

WORK SESSION OF FEBRUARY 26, 2008

Mayor Weinstein called the meeting to order at 8:26 p.m. Assistant Municipal Clerk Bojanowski read the following statement of compliance:

In accordance with the Open Public Meetings Act, notice of this special meeting of the Borough of Fair Lawn was published in the Record issues of February 15, 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 notice identified the time and location of the special meeting.

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

ALSO PRESENT: Manager Metzler, Assistant Municipal Clerk Bojanowski and Chief Financial Officer Eccleston.

Report of Findings of Investigation:

Mayor Weinstein stated that this part of the discussion would be in open session as requested by the Manager and CFO. The first issue is voting on accepting the report.

Councilmember Trawinski asked about the RICE notice. Attorney Rosenberg indicated CFO Eccleston, Manager Metzler and Chief Rose have received a RICE notice. Each employee is entitled to ask for the matters involving personnel that affects them to be discussed in open session. Manager Metzler and CFO Eccleston requested that any discussion regarding the facts surrounding the report be in open session. Chief Rose has requested that any discussion regarding him be in Closed Session. Therefore any discussion regarding him will have to be in Closed Session.

Attorney Rosenberg advised that any actions to be taken as a result of the Findings of Fact will be discussed in Closed Session. The Council would be acting in their quasi jurisdictional capacity and therefore notwithstanding any requests by the personnel affected that the discussion be held in open session, that discussion could still be held in Closed. He wanted the Council to understand that there are two things going on here this evening. After the facts have been discussed, the Council can either act to accept the findings of the report, modify the findings of the report, ask for additional findings if they so chose, after that action is taken, and if they so choose, they can go into closed session.

Mayor Weinstein stated that they had the report that was put together by the Attorney and the independent Auditor, Steve Wilkottz. The report has gone to every Councilmember as well as all of the affected employees. The Manager did respond with amendments which the Borough Attorney has accepted. In essence, from his interpretations he has accepted the findings in the report.

Deputy Mayor Swain stated that she accepts the report with the amendments.

Councilmember Baratta thought they would discuss the report because she had some questions about it.

She believed the Council would get a new copy of this report with the amendments in it that the Manager requested. Attorney Rosenberg stated the report is dated February 4, 2008 and at the request of the Council it was circulated to the affected employees. On February 6, 2008 the Manager issued a letter to the Mayor setting forth some additional amendments. He looked at those amendments and wrote a memo to the Council that he had no objections to amending the report to include these additional facts that were submitted after the February 4th findings had been put together. A final report for action by the Council would include the February 6th amendment which the Manager had put together.

Councilmember Baratta wondered about past practice pertaining to the Manager and cars. As far as she can remember, Managers always had cars. It is not in the report of what was done in the past, if approvals were given, if cars were replaced. Attorney Rosenberg stated the only thing that he was able to identify based upon the analysis, and it is in the report, which is the purchase order for the prior vehicle that is a 2001 car. Based upon that, as well as inquires by him to the Borough Clerk, he determined that it has been the past practice for vehicles to always be paid for from the Administrative budget. He had spoken to Municipal Clerk Kwasniewski about the prior Manager's vehicles but she could not pull the paper work out due to the Primary Election. He asked to her about the vehicle that was Barbara Sacks' but also prior to that and how was that paid for. It was paid out of the Administrative line item. Councilmember Baratta stated that should be added also to show past practice to give a history. Attorney Rosenberg stated that now that the Primary was over, Municipal Clerk Kwasniewski would have time to go into the vault to pull the purchase orders to supplement the report.

There was a unanimous consensus to have the Municipal Clerk pull the purchase orders for the prior vehicle.

CFO Eccleston stated he had looked this up on the computer and it was charged to the Administrative Department in both Bert Kendall and Barbara Sacks administration. He did not have the information when Joe Garga was here.

Councilmember Baratta asked if the documents would show there was Council approval on those vehicles. Attorney Rosenberg advised if the line item was part of the budget it would show that.

Councilmember Trawinski asked if there were any documents that he requested that he did not receive. Attorney Rosenberg said he was provided with the documents as expeditiously as he could. Councilmember Trawinski asked if he had looked for any minutes authorizing the purchase of any other Manager's car. Attorney Rosenberg said he did not. Councilmember Trawinski thought that information would be relevant for past practice too.

Mayor Weinstein stated as long as he has been on the Council, Barbara Sacks had the 2001 Impala, when Joanne Kwasniewski took over she negotiated for the use of the car as a Manager's vehicle, when Manager Metzler came on that was part of the negotiation as well. Since he has been sitting on the Council, whether it has been a Police car or any vehicle in the operating or capital budget, he has approved every single vehicle.

Councilmember Trawinski stated that he had looked at prior minutes. He could not find any minutes where the Council approved Barbara Sacks' car. Deputy Mayor Tedeschi stated when Barbara Sacks came she took Kendall's old car. Councilmember Trawinski wondered where the Council approval was for the purchase of the 2001 vehicle that she purchased. He felt it was relevant for them to look at past practice. He thought they should ask the Auditor to look for it. He asked Assistant Municipal Clerk Bojanowski if there were any such minutes.

Assistant Municipal Clerk Bojanowski stated she had done a search on the minutes dating back to 1997 that are on the computer and found no discussion regarding the Manager's car. Councilmember Trawinski asked if there was a discussion from a prior Council regarding Barbara Sack's car. Assistant Municipal Clerk Bojanowski stated there was none.

Manager Metzler stated in regard to every vehicle getting approval from the Council, they would find that there has been an ongoing policy that when a vehicle has been totaled, they are replaced without Council permission. The Borough received checks from the Joint Insurance Fund. He wanted to make them aware, there are situations when the vehicles have to be replaced. Deputy Mayor Tedeschi asked if the Borough had received a check for the car that was totaled and how much was it for. Manager Metzler stated he did receive the check and believed it was around \$21,000. Deputy Mayor Tedeschi said that would purchase the car outside the budget. CFO Eccleston said they would pay the \$1,000 deductible which would come out of the Self Insurance Fund.

Councilmember Trawinski asked in respect to vehicles if there ever was a circumstance where a vehicle was destroyed by a Borough Manager or authorized to be destroyed by a Borough Manager and subsequently a replacement vehicle was purchased without coming to the Council. Attorney Rosenberg stated no. The only information he had knowledge about was in regard to Mr. Garger's vehicle which was an exchange of insurance proceeds. Councilmember Trawinski stated assuming that was the case under the findings, would such an action require authorization from the Council.

Attorney Rosenberg advised in that case that would have been a replacement of a vehicle, dollar for dollar. Councilmember Trawinski stated he was assuming if the vehicle was repairable and could be fixed and was destroyed and there was not an insurance claim on it. Mayor Weinstein stated he was tying it into two different issues. Deputy Mayor Tedeschi asked if he was talking about Mary Ann Collura's car. Councilmember Trawinski said yes. Deputy Mayor Tedeschi stated he had just found out that the car had been destroyed. Councilmember Trawinski stated he was not quibbling with the actions of the Manager but his point is there was a vehicle that was

destroyed for which there was no Council authorization sought or given to destroy it nor was there any Council authorization or line item to replace it. Attorney Rosenberg thought it was a different situation.

Councilmember Trawinski stated that according to Council Resolution No. 106-2005, dated March 8, 2005, the Borough authorized entering into certain master lease. Pursuant to that resolution, the Borough applied on March 17, 2005 for lease financing of five Police vehicles. He looked at the document and he did not see that it was limited to Police vehicles or to a specific number of vehicles. In fact, the document references purchase of certain capital equipment and if applicable, other personal property and it references later on a schedule but the schedule is missing. Deputy Mayor Tedeschi asked if that budget specified a set number of cars to be purchased. Councilmember Trawinski stated he could not find it in the line item appropriation. Attorney Rosenberg stated he was looking at the February 15, 2005 minutes with respect to Police cars. Councilmember Trawinski wondered where it said the actual number in the line item appropriation.

Councilmember Trawinski wondered where in that resolution it said only five cars could be purchased. Attorney Rosenberg stated it did not limit it to five. Councilmember Trawinski stated he did not think the report contains a correct factual conclusion pursuant to that resolution. It may have been what someone perceived to be in the resolution but that resolution did not authorize the purchase of police vehicles or any number of vehicles, it authorized purchase of equipment and personal property. In fact, pursuant to that resolution later on in the documentation that Attorney Rosenberg supplied, personal property was purchased which were not police vehicles. It was articles for the DPW. There was a couple of thousand dollars missing and it was in those items. He thought it was not accurate to say that it was totally pursuant to that resolution. Attorney Rosenberg stated the resolution them to purchase equipment including the five police vehicles. Councilmember Trawinski disagreed.

Deputy Mayor Tedeschi thought there was case law that says expenditures must be by line item in the budget, Attorney Rosenberg concurred. Deputy Mayor Tedeschi wondered if there was money left over from any ordinance, could that money be used in a subsequent year without Council approval. Attorney Rosenberg stated the findings are that it cannot not without Council authorization and that is the issue.

Councilmember Trawinski said the report referenced that it authorized a specific sublease purchase with the BCIA for the purchase of five police vehicles, referencing document 6. He looked at document 6 and schedule g is blank, is that the only copy of document 6 out there? Attorney Rosenberg stated that was the only copy he was provided with. Councilmember Trawinski asked Manager Metzler if that was the only copy of document 6 out there. Manager Metzler stated it was the exact copy of what was in the file in the Manager's office. Councilmember Trawinski asked how they know from that requisition, which is the form submitted to Commerce Commercial Leasing, what was authorized to be purchased pursuant to the sublease agreement, which is signed in blank by the former Mayor. He said that in Attorney Rosenberg's report that was what was authorized but it is blank. Attorney Rosenberg stated these are the documents that were provided to him by the Municipality, by the Clerk's office, by the

Manager's office, with respect to the acquisition of the five vehicles through the BCIA. Councilmember Trawinski felt that maybe they should be talking to the former Mayor and former Manager about what was authorized. Councilmember Baratta stated this cannot be the proper procedure. Mayor Weinstein stated they had a resolution and they approved the items in the budget during the budgetary process and that was what was authorized.

Attorney Rosenberg stated document 8 that supports the \$105,923.15 for the police vehicles. Councilmember Trawinski stated he was looking for the limitation in the documentation that Attorney Rosenberg obtained in the course of this investigation that says they were limited to five vehicles pursuant to enabling resolutions authorized by the Council or documents executed by the Mayor or the then Manager that says it was limited to five vehicles. In fact, based upon the documentation given to them, it was not limited to five vehicles it was limited to \$105, 923.15 and safety equipment and highway safety equipment. Attorney Rosenberg said that was correct. Councilmember Trawinski stated he did not see anything in the Council's budgetary discussions that authorized those appropriations. The only discussion he saw by the Council was that authorization for Police vehicles. Mayor Weinstein stated through the BCIA. Councilmember Trawinski stated these vehicles were purchased through the BCIA in 2005 without Council authorization. It is not in the budget discussion. He asked if the discussion existed somewhere. Attorney Rosenberg asked if he was talking about the differential. Councilmember Trawinski stated yes between the two pieces of equipment. There was an authorizing resolution that authorized the purchase of personal property in 2005 plus equipment. It did not particularly reference vehicles, yet pursuant to that resolution Attorney Rosenberg said five vehicles were authorized and purchased. Attorney Rosenberg stated the enabling resolutions that were provided to him, provide the evidence of the authority to purchase the five vehicles. Councilmember Trawinski asked if he had asked for or does he know if there are any other resolutions. Attorney Rosenberg said he did not ask for any others nor does he know if there are any other resolutions.

Councilmember Trawinski spoke about Page Five where Attorney Rosenberg referenced Article 2 of the Borough code as to who has responsibility and Article 19 Appropriation Request to be reviewed by the Manager. Attorney Rosenberg noted that there was a Standard Operating Guideline. Councilmember Trawinski asked what the date was of the Standard Operating Guide. Attorney Rosenberg advised that the SOG was adopted in May. Councilmember Trawinski asked who prepared the SOG. Attorney Rosenberg thought it was prepared by the Manager. Councilmember Trawinski asked if he had discussed with the Manager the intent of the SOG. Mayor Weinstein stated that the Manager discussed that in his report. He basically said that it was memorializing past practice and verbal guideline as enacted by this and prior Borough Managers. Councilmember Trawinski stated he had asked Attorney Rosenberg if he had discussed this with the Manager prior to getting that. Attorney Rosenberg stated he was aware of why the SOG was done. Councilmember Trawinski asked what the intent was. Attorney Rosenberg believed the SOG was adopted because of the fact that there was a deviation with respect to bidding procedures of the COWS last year. As a result of that, there was a decision by the Manager to make sure

there were proper protocols and procedures being followed with respect to COW bidding.

CFO Eccleston stated the purchase of the vehicle had nothing to do with this memo. The Manager and he felt there were a lot of new employees that were doing purchase orders. They wanted to memorialize the procedures they have to follow. It had nothing to do with the Police Department. It was just refreshing new employees about what the Borough's policies were.

Mayor Weinstein stated in essence these policies and guidelines were in place and were formalized and put into procedure. It was not just a verbal situation. They were all in agreement that these policies and procedures have existed for many years.

Deputy Mayor Tedeschi quoted out of the SOG, "no individual group or department has the authority to legally or financially commit the Borough to any contract agreement or purchase orders". Quoting from 457, no officer, board, body or commission during any fiscal year expend any money or any liability or enter into any liability contract by which its terms involve the expenditure of funds for any purpose for which no appropriation has been provided or in excess of the amount appropriated for that service. He felt this mirrored the SOG. To him, the intent was, to say to people they cannot go and buy anything unless it is in the budget, the Council has approved it and there is a line item for it, unless there is an emergency.

CFO Eccleston stated it meant that the Department Heads cannot purchase anything without following their purchasing procedure. It has nothing to do with the State statute. That statute is a broad statute. He told them to look at Chapter 2-117, the Manager and CFO have the authority to approve all expenditures on behalf of the Council on any matter. Deputy Mayor Tedeschi said once they are approved by the Council. CFO Eccleston disagreed. He referenced that section of the law which says the Manager and the Chief Financial Officer will approve all expenditures on behalf of the Council. In the administrative code, it has been set up with what the procedures are. The Council has defined it that the Manager approves the purchase orders and the CFO approves the expenditures and has the right to issue the check.

Mayor Weinstein stated the Council authorizes the funds and items to be purchased in a particular year. CFO Eccleston stated that the Council rarely goes through every line item in the budget and discuss everything that is being purchased in a line item. They approve a budget in total not individual items. Every day they are expending money as long as they stay within the budget total. That statute is a broad term that says the Council has to set up a policy on how they want bills to be paid. In this Council's case, under the Borough's administrative code, which has been in place since 1979, it says that the Borough Manager and CFO approve all expenditures and report to the Council of what bills have been paid after they are paid.

Deputy Mayor Tedeschi wondered if he thought the Borough's policy was superior to state law. CFO Eccleston says a policy has to be set. The Council has the right to review and approve all of the purchase orders or they can delegate under this form of government. Most of the time, in this form of government, it is delegated to the

Manager and Financial Officer. It is not a conflict. It is state law that says the Council can delegate their authority to anyone they want.

Mayor Weinstein stated in 2005 they used the BCIA to purchase police cars they authorized the purchase of five police cars that year. When the contract was set up, the initial amount was \$130,000 for the five police cars. When it came back that the five cars only cost \$105,000, did the Manager and CFO have the authority to buy two more cars, for example, costing \$10,000 each. Did the CFO have the authority in 2005 to purchase a sixth police car. CFO Eccleston stated they purchased the sixth vehicle for the Manager not the Police Department. Mayor Weinstein asked if he had the right to buy six police cars after the Council authorized five. This year the request is for six police cars, when last year it was five. CFO Eccleston stated he did not authorize the purchase of another car. Mayor Weinstein stated when they authorized the five police cars, which ended up totaling \$105,000, being that was less than the \$130,000, did the CFO have the right to buy another vehicle that year. CFO Eccleston stated he did not have a right to buy another car for the Police Department. It was unexpended funds and could be used for other things. He said it was done all the time like that in the budget. Mayor Weinstein stated when there are unexpended funds, whether it is a road or sewer, the discussion starts at the Council level and then the CFO will tell them if he has some open contracts that have money left over. CFO Eccleston stated in the case of capital items, yes, they go back to the Council but this was an operating item. Mayor Weinstein stated in 2005 the whole reason they used the BCIA because it was a capital item. They could not fund police vehicles in the capital budget by doing it this way they could. CFO Eccleston stated that was correct.

Deputy Mayor Tedeschi read from the verbatim minutes of December 18, 2007 where he questioned the purchase of police cars versus other cars, CFO Eccleston stated that they did purchase a police car, the Manager's car is a police car. CFO Eccleston stated he did not purchase it for the Police Department. All of the Manager's cars were police cars.

Councilmember Trawinski stated to Attorney Rosenberg that he did not agree with the Mayor's statement that the Council authorized in 2005 the purchase of five police cars. Attorney Rosenberg had supplied a portion of the budget minutes from February 15, 2005, the section said "Chief Rose stated this item is for five police cars, Mayor Ganz said they would purchase the cars through the BCIA". There was nothing in there where the Council took a consensus to buy the five police cars. The Mayor said they would purchase the cars. He did not say it would be limited to the five cars. Mayor Weinstein stated he would not have said it would be limited because the program was five police cars, six police cars, etc. as stated earlier this evening this year the Police Department has requested six cars. If that was not stated, they would not go out and buy six police cars, they would have asked for five cars and they would not purchase a sixth car. Councilmember Trawinski stated there is nothing in this authorization that the Council took to authorize the two items of equipment, yet the master lease and the sublease mentioned the equipment and personal property, not police vehicles. Maybe they should talk to the former Manager and former Mayor about what transpired in March of 2005. Mayor Weinstein stated he understood what he was saying and maybe it was wrong that the extra equipment was purchased through that BCIA contract when

the intention was to purchase five police cars. The fact is the CFO was the one who was working with the BCIA contract. CFO Eccleston corrected him and said absolutely not. He had nothing to do with the leases. His name is not on any document. Mayor Weinstein wondered about the purchase orders. CFO Eccleston said that he and the Manager sign purchase orders but he had nothing to do with the leases.

Deputy Mayor Tedeschi asked if he had submitted a request of funds. CFO Eccleston stated he did submit a request of funds. Councilmember Trawinski stated he did not submit a request to obtain the funds from the BCIA. The request was submitted through the Manager in 2005. CFO Eccleston stated he was not involved with the leases but did get involved when the equipment was purchased and he was the one that sent the letter to BCIA to make the payment because the vehicle was purchased. Mayor Weinstein stated that is what he meant when he said he was part of the process. Councilmember Baratta wondered if he was normally involved in the leases. CFO Eccleston stated these were the first leases the Borough has ever had and he and the Mayor are the only two signatures that are on capital ordinances. In the case of the lease, he did not sign or see them. Councilmember Trawinski asked if he was consulted about the lease. CFO Eccleston stated no. Councilmember Trawinski said so he was not in the loop with the BCIA. CFO Eccleston stated he had to get involved when he was getting ready to prepare the budget for the next year and he had to get some documentation on how much they had to pay.

Mayor Weinstein felt they were diverting the attention from issue at hand. Councilmember Trawinski stated that this report contains in addition to the inaccuracies pointed out by the Manager in his correspondence further inaccuracies. If they are going to rely upon a document to come to some conclusions, he felt it should be factually accurate.

Councilmember Trawinski stated there was a conclusion in the report that the Borough did not follow its own Standard Operating Guidelines. He looked at all of the documentation both in the report and what was previously given and cannot find where the Borough did not follow the SOG. He wanted to go through it with the Attorney, CFO or Manager to understand how Attorney Rosenberg reached the conclusion that the document was not followed. As precursor to that, he would like to ask who the Chief Purchasing Agent is for the Borough under the Faulkner Act. Attorney Rosenberg advised it was the Borough Manager.

Councilmember Trawinski stated the SOG was effective May 14, 2007 and wondered when were the Purchase Orders for the issue at hand were cut, before or after this SOG. Attorney Rosenberg stated April 12, 2007. Councilmember Trawinski asked if the guidelines were followed in this case. CFO Eccleston said absolutely. Manager Metzler agreed. Councilmember Trawinski asked if any of the information was missing or incomplete. Attorney Rosenberg said it was not.

Councilmember Trawinski continued to inquire if each item had been followed. Manager Metzler and CFO Eccleston indicated that they were.

Councilmember Trawinski stated that the area that Attorney Rosenberg thought the Manager violated was guideline two, b, in that he is an individual because he is a department and lacked the legal authority to commit the Borough to any contract, agreement for purchase of goods or services. Attorney Rosenberg stated that was the finding he and the independent auditor made.

Councilmember Trawinski stated how is it the Chief Purchasing Agent of the Borough lacks that authority. Attorney Rosenberg stated because in the context of the totality of the circumstances surrounding the acquisition of the Manager's vehicle, the finding was there was never an appropriation made by the Council for that police vehicle. That is the finding. It violates the spirit, the intent and purpose of this Council's oversight and authority with respect to the budget and that is why they believed it violated the spirit and content of the SOG. He added this SOG was adopted on May 14, 2007 believing that the Manager and the CFO said it was in the works before that date because it did not just arise then. The purchase order in question for the Dodge Charger is dated April 12, 2007. The Council adopted its budget on April 10, 2007. He thought they should look at the totality of the timeline and draw their own conclusions whether or not the SOG was violated.

Councilmember Trawinski stated he did look at it and looked at the intelligence of the Borough Manager and felt it was strange that all creditability in his mind to say the Manager and the CFO were working on a SOG are going to then consummate a purchase which they intentionally violate the SOG that the two of them prepared knowing they were in the midst of preparing it and make a purchase a month before it was circulated. When in fact was it circulated? Manager Metzler said it was signed off by the personnel after the 1st of this year.

Deputy Mayor Tedeschi stated he read from the Borough Code where it says that no contract be entered in to or improvement under taken until the funds have been appropriated in the budget. Councilmember Trawinski stated but it was, he saw the appropriation. The line item in the 2007 budget indicates purchases for cars. Deputy Mayor Tedeschi said they cannot purchase from a previous year's budget they can only use funds from the current year. If what you are saying is true that means that the Borough Manager and the CFO has the right to take any unappropriated fund balance from any year and spend it as they wish because it was appropriated. Councilmember Trawinski stated he was not suggesting that. There are appropriations that were made in 2005 that they were all aware of that are being spent in that parking lot right now. Deputy Mayor Tedeschi said those expenditures, even though they have not expensed them yet were identified in the budget.

CFO Eccleston stated everyone was missing the point, they did not charge it to the wrong year. They bought the car in 2007 and they charged it to unexpended funds in 2007. He said they cannot buy something in 2007 and charge it to 2006. Capital funds have no life and are open expenditures; they can be spent over a fifty year period. The BCIA is a lease, a capital item and does not have a life.

Mayor Weinstein stated there is one thing that he was missing, when it was discussed on December 18 that they would not use BCIA funds any longer. CFO Eccleston stated

when they said that it was his recommendation and he felt they would not go to the BCIA forward not talking about unexpended funds. There are items that have not been purchased yet. When the Council gave that authorization, it was based on his recommendation that they do not use them in the future.

Manager Metzler wanted to clarify some points. There is no conspiracy in the fact the budget was approved and they were then processing purchase orders. Money cannot be encumbered until the budget is approved.

He continued saying what he found disturbing was they have the Attorney and the Auditor doing an interpretation of what 2.b of the SOG meant and he was the author and no one called him to see what his interpretation was.

It is not a mistake that it says on the top, Standard Operating Guidelines. Council sets policy and the Manager and administration develop guidelines to enforce that policy. The intent of 2.b, was basically the administrative directive with Finance that they are not to enter into any types of agreement until a purchase order has been cut and the money has been encumbered. He understood the Attorney was charged with doing something and that was his interpretation. This does not reflect the Council's policy, this reflects his guidelines to his staff that they cannot move forward until the proper paperwork is in place.

Deputy Mayor Tedeschi stated there is state law that says the same thing and says what they cannot do. CFO Eccleston said the law states the Borough has to have an encumbrance system. They have to follow the guidelines. The purchase order is the document that is standard through the industry and is the document to use to reinforce the State's standards.

Councilmember Trawinski stated in the report on page 3, he reference a current fund appropriation and it seemed to indicate the line item was for five new police vehicles. When he goes to the line appropriation on item 10, account 26-241-2, it does not identify five police vehicles. It says acquisition of police cars without any number. Attorney Rosenberg advised that he would have to read this in concert with the document that is tab 9, which is the memo from Chief Rose, item #6. Councilmember Trawinski stated if he had to read it that way, then going back to the 2005 minutes, and the 2005 appropriations, why is it appropriate for safety equipment to be purchased on the BCIA lease where there was no discussion by the Council regarding that equipment through the BCIA lease system. He looked at the 2005 budget and there was no appropriation for it. Attorney Rosenberg stated it may not have been appropriated but that was not the scope of the inquiry. Mayor Weinstein stated it may have been an incorrect purchase.

Councilmember Trawinski stated he has looked for and asked for and no one has been able to produce it for him, a Council policy that dealt with the purchase of the number of vehicles anywhere. In Attorney Rosenberg's report, he reported that a Council policy was violated. Mayor Weinstein said the policy is when the Chief presents his department's budget to the Council, there is a line item for police vehicles. Mayor Weinstein stated it was decided how many each year. Councilmember Trawinski

wondered where in the history of the Council they said that when they discuss it in budget meetings that is the policy and that is all they can purchase. Mayor Weinstein stated there was a verbal process from year to year to decide the number of police cars which has been the procedure for a number of years. In essence that became a policy of the Council until the next Council decides to change it.

Attorney Rosenberg stated the action that was violated was the appropriation. He felt it was up to the Council to decide what it means when the 2007 budget contained an appropriation for five police vehicles and six were purchased and that vehicle was for the Manager. It was not for the Police Department. He thought that was something the Mayor and Council had to look at in what is presented to them. He did not see how if they came to the Council and asked for five police vehicles, he did not see where they could arrogate that one of those would be other than for police matter purposes. He thought this was the issue that Council has to decide after they look at this whole thing.

Councilmember Trawinski felt that what it comes down to was the Manager demonstrated poor judgment in making that purchase. He did not see where the Manager violated State law. He knew that Deputy Mayor Tedeschi felt there was a violation. The Manager should have come to the Council and said these funds were there and he was going to use them for a vehicle, unless the Council had a problem.

Attorney Rosenberg stated the report never found that there was a violation of State law. Councilmember Trawinski stated there is a resident on the website saying State law was violated. Attorney Rosenberg stated that is not what the report says. Mayor Weinstein stated he did not care what the people in the chat room had to say, it is a matter of what the Council says. Councilmember Trawinski stated he does care what the residents think. Mayor Weinstein said he cared what the public thought but it is a Council discussion and decision at this table. The residents on the chat room do not have all the facts. Councilmember Trawinski felt the facts they have today, are substantially the facts they had on December 18, 2007. He wished they had had this discussion before they sent this to the Auditor and Borough Attorney because he thought they could have asked them to explore them further. Frankly, when he voted to supply that information on December 18, 2007, he was relying on the Deputy Mayor's written statement that that is exactly what they would do.

Mayor Weinstein felt they had oral discussions on December 18, 2007. They received some documents afterwards but this report did confirm some of the interpretations as far as where certain cars were purchased. Verbally it was said that the funds to purchase the Manger's car came from the BCIA. The documents did not show him that. He felt there should be some confirmation and it was in the report. Councilmember Trawinski felt if they had talked about this collectively as a Council, they would have not only asked for those items, they would have unanimously agreed to ask for other items that they have talked about tonight.

Deputy Mayor Swain asked if when they realized there was money left over, did they think about using it for anything else in the Police Department. CFO Eccleston said no and the only reason why he allowed the Manager to purchase the car was because the Council does not have a policy on the acquisition of any vehicles. He has been here 28

years and the Council has never established a policy on the acquisition of vehicles. He felt there were unexpended funds from the BCIA which they were paying interest on so he thought it was a great use to expend it and the Council did not have a policy. If the Council had a policy the Manager would have not gotten the vehicle because he would have not signed the purchase order.

Mayor Weinstein asked if he was referring to a written policy. CFO Eccleston said the Council, in his 28 years, has never talked about the acquisition of vehicles other than vehicles for the Police Department. To his knowledge, he did not think they had any documentation that prior Manager's had gotten permission to buy their cars. Mayor Weinstein understood that they have discussed every vehicle except ones destroyed by an accident and then replaced with insurance funds. He remembered sitting here when Manager Metzler was head of Emergency Management discussing new vehicles for that department, discussing new vehicles possibly for the Engineering Department. He remembers discussing every vehicle at the Council level. Mayor Weinstein stated that CFO Eccleston should have come to the Council at some point and said in order to protect yourselves in the future, they should have a written policy regarding vehicles versus saying there is no policy let's go get another car. CFO Eccleston said absolutely not. The Administrative Code says that the Council established policy. Mayor Weinstein said wouldn't the Council take advice from the CFO, the Manager and the Borough Attorney. CFO Eccleston said absolutely he had advised the Council but not to set policy. Mayor Weinstein asked if CFO Eccleston felt it was good that there was no policy. CFO Eccleston thought they were spending an awful lot of time on this issue. This is the first time they have had this much discussion on it and he thought there should be a policy on the acquisition of vehicles. The only reason he allowed the purchase was because there was no policy.

Deputy Mayor Tedeschi stated under the Department of Finance, one of his duties is the exercise of effective control over financial resources. He repeated a statement that CFO Eccleston had said "when they get all the documents Deputy Mayor Tedeschi can say all he wants. If you are going to get the documents that is fine but you are going to get one purchase order and a letter to the BCIA, that is all the documents we have, it is a purchase order, an invoice and a letter that went down to the BCIA saying pay this. That is all you are going to see because there is nothing else to see". Maybe that is why they did not ask more questions. Councilmember Trawinski said no, they tried to ask questions of the Manager and the CFO and were constantly rebuffed. They should have talked about it. What is being said is that two of the Councilmembers do not want to do their fiduciary responsibilities which are so far from the truth. They did not want to engage in a witch hunt. He is not sure this was a witch hunt but they are back to where they were on the 18th. On the 18th, the Manager told them they should adopt a policy in response to direct questions from Deputy Mayor Tedeschi. It was put on the agenda and hopefully tonight they will adopt a policy for these two items. He felt in Closed Session he would like to talk about disciplining the Manager. He thought that appropriate discipline is in order for the use of poor judgment in acquiring the vehicle.

CFO Eccleston thought there is an awful lot of money that is spent in this town and it hard for a Councilmember to understand and grasp it. He felt the Council should put into place a policy for whatever they felt comfortable with as to what the process should

be. In this form of government, it is not his responsibility to set policy. Mayor Weinstein said he should have advised. CFO Eccleston said it was not his responsibility. It is the Council's job under this form of government to set policy and his responsibility is to implement it. Mayor Weinstein stated he should have told the Council about the unexpended funds. He said the CFO advised the Manager that there was no policy and he could have the car. CFO Eccleston said he did not say that. What he said was he allowed the Manager to buy a car because there was no policy. He did not advise him to buy the car because there was no policy. He made the decision because there was no policy in place. Mayor Weinstein maybe if he did not advise the Council to have a policy, maybe he should have advised the Manager to come to the Council. CFO Eccleston said he did but for an entirely different reason. It had nothing to do with any of this report or documentation because all of it is not being interpreted properly. He has been in municipal finance for 38 years, he has been an auditor of many municipalities, school boards and counties, past president of the Government Finance Officers for the State of New Jersey and he could tell them that no State statute was violated. The Administrative Code authorizes the Manager to do this. The reason why he advised the Manager to go to the Council is that it is part of his benefit package and he advised him that if he was going to improve his benefit package by getting a new vehicle, that he should get authorization. Not because any document or any paper or any unexpended funds, all of that is totally immaterial it has nothing to do with the process because no State statutes were compromised. They had the complete authority to purchase everything.

CFO Eccleston stated the thing that is not in this report, which is a disservice from the Auditor, a copy that the Council had a policy on the acquisition of vehicles and the past practice of what other Manager's have done and thirdly, the Auditor might not have thought this was Council policy and rendered his opinion. He thought the Auditor needed those documents in order for him to render his opinion and without the documents about the Council policy and the past practices of how vehicles were purchased, his opinion could have been tainted and might be a little different. He thought he might have been going under the assumption that this was Council policy and not a Manager's procedure to implement that. He knows as an Auditor, he would have asked how other Manager's bought their cars and what was the Council policy and asked for a copy of it. If there were no documents, in this report, the Borough Attorney should have written that he had requested those documents and they do not exist or 2343 not provided so at least the Auditor would have known that there were missing blanks and maybe he would not have rendered an opinion or would have asked for more time or documents. Councilmember Baratta wondered why the Auditor was not there. She felt if he was here he could answer some of these questions. CFO Eccleston said it was not necessary for the Auditor to be here and furthermore, if there was a violation of State statute, he would have put it in his report.

Manager Metzler stated he met with Mayor Weinstein and Deputy Mayor Tedeschi on December 7, 2007 and Mayor Weinstein explained to him that people come to him asking about the car. He told them he did not think about it that way but they were absolutely correct. The Mayor and he met on December 14, 2007 and he told him then that he had used poor judgment and still believes that he used poor judgment. The one thing that everyone should know is that this was a single transaction that took probably

five minutes. He is sure the research for the first letter questioning where the funding was took ten times the amount of time the initial transaction took. He stated this was nothing more than one of his department heads coming to him asking to take care of purchase orders for the acquisition of approved vehicles he made a comment that he wished he could have done something about cars. It has been no secret that he has wanted to change the type of vehicles the Borough buys. A day or two later, the Department Head came into him and said there was money in the Bergen Bank that was allocated for vehicles maybe the Manager could get his car through there. At this point, he did not even talk to the CFO, he asked the Department Head to check to see if this was ok to do. He was told it was. He knows they are hung up on whether it is a police car or an emergency car, is it a Manager's car. He did look at the State contract at a Ford Focus which was available, which cost about \$17,000, the Department Head said to him that they were paying the same amount for Dodge Chargers for the Police Department and suggested they gear it up as an emergency vehicle because he was an emergency responder. When he became Borough Manager he stepped down as the Emergency Management Coordinator, he is still a Deputy Emergency Management Coordinator.

Manager Metzler said he did use poor judgment. He is disappointed that the CFO and Police Chief have been dragged into this because in his mind, they did nothing more than answer a question. Did the CFO advise him to go to Council, yes he did but it was his poor judgment not to. Does he agree with Council, after spending so much time trying to ascertain whether five cars or four cars were approved, the bottom line is there was a sixth car that was not approved. At the time the paperwork was put through, he believed as the Borough Manager it was in his prevue to do that. All this other stuff, it's a good report, lets put it to bed. Do what you have to do.

Mayor Weinstein stated they will be going into Closed Session after this. This has been a very disheartening situation to start the year. They do have a wonderful working relationship. They are working on major projects together and going through this has been a very difficult situation. As a Councilmember he felt they did not have a choice whether to deal with this or not. He was voted in by the residents and has a fiduciary responsibility to do all that he believes necessary to come to a conclusion. He, too, would like to put this to bed. He hoped whatever decision the Council makes they will be able to move forward and work together.

Deputy Mayor Tedeschi stated when he and the Mayor met with the Manager, they did not confront him. If he asked where the money come from and the Manager said it came from an account titled Other Borough Vehicles. Manager Metzler told Deputy Mayor Tedeschi not to go there because that is not what was said and the Mayor and he had a conversation on December 14, 2007. Deputy Mayor Tedeschi said he was only trying to make the point that they did not try to confront him and secondly he legitimately went back and tried to find where the money was and then he called the CFO and told him he could not find it.

Manager Metzler stated that he disagreed with Deputy Mayor Tedeschi and he said it was budgeted and he does know that when he met with Mayor Weinstein on the 14th, he was questioned him and it was corrected.

Councilmember Baratta stated maybe perception is wrong. She thought they were back where they started on the 18th, and she wished they could have had this frank, open discussion back in December. She was sorry that they had to drag the town's name and the Manager's name and this Council's name through the mud publicly. Some things were said that this was in violation of State laws, she believed they decided that is not true. She was very upset to see passages from this report put out on the internet, She was told by the Borough Attorney when she was given this report that this was not a public document. It was for their eyes only. Deputy Mayor Tedeschi stated except that some of that information was public information, it is case law. He did not know what she was talking about. Councilmember Baratta said this was all put out there. Deputy Mayor Tedeschi stated that Councilmember Baratta said she had already talked to the Borough Manager and she knew he did nothing wrong. That was the night when they were told it came from the BCIA, when it fact it never did. His point was that she accepted it at face value.

Councilmember Baratta stated she did not accept it at face value because she was told weeks before they as a Council discussed this that someone was talking to the press about this. When she was told that, she went to the Borough Manager and asked him questions. She questioned how the minutes came verbatim because at one point Councilmember Trawinski wanted minutes verbatim and it was a major problem. Councilmember Trawinski stated he was told by the Municipal Clerk it was a major expense and her office could not do it. Councilmember Baratta wanted to know how these minutes came verbatim. Councilmember Trawinski stated they had a transcript done. Councilmember Baratta continued that she had received the minutes of December 18, 2007 from the Municipal Clerk and they are not verbatim but in this report they are. She wanted to know who authorized them to be verbatim because in the past they were told it was an expense and they had to discuss having it done by someone else. Mayor Weinstein stated that this was going into the report, it had to be verbatim. Councilmember Baratta asked again, who authorized it. Attorney Rosenberg asked for them as part of the report. Councilmember Baratta wanted to know what the expense was. Attorney Rosenberg said there was no additional cost. Councilmember Trawinski said he had asked for a particular section of minutes to be verbatim and Municipal Clerk Kwasniewski said it would be a big production and the only way it could be done efficiently would to have it transcribed.

Attorney Rosenberg stated that in trying to put together the report, it was important to have whatever they had at the time, these are just draft minutes that were prepared. Councilmember Baratta wondered if the Borough has two sets of minutes. Councilmember Trawinski said he was the recipient of a pot shot after the transcript saying they spent \$600 for that. Now what you are saying is that the Municipal Clerk's office could have done it and there would have been no additional cost. Mayor Weinstein felt it was important to have whatever piece of information to be in the report. Councilmember Trawinski agreed with that but was concerned about the process on how it got there.

Councilmember Baratta stated they should put this to bed finally. She thought they all agreed that there needs to be policy where there was no policy. It is important to do that. They could have done that from the very beginning. She will accept this report

even though she felt it was not complete without putting past practice in it which goes to the history of vehicle purchase by the Borough.

Deputy Mayor Tedeschi stated the taxpayers of Fair Lawn are entitled to know that the Council who is ultimately empowered to spend its tax dollars knows where those tax dollars are being spent. He did not believe that was the case here. He read from the verbatim minutes, "Councilmember Baratta stated that because this item was on the Agenda she had heard some rumblings about this about a week ago, she called the Manager and discussed this very issue with him trying to get some background on it. All the information she received from the Manager about the car and how the car was paid for and about the Council approving the Police cars, what was done in the past has satisfied her on this issue". Councilmember Baratta stated correct.

Deputy Mayor Swain stated as the newest Councilmember she was actually glad that they had this report. They have been able to analyze what has happened and go forward with new information. If they need to make any changes, they have something to base it on. She thought if something came up at least if there is a document to say that the Council did their due diligence. She felt the residents deserve that.

ESTABLISH COUNCIL POLICY REGARDING UNEXPENDED FUNDS IN CAPITAL AND OPERATING BUDGETS

Councilmember Trawinski stated that by State law for the Council to terminate unexpended capital budgets, the Council has to adopt a resolution. If there is going to be a use of those unexpended funds, for something and it has been lying around for beyond a year, they should come back to the Council.

Mayor Weinstein stated it was policy or procedure for the CFO's department to send reports to the various department heads. CFO Eccleston stated every month those reports go out. Mayor Weinstein requested that the Council also receive those reports.

Councilmember Trawinski felt the policy should be if money is being spent outside the year in which it was appropriated, they should come back to the Council before the funds are spent. In some cases, he felt the Council would have to approve it if they are going to shift it from something it was appropriated for. CFO Eccleston stated that 90% of the time they use the money to help the Council do projects that they wanted.

Deputy Mayor Tedeschi asked the CFO if he had ever purchased any cars under these same circumstances before. CFO Eccleston stated they are not allowed to buy vehicles under capital. Deputy Mayor Tedeschi asked if he ever authorized the purchase of a car without going to the Council. CFO Eccleston said yes. Deputy Mayor Tedeschi asked if he ever taken an unexpended ordinance and spent it without coming back to the Council. CFO Eccleston stated there are times the money is needed, for example, one time the Municipal Clerk's computer went down, there was an open ordinance that had acquisition of computer and that was how it was purchased. He cannot remember the time before that possibly when Bert Kendall was here. In the last six years, those are the only two times that they have used unexpended funds that he can think of.

They always adopt ordinances for sewers and drainage equipment that is not tied into anything specific.

There was a unanimous consensus to authorize the Manager and CFO to have the Department Head prepare a request, submit it to the Council and they discuss it.

ESTABLISH COUNCIL POLICY ON PURCHASING VEHICLES:

Councilmember Trawinski thought they should say now that when they take a consensus on the budget items, even if the line item does not show the number of vehicles, if they are going to exceed that number, it has to come back to the Council to make the final decision.

CFO Eccleston stated they could say that all vehicles have to be approved by the Borough Council at all times.

There was a unanimous consensus that the purchase of all vehicles has to be approved by the Mayor and Council.

CFO Eccleston stated even if the car is being replaced with insurance funds, the Council should be informed. He thought there was no problem setting a policy for them to come to the Council with all vehicles and this way no vehicle will be bought without Council approval.

MISCELLANEOUS PUBLIC COMMENTS:

Arlene Rubinstein, 28 Rutgers Terrace stated there should be a cover letter on the report with all of the inaccuracies in it. She felt there should be a written policy in the Manager's Report about not questioning every item.

She felt that the Manager and the town have been dragged through the mud. It was a political witch hunt. She was ashamed of the Council. She has the deepest respect for Manager Metzler and CFO Eccleston.

Stan Hayden, 12 Beekman Place, echoed the previous comments. He felt they were wasting time and money on this issue. It was a disgrace. He wondered how they expect the Manager to work under these conditions.

CLOSED SESSION:

Upon motion by Councilmember Trawinski and seconded by Deputy Mayor Tedeschi, the following closed session resolution was unanimously adopted at 10:09 p.m.

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

WHEREAS, the Mayor and Council of the Borough of Fair Lawn desire to discuss personnel – actions as the result of the fact finding report; and

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

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

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

ADJOURNMENT:

Upon motion by Councilmember Baratta and second by Deputy Mayor Swain the meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approved the foregoing minutes.

Mayor Steven Weinstein

Councilmember Jeanne Baratta

Deputy Mayor Lisa Swain

Deputy Mayor Joseph Tedeschi

Councilmember Ed Trawinski