

REGULAR MEETING OF APRIL 12, 2005
Memorial Middle School

Deputy Mayor Etlar called the meeting to order at 7:31 p.m. Assistant Municipal Clerk Bojanowski read the following statement of compliance:

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 18, 2004. 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 North Jersey Herald and News and the Shopper. The annual notice identified the times and locations of the Council meetings and work sessions.

PRESENT: Deputy Mayors Etlar and Weinstein and Councilmembers Caan and McCarthy.

ALSO PRESENT: Manager/Municipal Clerk Kwasniewski, Attorney Lustgarten and Assistant Municipal Clerk Bojanowski.

ABSENT: Mayor Ganz

COUNCIL COMMENTS

Deputy Mayor Weinstein attended the retirement dinner for Matty Croughan and wished him the best on his retirement.

Councilmember McCarthy also attended the dinner for Matty Croughan. He stated Matty had worked for the Borough for 33 years for the Parks Department and provided countless hours of support to the community. He added that Matty always ensured that the parks where the children play as well as the pool system were well taken care. He is a great asset to the Borough of Fair Lawn.

Councilmember Caan congratulated Matty Croughan on his retirement and thanked him for the excellent job he did for the Borough.

Deputy Mayor Etlar read his monthly activity report. He attended the following: The State of the County briefing by the County Executive at Darlington Park, DARE ceremony at Thomas Jefferson School, fund raiser for firefighter Bernie Lyons from Company #3, N.J. Symphony Orchestra sponsored by the Fair Lawn Community School, Planning Board meeting, Fire Board meeting, Blue and Gold Dinner for Boy Scout Troop #45, Planning and Zoning seminar at Bergen Community College sponsored by Bergen County Bar Association, new opening of the new Chamber of Commerce Building and Cosmos Building, St. Patrick's Day Parade at St. Anne's Church, 75th Anniversary Dinner at Company #4, Rotary Pancake Breakfast at the High School, Annual Old Timer's Dinner at St. Leons, Open Space meeting at Milnes School.

Deputy Mayor Etlar added he also attended the retirement dinner for Matty Croughan and wished him well in the future.

**PROCLAMATIONS: NATIONAL COIN WEEK
NATIONAL VOLUNTEER WEEK**

Assistant Municipal Clerk Bojanowski read the proclamations.

ORDINANCE: SECOND READING

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

Ordinance No. 2008-2005

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR
LAWN 2000, SPECIFICALLY CHAPTER 189, ENTITLED "SEWERS",
MORE SPECIFICALLY SECTION 189-7, ENTITLED "PROHIBITED
CONNECTIONS TO PUBLIC SEWER"**

Borough Attorney Lustgarten explained the ordinance is required by the Federal Clearwater Act and the Department of Environmental Protection. He added they want to make sure there is no commingling between the sanitary sewer system and the storm water system. Howard Hyde, 13-07 Ellis Avenue asked wasn't it dangerous to combine sewer waste into the street system. Borough Attorney Lustgarten stated they cannot connect your sanitary system into the storm water system.

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

Upon motion by Councilmember McCarthy and a second by Deputy Mayor Weinstein, Resolution No. 139-2005 adopting Ordinance No. 2008-2005 was unanimously passed.

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

Ordinance No. 2009-2005

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR
LAWN 2000, SPECIFICALLY CHAPTER 204, ENTITLED "SOLID WASTE",
ARTICLE II, MORE SPECIFICALLY SECTION 204-20, ENTITLED
"ADDITIONAL REGULATIONS FOR LEAVES" SUB-SECTION B,
ENTITLED "METHOD OF DISPOSAL"**

Borough Attorney Lustgarten explained this is the second of three ordinances again to protect the sewer system. This ordinance states that yard waste or leaves cannot be put into the street more than seven days before collection. He added this request comes from the DEP.

Donald Meyers, 8-22 Mayfair Terrace asked what the penalty would be for violating this ordinance. Borough Attorney Lustgarten stated it does not have a specified penalty so it would be the general penalty of the Borough. Mr. Meyers understood the penalty for throwing leaves into the street was a fine up to \$1,000.00 and/or 90 days and asked if that would pertain to this. Mr. Meyers asked what about if a resident blows leaves into the street on the wrong day could they face up to three months in jail. Borough Attorney Lustgarten stated that was not correct. This applies to putting leaves into the street seven days prior to collection.

Mr. Meyers asked why the Borough could not find another way besides imposing penalties such as more frequent pick ups. Borough Attorney Lustgarten stated he supposed that could have been an alternative. Mr. Meyers asked again about the fines and Borough Attorney Lustgarten explained that he did not know anyone who ever went to jail for putting leaves into the street and felt Mr. Meyers was conjuring up fantasies that would worry the public.

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

Upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein, Resolution No. 140-2005 adopting Ordinance No. 2009-2005 was unanimously passed.

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

Ordinance No. 2010-2005

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 62, ENTITLED "ANIMALS"

Borough Attorney Lustgarten explained this is the third ordinance required to protect the environment. This ordinance states the feeding of wild animals is not permitted in public areas. It is intended to help reduce animal waste so it does not get into the storm system.

Howard Marks, 12-23 Ferry Heights stated if they destroy all the open space then wildlife will have no place to live or get food. He added part of the problem is destroying open space. Deputy Mayor Etlar stated they animals would have to forage for food.

Chris Antonelli, 30-17 High Street asked about bird feeders in the backyard. Councilmember Caan states this does not cover private property. Mr. Antonelli asked if that meant he could feed racoons in his backyard. Councilmember McCarthy stated there are other health ordinances that deal with feeding raccoons.

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

Upon motion by Councilmember McCarthy and a second by Deputy Mayor Weinstein, Resolution No. 141-2005 adopting Ordinance No. 2010-2005 was unanimously passed.

RESOLUTIONS BY CONSENT #13-2005

Upon motion by Councilmember McCarthy and a second by Councilmember Caan, Consent Agenda 13-2005 containing the following items was unanimously adopted.

- a. Resol. #142-2005 - Refund of Overpayment of Taxes
- b. Resol. #143-2005 - Approval of Raffles & Bingo: St. Anne's Church, Off-prem 50/50
- c. Resol. #144-2005 - Confirmation of Fire Board Actions
- d. Resol. #145-2005 - Extend Storm and Sanitary Sewer Cleaning and TV Inspection
- e. Resol. #146-2005 - Award of Bid: Borough Vehicles
- f. Resol. #147-2005 - Award of Bid: Ballfield Improvements
- g. Resol. #148-2005 - Award of Bid: SCADA System Maintenance
- h. Resol. #149-2005 - Rejection of Bid: Uniforms - Public Works
- i. Resol. #150-2005 - Authorizing Execution of Forestry Management Plan
- j. Resol. #151-2005 - Appointment to Garden Club
- k. Resol. #152-2005 - DOT Grant Application - Berkshire and Arcadia

MISCELLANEOUS PUBLIC COMMENTS:

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

Russ Mensch, 30-11 Gordon Place objected to the cellular antennas on the water tower. He stated while the water tower was once briefly included as a possible commercial antenna zone, a previous Council took the people's best interests in mind, listened to their objections and omitted this water tower as a possible site when it created three specific zoning areas for commercial antenna use within the Borough in 1997. Mr Mensch added even if they approve it, T-Mobile has admitted that antennas on this site will not cover gaps in their coverage, which means they will come back to the Council to add additional towers throughout the town.

in decades.

Mr. Mensch added this is a simple land-use variance issue. It is not Council's job to find a suitable place for antennas. He respectfully asked that this Mayor and Council reject any proposals to change the Borough zoning ordinances regarding the water tower and surrounding area. He stated this is about good government. Past council made a wise decision. He hoped they represent the people who live in the community and not the interest of the carriers.

Michael Rooney, 14 Burnham Place inquired about New Jersey Transits interest in the train station. Deputy Mayor Weinstein explained if New Jersey Transit is doing something in Fair Lawn they want to be part of it. Councilmember McCarthy stated they want to make both Broadway and the Radburn Stations more pedestrian friendly. They were also looking to the future to coordinate bus schedules to increase mass transit to get more cars off the road during rush hour periods. Deputy Mayor Etler stated he was interested in what he called the satellite bus transportation from two places.

Mr. Rooney expressed concern about building a parking lot in Radburn. Deputy Mayor Etler stated they are not trying to get more cars into the center of town. Councilmember Caan stated they should keep in mind any of these projects are long term and this is at the preliminary stages and they are just getting information right now. The one thing the Council agrees on is that part of any process is still not touching Daly Field.

Mr. Rooney asked about Archery Plaza. Deputy Mayor Etler felt that Archery Plaza, the Heyward Tract and Topps would have a different, mixed use that in his opinion could be townhouses and businesses. He added they cannot do anything until they see a viable plan.

Mr. Rooney asked them for the record if they could reaffirm their support for keeping Daly Field green and keep the traffic down in Fair Lawn. Deputy Mayor Etler stated they are trying to do so.

Barbara Bilbo, 1 Bristol Place asked if Archery Plaza was deemed for recreational uses only. Deputy Mayor Etler stated he believed it was but if it had to be changed it could be. Ms. Bilbo asked who would have to changed it. Deputy Mayor Etler believed they would have to go the courts to change it or private ownership could. Ms. Bilbo asked if the deed meant nothing and asked who is it who will change it, is it the Council and something they do not know about. Councilmember McCarthy explained it is private property and it is the decision of the owner of that property. If there are deed restrictions, they run with the land and that is something the owner has to deal with. There may be a legal way perhaps to change it or maybe not but it is still private property. Ms. Bilbo asked if Radburn Association still owned the property. Councilmember McCarthy believed they still owned it but were talking to a possible purchaser of the property.

Oren Hiller, 30-07 Gordon Place the Council stated they would take everything under consideration regarding the cell tower and he wanted to know what that exactly meant. Deputy Mayor Etler stated they would take a look at it again and consider whether they

really want the antenna up there or not. Deputy Mayor Weinstein stated they sent it to the Planning Board for review.

Frank Spiegel, 30-02 Gordon Place asked if there was firm bid from any of the telephone companies right now. Borough Attorney Lustgarten explained the Borough process on when something goes to bid and nothing is done on this yet. Mr. Spiegel pointed out that they are talking about health hazards which is in all cell towers an unproven commodity. Borough Attorney Lustgarten stated if the cell phone operator's experts indicate the radiation levels is below the standards set, the municipality cannot deny the application based on that issue. He agreed with Mr. Spiegel and maybe 50 years from now someone is going to say why didn't someone look ahead before putting up all these cell towers. Unfortunately for this Council, the municipality and Zoning Board that issue is taken away once the experts say radiation level is low enough.

Robert Gulach, 4 Bancroft Place asked who was inquiring about buying Archery Plaza. Councilmember McCarthy explained that he has heard is that there is a developer interested in the three properties and that was the Landmark Group. There has been no application made before the Mayor and Council or any of the other boards. Mr. Gulach asked has Radburn said anything. Councilmember McCarthy stated he had no heard anything from them. Mr. Gulach stated that Archery Plaza is protected by a deed restriction. Radburn Association could not remove the deed restriction without notice to all the Radburn property owners and subject to a veto by half of the property owners in Radburn. There is absolutely no way that this deed restriction can be lifted by the say so of Radburn or trustees, Radburn Association or anyone in Radburn.

Mr. Gulach stated the deed should be honored and believed it represented the overwhelming opinion of all the voters in Fair Lawn. Mayor Ganz promised to protect that land. Deputy Mayor Weinstein stated all they are doing right now is getting a study. Mr. Gulach stated he trying to make clear the following, the deed restriction, assurance by Mayor Ganz and that all property owners in Radburn have property interest in Archery Plaza. Deputy Mayor Weinstein assured Mr. Gulach they were only doing a study right now.

Donal Meyers, 8-22 Mayfair Terrace wished to discuss the Recreation Center. He stated he emailed a series of questions to Mayor Ganz and Manager/Municipal Clerk Kwasniewski in the hopes the questioned would be answered. He asked when they first learned that the Center was going to cost approximately 12.9 million dollars. Deputy Mayor Etlar stated the cost was 9 million dollars. Meyers asked when the bond was signed off. Manager/Municipal Clerk

Kwasniewski stated it is not a bond issue. She added that a non profit group entered into an agreement with the BCIA and a bond issue was floated through the BCIA. Mr. Meyers asked if this non profit organization has the ability to repay the bond. Manager/Municipal Clerk Kwasniewski stated the bond is guaranteed by the County and the Borough. Mr. Meyers asked if the non profit agency had any ability to repay this bond. Deputy Mayor Etler stated the non profit organization is the conduit for how that community Page Seven

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center will operate. Mr. Meyers stated they were not answering his question. Deputy Mayor Etler stated the non profit agency does not have any money. Mr. Meyers asked if they are paying interest on 12.8 million. Deputy Mayor Etler stated they have not started payments yet.

Mr. Meyers expressed concern that they borrowed 3 million dollars more than they actually plan to spend and are paying interest on it at this time. Mr. Meyers asked when the resolution for this bond issue passed. Deputy Mayor Weinstein stated if he gave a list of questions to the Manager why doesn't he give them a chance to answer them. He added he could not remember at that minute when the resolution was passed and asked him to give them the time to get back to him with the answers.

Mr. Meyers asked how the interest rate on this compares to the interest rate on the school construction bond. Councilmember Caan suggested asking the Board of Education. Mr. Meyers stated they would have no idea of knowing whether the BCIA actually put in a competitive bid on the school construction bonds. Deputy Mayor Weinstein stated no. Mr. Meyers asked if it was correct that these bonds were in issued in November of 2004. Deputy Mayor Etler stated that was one of the questions they were not familiar with but would get back to him. Mr. Meyers asked if the recreation bonds were subject to competitive bidding. Deputy Mayor Etler stated no. Manager/Municipal Clerk Kwasniewski stated that was not true. Borough Attorney Lustgarten explained this is all through the BCIA. The BCIA followed their rules and has nothing to do with the Borough of Fair Lawn. Mr. Meyers asked if the BCIA requires competitive bids. Borough Attorney Lustgarten stated the BCIA has higher rating for bonding than the Borough of Fair Lawn. Mr. Meyers asked if the Borough usually issue insured bonds. Borough Attorney Lustgarten did not

think so but would asked the CFO.

Mr. Meyers asked if the bonds were issued before the end of year. Manager/Municipal Clerk Kwasniewski stated that was correct. Mr. Meyers stated the financial statements say the Borough is liable for these bonds as of the end of 2004 is that not correct. He added the point he was trying to get to is that 12.8 million dollars worth of bonds have been issued and the Borough is liable for them and they only needed to borrow 9 million dollars. Deputy Mayor Etlar stated it was 9 million dollars for the building and there was a contingency plan that they need beside that. Mr. Meyers asked if the extra goes back into Fair Lawn. Deputy Mayor Etlar stated the money goes back into the treasury of Fair Lawn. Mr. Meyers stated but Fair Lawn didn't borrow the money he thought they only guaranteed the bond, there is a non profit agency that borrowed that money. Deputy Mayor Etlar stated the money goes to Fair Lawn. Mr. Meyers stated the non profit agency is an alter ego of Fair Lawn. Deputy Mayor Etlar stated it is a legitimate governmental creation.

Borough Attorney Lustgarten stated it is not the alter ego. The non profit corporation has an independent Board of trustees. Mr. Cosgrove is the chair of the Board of Trustees. It was Borough Attorney Lustgarten recollection that he selected all the people of that Board with the exception of the Superintendent of Recreation. He added if Mr. Meyers had questions that was fine and they would try to answer them but he should not infer things that are not true, that is not fair.

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Mr. Meyers asked what the name of this non profit organization was. Borough Attorney Lustgarten believed it was the Fair Lawn Recreation Community Center, Inc. Mr. Meyers asked when this non profit organization first created. Borough Attorney Lustgarten believed the papers we sent on December 23, 2003 with an effective date of January 2,

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2004. Mr. Meyers asked if the guarantee of this bond issue reviewed by bond counsel. Borough Attorney Lustgarten stated there were three bond counsels that reviewed it.

Russ Mensch, 30-11 Gordon Place stated the Council has specifically created zones within the Town that would be acceptable. He did not understand why they were even considering the request. Borough Attorney Lustgarten explained if these carriers did not come to the Council they would not be looking at this. Since 1996 the law permits them to come in to fill in the gaps of service. He stated the carriers primary argument was they are entitled to come into anyplace in a municipality if there are any gaps of service. If the

position was on this. Deputy Mayor Etler explained they want to keep Daly Field green and are waiting on the other for the planners research. Deputy Mayor Weinstein stated they are waiting to hear from the planner.

Closed Session:

Upon motion by Councilmember McCarthy and seconded by Deputy Mayor Weinstein, the following closed session resolution was unanimously adopted at 9:11 p.m.

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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 Contract Negotiations; and

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

WHEREAS, public disclosure of the results of these discussions shall be made relating to Personnel upon appointment by the Borough Manager and or the Mayor and Council within 30 to 60 days and in regard to Contract Negotiations upon formal resolution within 90 - 120 days; and

WHEREAS, public disclosure of the results of these discussions shall be made upon the conclusion of these matters by the Governing Body of the Borough of Fair Lawn.

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.

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ADJOURNMENT

Upon motion by Councilmember McCarthy and a second by Councilmember Caan, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

Absent
Mayor David L. Ganz

Councilmember Allan Caan

Deputy Mayor Martin Etler

Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein