between 1995 and 1996, there were over 55 Police grievances filed by Police officers who had personal reprimands posted in public by the Chief. Separate books were kept to record comp time for the Detective Bureau, after they were told they could not do so. They hired a company called Carol Buracker Associates to do an analysis of the Police Department. The report came back with 125 specific recommendations for improvement. Chief Gorman did not even show up for the meeting when this matter was reviewed.

Bob Gulack, 4 Bancroft Place stated that when Mayor Weinstein tells a resident he is not allowed to speak about things that he disagrees with, it intimidates other residents from speaking out as well. Those people, even if they haven't been censored by the Mayor, are regarded by the Courts as having standing-to-sue. He felt that Mayor Weinstein had created a large group of Fair Lawn voters who now have the right to sue him. The way to erase this was to issue a public retraction and apology.

Mayor Weinstein stated that it was Mr. Gulack's words that stated people could not speak if they disagreed with the Mayor, not his. His comments were to advise Mr. Gulack that he had used many five minute periods to state the same issue. He wanted to give everyone interested in speaking an opportunity to do so, and did not think it was fair to take up time discussing the same issue over and over again. Mr. Gulack stated that the video tape will show Mayor Weinstein state that he disagreed with a lot of what Mr. Gulack said. Mayor Weinstein acknowledged that he did say that. Attorney

Rosenberg stated that Mayor Weinstein handled this matter properly as the presiding officer and had the right to determine the decorum of this forum. Mr. Gulack suggested Attorney Rosenberg review the case he mentioned before his opines further.

Mayor Weinstein invited Special Counsel Lustgarten up front to answer questions from the public.

Special Counsel Lustgarten, 12-28 Burbank Street stated that Mr. Gulack was only partially correct on the free speech issue. Free speech is not absolute in this country. You cannot use speech to incite a riot; you cannot yell "fire" in a crowded movie theater; or use speech to libel someone. It is a criminal offense to use commentary as a terroristic threat. He agreed that content neutral requirements in public forum are the rule of thumb.

He informed Mr. Gulack that if he had questions over the last three or four weeks, he could have called him at home, as he was listed in the phone book. He would have gladly spoken to him.

He wanted the public to know that the strategy in the Landmark case was extremely thought out. The litigation started four years ago in 2005. The genesis and origin of these issues had nothing to do with this Council. The Fair Housing Act was adopted by the State legislature; not this Council. The Mount Laurel decisions were decided by the Supreme Court; not this Council. COAH imposing a numerical requirement of affordable housing to Fair Lawn was adopted by that State agency. The Council took action to defend the citizens of Fair Lawn at COAH, at the trial level and Appellate Division level, taking a petition to the Supreme Court. The Council adopted ordinances a few months ago to lay the foundation for eminent domain proceedings to protect a substantial and significant portion of Daly Field. He stated that any resident that attacked the Council for not using due diligence in defending these multiple suits and taking affirmative action to save whatever could be saved on Daly Field, was rewriting history. The Council has put its energies, its time and Borough taxes to defend this suit.

Not only was there oral testimony at the trial level, there were 56 separate exhibits that were considered by the Court. As far as strategy, he had to be circumspect. This case is going forward and the Council intends to appeal Judge Harris' order. The Bond Ordinance and the Ordinance authorizing acquisition of Daly Field by eminent domain are in place; an appraiser has been hired.

The judge ordered that Landmark was entitled to a Builder's Remedy to build 200 units of housing; 162 market rate units and 40 COAH units. If the 162 market units go for sale at \$400,000 - \$500,000 each, there would be substantial revenues for Landmark, even without the COAH units. He explained the steps that the Council has taken; specifically: Ordinances 2151-2009, 2154-2009 and 2155-2009, which are the acquisition ordinances and Bond ordinance. The Borough's concept is to acquire Daly

Field and build, with the mechanism not yet in place, 40 – 70 senior/COAH units, while preserving 60% of Daly Field as open space. Although many would like to save 100% of Daly Field, it belies the reality of the Fair Housing Act, Mt. Laurel Decision, COAH mandates and the trend of all the court cases. The Borough plan is to satisfy at least an equal amount of COAH required units as in the Landmark plan, while at the same time provide senior housing and save 3 acres of Daly Field as open space.

He did not think Mr. Gulack was familiar with the Borough's 1992 master plan, the 1998 re-examination and the 2004 re-examination; specifically, the recommendations for Daly Field by the Borough's expert, which were adopted by the Planning Board. There were specific actions taken by the Council in 1995 and 1996 to obtain substantive certification and the overlay zones that were then part of the plan for Daly Field. They looked at every avenue to attempt to save all of Daly Field and if not possible, at what would reasonably happen in the litigation and anticipate what the Judge was going to do. They could have said to the Judge "it's all or nothing" but he felt that was an inappropriate strategy. The Council took other actions as a predicate for future actions and litigations relating to eminent domain, which will be pursued.

Ms. Bergailo gave them a numerical context for appropriate density, with a maximum of 70 senior housing units on Daly. Ms. Bergailo will opine that 92 units could fit on Hayward. He believed these were the 162 units that Mr. Gulack referenced. They made a reasoned judgment as to what the probable outcome would be. The Council is attempting to preserve 60% of Daly Field, which he felt was doable in the context of eminent domain procedures that were already in place.

He wanted the public to know that if he declined to answer questions specifically or as comprehensively as he would like, it was not to be evasive or disrespectful to Mr. Gulack. He wanted to preserve the Borough's strategic position for future litigations.

He summarized by stating the Landmark lawsuit has two aspects: the builder's remedy from Landmark that was just tried and the directive from Judge Harris that Fair Lawn implement and demonstrate that they can meet the realistic development opportunity for affordable housing. This will be done in conjunction with the special master that was appointed by Judge Harris, the Planning Board, the Borough Planner and the input of the Council, who will have the final word. The actual COAH numbers assigned to Fair Lawn and other municipalities are being challenged in Court by other groups and there has been no final decision. He estimated that their numbers will be between 150 and 200 units. In order for them to develop a conceptual plan and adopt the actual ordinances, they must work with some number, as deficient as that number might be. They have until November 12th to submit the plan to Judge Harris. The Judge will then review their submission, upon recommendation by the Special Master.

There is a fairness hearing where groups or individuals who want to challenge their plan will have an opportunity to speak out. If the Judge accepts their plan, at that point, and

only at that point, the time to appeal the builder's remedy and the prior partial summary judgment rendered by Judge Harris will begin. They would have 45 days from that process. This would bring them into 2010. There is another component to this with regards to the eminent domain process, which is fairly lengthy. They have a long way to go.

Bob Gulack, 4 Bancroft Place stated that the first amendment law that Special Counsel Lustgarten recited was accurate and totally irrelevant to his matter. He stated that he and Special Counsel Lustgarten did a lot of good work together and hoped this would continue tonight in dealing with the issues that currently face Fair Lawn.

He stated that he did not call Special Counsel Lustgarten on his home phone because a presentation was made on camera that raised certain points that he wanted clarified for the town.

He stated that the June 1, 2009 Special Master's Report on Landmark vs. Fair Lawn raised issues about Fair Lawn's conduct of the case, including the lack of an expert report on traffic conditions. He was told that at trial, Special Counsel Lustgarten attempted to illicit testimony from a Landmark partner testimony that the proposed development would create traffic issues. By doing so, Special Counsel Lustgarten demonstrated that is was his conviction that there would be significant traffic issues. Given that fact, he wondered why Special Counsel Lustgarten did not submit an expert report on these issues to the special master or to the court, prior to Judge Harris ruling against them.

Special Counsel Lustgarten stated that Mr. Gulack starts with a faulty premise to arrive at his conclusion. He should not make assumptions about his convictions. He stated that he deposed Landmark's traffic expert. He asked if Mr. Gulack wanted a copy of the deposition, as it was public record. He would not discuss this area of strategy further. He advised Mr. Gulack not to leap to any conclusions based on the questions he asked, since he did not understand his motivation. He clarified that there was specific strategic reasons not to do what Mr. Gulack suggested. Mr. Gulack stated that both the special master and the Judge also made this point. Mr. Gulack felt Special Counsel Lustgarten was not answering his question. Special Counsel Lustgarten stated that he would not engage in a dialogue with Mr. Gulack if he continued to castigate him for things that he did not say. He would be happy to continue in a fair dialogue; his obligation was to the Council and residents of Fair Lawn, not Mr. Gulack. If Mr. Gulack chose not to be honest, then he would stop the discussion now. He did not want his words twisted.

Mr. Gulack asked Special Counsel Lustgarten if he felt that the proposed development by Landmark would create significant traffic issues for Fair Lawn. Special Counsel Lustgarten stated that Mr. Gulack could read the expert report and depositions; it was a matter of strategy. It was not beneficial to future proceedings in this case for him to

answer that question definitively. He cannot answer certain things while they are still in litigation.

Mr. Gulack asked why Special Counsel Lustgarten did not submit an expert report to the special master or the court regarding the impact of the proposed development on Radburn design. Special Counsel Lustgarten stated his response remained the same.

Mr. Gulack stated that if a municipal housing authority with no commercial motives were assigned to build 40 COAH units on the Hayward property, would the COAH regulations require that as many as 200 units total be built. The answer given by Special Counsel Lustgarten at the time was that Hayward was not a viable option because it would require 200 units on the Hayward property alone and that would be an impossible density. He asked which citation to the third round of COAH regulations it was that requires a 5:1 ratio between COAH and non-COAH units in a COAH development. Special Counsel Lustgarten stated that he did not have the specific citation with him, but the general citation is N.J.A.C. 5:97. On "for sale" units it is generally a 20% set aside, so on a project with 200 units it would be 40 units. On rental units, it goes down to 15%, which is 30 units. Mr. Gulack thought that the 20% set aside was on commercial developments. Special Counsel Lustgarten stated that the 20% is the rule of thumb that COAH and the courts use both through the COAH regulations and builders remedy. If they cluster 200 units on Hayward, which is roughly 4.6 acres, they would have a density of 40 units plus. It would be the highest density of any development in Fair Lawn. It was not a recommendation to cluster all the COAH units on one site.

Mr. Gulack stated that if a non-commercial municipal housing authority is assigned to build on 4.5 acres and wanted to have 40 COAH units and integrate that with non-COAH units, what number would actually be required. Special Counsel Lustgarten stated that it would be 200 if he was talking about the 20% set aside. Mr. Gulack confirmed that it was Special Counsel Lustgarten's view that the 20% set aside requires non-commercial municipal housing authorities to be built on a 5:1 ration. Special Counsel Lustgarten stated that was not what he was asked. His view is that in attempting to meet a COAH obligation in a multi-family development, the rule of thumb is 20%. He did not know how COAH would view Mr. Gulack's hypothetical scenario. What he was suggesting would require at least two steps: the financial acquisition of Hayward, which is substantial, and that proposal, which most likely they could not get back to COAH, would have to go before the Court, who would tell them how many COAH units were required. Mr. Gulack stated that since Hayward was smaller, it would be less expensive than Daly Field, which is what they were proposing. Mayor Weinstein stated that was not the plan.

Mr. Gulack stated that if there is a specific citation on the 20% set aside, he would like it to be given to the Mayor so that it can be presented to the community at the next Council Meeting so that all the citation upon which he is relying are on record and can be examined.

The Special Master's report states in four places that the number of units could be as high as 162. Special Counsel Lustgarten stated that the context was that Ms. Bergailo suggested that 70 units on Daly and 92 units on Hayward was a total of 162 units. That is a suggestion she made that went into evidence. The basis for that is that 70 came from the maximum number that the Council authorized in the acquisition Ordinance, and Ms. Bergailo's calculation of what a reasonable density would be on Hayward, given the other density of the town. Mr. Gulack stated that when they were first discussing this, he came up with that number of 162, yet Special Counsel Lustgarten responded several times on the record that he was making math errors. Special Counsel Lustgarten stated that he did not remember saying that, but whatever discussion they had was pre-trial and he was more concerned about preserving the Borough's position than having a debate with him. If he told him that he was using the wrong number and the number was right, then he apologized. He did not feel it was relevant to anything because Ms. Bergailo did do that analysis at the Borough's request and it was submitted to the Court.

Mr. Gulack asked if it was true that Special Counsel Lustgarten, as stated in the Special Master's report (footnote 3, page 6) that at least one of the densities in Chapter 7 was inaccurate? Special Counsel Lustgarten stated it was. Mr. Gulack asked if he failed to supply documentary evidence backing up that claim. Special Counsel Lustgarten stated that he did supply the evidence. Mr. Gulack asked if he knew why the Special Master was confused on that issue. Special Counsel Lustgarten stated Councilmember Trawinski had reminded him that their expert had looked at the proposal for Fair Lawn Commons as opposed to the as built plan. The difference was approximately 19 point something in the proposed, which went down to 17.8 in the as built. That was transmitted to Mr. Kusaba almost concurrently with the time he submitted his report. Had Mr. Gulack attended the trial, he would have seen that in the record, Mr. Kusaba corrected that. It was accepted by the Judge and is a non-issue.

Councilmember Trawinski stated that prior to Mr. Kusaba writing his report, he had direct evidence from him that the density was wrong. He was there when it was negotiated and he knew what the numbers were. He told Mr. Kusaba in a work session meeting, but he chose to ignore it.

Mr. Gulack concluded by stating that the special master's report indicated that Fair Lawn was relying on the opinion of Ms. Bergailo as an expert, but that she had not prepared a report. For this reason, the special master said the opinions of that expert "may be objected to and may not be admitted into evidence at trial". He wanted to know if it was true that they were relying on Ms. Bergailo but did not have her to prepare a report. Special Counsel Lustgarten agreed that that the special master said the use of Ms. Bergailo as an expert witness might be objected to in court. Mr. Gulack wondered how it was a good idea to have an expert that could be objected to.

Special Counsel Lustgarten stated that there was no objection made; Ms. Bergailo testified. He worked out an agreement with Mr. Shimanowitz, Landmark's attorney whereby Ms. Bergailo would be deposed. She opined her position on the record and they had all of her previous reports that went back several years, including her submissions to COAH. The compilation of her testimony and her prior submissions to COAH were agreed upon between Mr. Shimanowitz and himself that Ms. Bergailo's calculations would go into documentary evidence, which they did. Ms. Bergailo testified to her analysis of the project and was accepted as an expert witness by Judge Harris. He noted for the record that P18 was the Affordable Housing Project Comparison, Landmark Project vs. Borough of Fair Lawn project, dated May 11, 2009 by Taylor Design Group. This is the comparison between the Borough's concept and vision of the 40 – 70 senior houses and preserving about three acres on Daly, versus the developers 200 units.

Councilmember Baratta stated that Mr. Gulack made many references to the special master's report, which will be discussed later in closed session. She asked Special Counsel Lustgarten and Attorney Rosenberg what Councilmembers could or could not say. If she hypothetically stated that the special master's report wasn't worth the paper it was written on, could it be said at this juncture? Special Counsel Lustgarten stated that she was entitled to an opinion. The report was submitted into evidence and is now a public record. Anyone was free to comment on it, as long as a councilmember did not touch on future strategies.

Larry Koplik, 6 Reading Terrace asked if Judge Harris declared Fair Lawn's land use/zoning regulations unconstitutional, or is that contingent on what happens on November 12th. Special Counsel Lustgarten stated that the Judge did not do that pursuant to the builders remedy trial, he had done it previously at the partial summary judgment motion several months ago. If the Borough does not submit by November 12, 2009 a comprehensive plan with ordinances in place, then the Judge can do other things premised on the unconstitutionality of their current ordinances. This has not stopped the Planning and Zoning Board in their tracks. He asked Judge Harris what if there were applications coming in that provided for affordable housing (ex. Fair Lawn Promenade). They have agreements in Court with the special master that those projects can move forward. It is declared unconstitutional because they are not in COAH compliance. It does not mean people can go out and violate things like height, bulk, and side yard setbacks. It applies to the usage and categories of their zoning. Residents should not think they can go and put an addition on their house without following normal procedures.

Mr. Koplik inquired if the Landmark plan has to conform to the present zoning. Special Counsel Lustgarten stated they did not. The Judge has given them until November 12th to work in coordination with the special master and come up with reasonable zoning for the town and the Landmark site, so that Landmark can apply for a site plan application that doesn't need variances, unless they change their concept. Mr. Koplik asked if it

meant they could change things like setback and height regulations. Special Counsel Lustgarten stated that as part of the comprehensive overhaul of those sites, the special master will take everything into consideration to accumulate into the report. They still have major input into side yard setback, buffer zones, lighting and height limitations. The judge will be looking for a variance free set of zoning regulations for that site and Hayward so that Landmark can submit their application.

Mr. Koplik asked if there was a maximum of 200 units. Special Counsel Lustgarten stated the judge did not give his opinion either way. Landmark is entitled to a builder's remedy of 200 units, with 40 COAH units set aside. Landmark can choose to put in less, but they cannot put in more without going for variances. Mr. Koplik inquired if less COAH units would be required if Landmark put in less units. Special Counsel Lustgarten stated that it is the formula of 20% of the gross number. They would probably need clarification from the Court as to whether the 40 units was an absolute number or if it was the product of the 200 units.

Jane Diepeveen, 14 Ryder Road was surprised to learn that the Court Plan Master was an Attorney and not a Planner. Special Counsel Lustgarten stated that he was appointed as a Master in other towns; he is an Associate Attorney for Sills Cummis, which is a very large law firm. The Court Plan Master's credentials satisfied Judge Harris that he was a knowledgeable person to be a Special Master.

Ms. Diepeveen asked if the Borough was allowed to include the proposal for the KEM property, which is going to be rezoned for mixed use occupancy. Special Counsel Lustgarten stated that all areas of the Borough will be under review. This case does not mean that they can come into a neighborhood of single family houses and put up an apartment building. If a realistic opportunity occurs because an old industrial site has become vacant, then the COAH items kick in. The density that the Court arrived at is approximately 16.8 if you include Archery Plaza. The Borough's argument is that Archery Plaza could not be included because it is not part of the assembly. If you exclude Archery Plaza then the density is approximately 19.8. The judge did not absolutely rule on that. Archery Plaza is deed restricted and the restriction can only be lifted by a majority vote of the Radburn Association.

Councilmember Trawinski stated that he had the contract in front of him and in section 8.3.5 on page 19 of the contract does not say that the developer could use it in the calculation of the density. It states that the developer will use it in the calculation of the density for both open space purposes and for density purposes. The Radburn Trustees agreed in the contract that the Trustees were bargaining away the deed restriction rights, not the right to develop, but a greater density was given to Hayward and Daly then otherwise would be permitted. It is a very dangerous for open space in New Jersey.

Ms. Diepeveen was told by a Louise Orlando, former President of the Radburn Association that the deed restriction could be removed through a court proceeding. Special Counsel Lustgarten stated that the restrictions itself makes no sense and that the restriction is a better use of the property. The property has been used as a soccer field and open space; however it is basically not used because it is difficult to get into because of the lack of parking.

Ms. Diepeveen stated that the newspaper stated that the Borough had not done the zoning for affordable housing on that site in time. The Borough did an overlay zone for six units to the acre. Special Counsel Lustgarten stated that when the Borough rezoned all of the open space to R-1-1, there was a question in COAH's decision that dates back to 1996, as to when the overlay zone had to be imposed on the property. There was an overlay zone that the Council adopted but mathematics of it did not work out when they were applied. Landmark had challenged the bulk regulations of the Ordinance and Judge Harris invalidated those bulk regulations. The overlay zone was ineffective. The COAH employee, Stan Lechekav, that gave the initial report, recommended that the Borough implement the overlay zone 45 days after the remediation had been completed. The remediation is not yet completed. When COAH adopted the Resolution, it did not include the 45 days after remediation is completed, it just said after 45 days. The Borough did not implement the overlay zone for over 10 years and when it was implemented, it was invalidated because of the bulk issues already discussed.

Felice Koplik, 6 Reading Terrace stated that she understands that Daly and Hayward are zoned R-1-1 and were changed in 2004. Special Counsel Lustgarten stated that it was true until the Judge invalidated them. The Judge never set a new zone on the properties. At the present status, the properties are unzoned. Judge Harris has ordered that the Borough in conjunction with the Special Master, experts and the Borough Zoning Board decide on an appropriate zoning. The initial point of reference will be the existing bulk regulations. If the current zoning regulations do not allow for the 200 units to be satisfied, the zoning regulations will have to be changed to accommodate the Judge's order of the 200 units, then the ultimate Ordinances adopted by the Borough will have to conform to that. He did not feel that they should throw out everything they are doing, because Landmark was trying to make this consistent with the surrounding neighborhoods; their vision was to make the fourth Radburn Park. One of Landmark's primary arguments was that their proposal would be consistent with the bulk requirements in the contiguous areas.

Ms. Koplik wondered if a new R-5-4 would have to be created in order to meet the Judge's requirements of 200 units? Special Counsel Lustgarten stated that this was probably the case. The ordinances would still need to have good planning, but in the context of 200 units. Ms. Koplik inquired if the public would be included in this process. Special Counsel Lustgarten stated that the ordinances have to be adopted by the Council before the November 12th deadline. Residents would be allowed to speak during the public comments section. At some point there would be an open discussion

by the Planning Board before they make their recommendation to the Council. Deputy Mayor Swain stated that the Planning Board has formed a sub-committee for the Master Plan. Ms. Koplik stated that Peter Kortright wanted input from the Historic Preservation Commission. She will contact him about joining the sub-committee.

She inquired if the remediation needed to be finished before they started building. Special Counsel Lustgarten stated that a "No Further Action" letter from the DEP certifying the groundwater was needed before they could start building. BASF's next submission to the DEP will be December, 2009. The DEP will review the case and determine if more remediation is needed or the property meets the current standards.

Howard Mark, 12-23 Ferry Heights called the DEP a year ago and was told that the soil pollution would be cleaned up in a few months. They mentioned that there was soil and water pollution that would take years to clean up. Special Counsel Lustgarten stated that the soil remediation was complete and the groundwater contamination was substantially complete, although not 100%. They will know where they stand after the DEP reviews the submissions.

Mr. Mark asked when Mr. Gorman served as Chief of Police. Councilmember Trawinski stated that he was Chief in the mid 1980's through 1998.

Pam Coles, 13-34 George Street commended the Council, Attorney Rosenberg and Mr. Gulack for bringing to light information that she did not know. The questions are being answered in a dignified manner in an appropriate setting.

She inquired about the economic viability of Landmark. Councilmember Trawinski stated that was of no consequence in the eyes of the court. Ms. Coles wondered if there was any option of a settlement. Special Counsel Lustgarten stated that he could not comment on that. If there was a settlement, however, it would be between the lawyers only, although the public would know about it since it would have to be approved by the Council in open session. Ms. Coles asked if that option was on the table. Special Counsel Lustgarten presently there is no offer or demand on the table.

Ms. Coles asked if it was possible to zone the property for recreation. Councilmember Trawinski stated it was not. Judge Harris has taken away their right to re-zone it. Special Counsel Lustgarten stated that it was not over until it was over. He did not want residents to think this was a done deal; they are still fighting.

Craig Miller, 5 Ramapo Terrace asked who the primary owner of the property was. Special Counsel Lustgarten stated that Landmark, LLC owns Daly Field and Bergen Properties owns Hayward. Mr. Miller wondered if Landmark fully owned Daly Field. Special Counsel Lustgarten stated they were a contract purchaser from Radburn. Mr. Miller inquired if they had to pay the full amount of the purchase price. Special Counsel Lustgarten stated that deposits have been made. There are some contingencies to get

approvals. He stated that he misspoke; at the end of the day Landmark and Radburn will be the owner of Daly and Bergen Properties will be the owner of Hayward. Mr. Miller stated that at one meeting he was informed that the Radburn Association still owns Daly Field. Special Counsel Lustgarten stated that was correct. Mr. Miller inquired if Landmark can sue the Borough for builder's remedy, even if they do not fully own it. Special Counsel Lustgarten stated that they are a contract purchaser, which gives them standing to bring that action.

Ms. Koplik, 6 Reading Terrace inquired if it was true that the zoning in all of Fair Lawn is not viable. Special Counsel Lustgarten stated that it was suspended as to land use; they cannot make any amendments. If a residential application is made to either the Planning or Zoning Board, they have to make sure that the special master agrees with whatever COAH component there is. All of the bulk regulations are in full force and effect. Ms. Koplik asked if the special master could comment on properties on the other side of town. Special Counsel Lustgarten stated that it depended on what was going on. If someone wanted to develop it residentially, the special master would have to see whether it could reasonably yield COAH units, and if the developer's proposal was yielding the appropriate amount. The special master would make an estimate as to the gross number requirement by COAH. They will present a plan that says there is going to be redevelopment, and as long as it's consistent with good planning the special master will tell them if it's reasonable or not. Reasonable density is the key.

Larry Koplik, 6 Reading Terrace stated that under the Municipal Land Use Law they would do a master plan, and be required to do the zoning afterwards. Special Counsel Lustgarten stated that the master plan is an advisory only document. If the Council chooses to zone they can. If they choose to zone differently they would need to give specific reasons. Mr. Koplik stated that Daly Field and Hayward were once industrial in a business zone. Special Counsel Lustgarten stated that Hayward was once half B-1 Zone and also an I-1 Zone. The I-1 designation was taken off 15 years ago; the property became B-1 and became R-1-1 in 2003. Mr. Koplik stated this was different from the master plan. Special Counsel Lustgarten stated that prior Councils decided not to zone it for multi-families. Mayor Weinstein stated that many parks that were R-1-1 are all open space because of their Green Acres Incentive Plan.

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

Councilmember Trawinski stated that the answer to the question about the impact on traffic on Fair Lawn was that it would be catastrophic if the property were developed. He did not want residents left with the false impression that the Borough proposed a development of 162 residential units on Daly. Fair Lawn proposed that the Landmark site could or may include between 116 to 162 new COAH or senior housing units. There is a huge difference in traffic impact between 162 senior units versus 162 market

rate units. The special master chose to ignore that submission in his report. The Council is determined to move forward with a solution.

He stated that he would like to respond to Mr. Gulack's questions to Council members, but he cannot because of the strategy issues that are involved. He stressed that the Council was fully informed as to its options, alternatives and its strategic choices. With the exception of Deputy Mayor Swain who was recused, they agreed unanimously with those choices, with the exception that Councilmember Baratta does not support exercising eminent domain. The Council is extremely united and well informed by Special Counsel Lustgarten.

Deputy Mayor Tedeschi noted that the term "housing authority" had been mentioned several times this evening. He stressed that the Council has never considered the creation of a Housing Authority, nor would he support the idea. There are better ways to manage affordable housing.

ADJOURNMENT TO WORK SESSION

Upon motion by Councilmember Baratta and a second by Councilmember Trawinski the meeting was adjourned to Work Session at 10:28 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

Mayor Steven Weinstein

Councilmember Jeanne Baratta

Deputy Mayor Lisa Swain

Deputy Mayor Joseph Tedeschi

Councilmember Ed Trawinski