

REGULAR MEETING OF AUGUST 16, 2005

Mayor Ganz called the meeting to order at 7:31 p.m. Assistant to the Municipal Clerk Van Kruiningen 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: Mayor Ganz, Deputy Mayors Etler and Weinstein, Councilmembers Caan and McCarthy.

ALSO PRESENT: Manager/Municipal Clerk Kwasniewski, Assistant to the Municipal Clerk Van Kruiningen and Attorney Lustgarten.

ABSENT: Assistant Municipal Clerk Bojanowski

MANAGER'S REPORT:

Mayor Ganz stated the report was on the table. Manager/Municipal Clerk Kwasniewski stated that the Borough pools will be closing on September 5th.

COUNCIL COMMENTS:

Mayor Ganz spoke about the grants received from Community Development. He stated that he had received a copy of the anticipated Landmark lawsuit against Fair Lawn. He explained that those tracts were not consistent with the Master Plan. Mayor Ganz thanked Ron Mondello for the COAH ordinances that the Borough is required to adopt. He explained that it would be an overlay zone to Daly Field, Heyward Tract and Archery Plaza.

Deputy Mayor Etler stated that he attended the EPA meeting, the Planning Board meeting, Fire Board, the Police Cadet Graduation at Borough Hall and the Senior Center Anniversary party.

Deputy Mayor Weinstein stated he was happy about the Open Space petition. A committee will be formed at a Work Session following the regular meeting.

Councilmember Caan stated that no one was surprised at Landmark filing a lawsuit. This does not change the Council's position on keeping Daly Field green.

Councilmember McCarthy stated that two weeks ago four new police officers were sworn in and started the Police Academy. He reported that Sgt. Boyle retired and wished him the best.

Attorney Lustgarten stated Resolution No. 238-2005 which is on the Consent Agenda is the resolution to put the Open Space Question on the ballot.

He reported to everyone that he and Mr. Trawinski spoke. He drafted the language and asked Mr. Trawinski who approved. There was no change in any wording in the interpretive statement except they took the word binding out.

PUBLIC HEARING ON AMENDMENTS TO THE BUDGET

Mayor Ganz stated tonight the Council will hold a hearing on revisions to the budget for 2005. The budget is about \$35,406 million, compared with \$33,261 million last year, a 5.1% increase that is the equivalent of 5.49 tax points. The increase to Borough taxpayers amounts to about \$99.91 for the average homeowner or a change from last year of about 28 cents per day.

This budget contemplates a projected surplus of \$2,395,000 compared with a surplus last year of \$1,945,000. It includes salaries for borough employees of \$13.79 million compared with \$13.69 million last year and a capital budget details of about \$1.8 million, the same as last year.

We waited to finalize our budget in the hope that we would receive state aid, and it was worth it. Through the efforts of Assemblyman Gordon, Assemblywoman Voss and Senator Coniglio, we received \$350,000 worth of state aid in what I have called "Gordon Grants". That lowered the average homeowner's tax bill by more than \$25.

As I told you in March, when the Manager originally presented the budget in early January, the expenditures called for an increase of \$3.9 million. On Saturday mornings, and on early evenings long before the regular Council meetings, the Council went through the budget line-by-line, department -by-department, and made cuts of over \$2.4 million that it thought were appropriate, including reducing overtime across-the-board by about 25 percent.

The smallest line-item cut was \$4 to the police department; the largest cut was over \$500,000 for health insurance, as a result of an aggressive program that was presented to the Council after meetings with health care professionals. The new health plan went into effect on May 1st, giving us a seven month savings.

This year's budget required all of us on the Council to make difficult choices. We deferred some costly items in our capital budget, because the capital items that the departments hope to replace still have a useful life. I appointed a two member committee, consisting of Councilman Owen McCarthy and Deputy Mayor Marty Etler, to review equipment, and their preliminary report will save the taxpayers of Fair Lawn thousands of dollars.

Although departments asked for over \$4 million in capital projects, and the manager recommended \$2.8 million worth, the Council reduced those amounts to \$1.8 million.

Fair Lawn's capital program requires important long-term use items that benefit the community as a whole. For example, last year, we put three new recycling garbage trucks in operation. Last year, we also added a new ambulance to replace an 18 year old vehicle,

and bought a new fire truck that will take the place of an 18 year old truck. We did this at the request of our all-volunteer ambulance corps and fire department.

We continue to pay down capital debt. \$3.8 million will be paid this year for debt service for

past capital and current capital improvements vitally needed for the Borough infrastructure. State mandated services -- required to be undertaken on a municipal level, but unfunded by the state-- also increased. Our recycling program, for example, will cost over \$1-million in this year's budget. Garbage collection and tipping fees for waste disposal will cost more than \$2-million.

Other fixed cost items that are not very visible, but are very necessary, are also provided for in this budget. For example, the cost of electricity for streetlights and at municipal buildings will cost us nearly \$1-million, also up from last year. We will spend \$190,00 for gasoline -- up from last year, just as you and I pay more at the pump. Salaries for the most part are increasing by an average of 4% -- we locked in long-term union contract savings several years ago -- but the added cost of social security contributions is almost \$800,000 in this year's budget. State mandated -- but unfunded -- changes for employee pensions cost an additional \$200,000 this year.

Our decision to "shop" health insurance carriers from Blue Cross to Oxford resulted in Blue Cross dropping a proposed 17% increase, and by implementing a P.P.O. plan, an additional \$300,000 will be saved -- a \$700,000 annual savings, spread over two budget cycles.

We spent hundreds of hours of collective time in bringing this budget in. Over the last two years, not counting over a half million in intersection improvements paid for by the County, Fair Lawn has received over \$1.6 million in aid and grants from the state, County and other sources.

Governing is about choices. This Council deliberated carefully, but judiciously, eliminated waste, and proposed continued services that maintain strong property values while at the same time recognizing that everything costs more today than it did last year, but is probably cheaper than buying it in the future.

We have preserved basic services, safety, health, recreation, roads, trees, and the like, and have made judicious choices on optional programs. It must be working, because in the last three years, Fair Lawn's combined property values have increased by \$700 million from \$3.32 billion to nearly \$4 billion.

You may want to know, department by department, just what your tax dollars are buying. Our Maurice Pines Free Public Library will receive over \$2-million, and as a result of special funding by the Council, remained open on weekends during June to allow students to study there.

We will continue to expend \$100,000 annually on tree replacement, thus maintaining Fair

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We have expanded our department of buildings and added additional part time and full-time help to deal with more than 3,000 annual inspections and more than 400 certificates of continued occupancy. We also now have Saturday inspections for the convenience of Borough residents.

Our Engineering Department has a budget of almost \$200,000 and continues to provide

exemplary service. Among the major projects that they are working on this year is the traffic light at Chandler Drive and Fair Lawn Avenue. At the Borough Attorney's suggestion, instead of taking the land by eminent domain, individual discussions were held with the six landowners and, I am happy to report, acquisition was done for just \$1.00 apiece. As a freeholder, I was able to get the County to absorb most of the rest of the cost of the intersection improvement in a County road. The pre-construction meeting last week suggests that they will be in the ground shortly.

We will expend \$4,000 to plant American flags on the graves in town of America's true heroes, its veterans.

We will spend \$2.1 million for trash collection and garbage disposal, including once a week pick up – twice a week during the warm season. The ambulance corps will be funded with more than \$50,000 to assure top service to our residents. We will spend over \$600,000 on street lighting and electricity for the Borough's needs. We've earmarked \$1.8 million for the recreation and parks department – including ballfield maintenance, and sports programs, that are used by more than 2,000 children each year.

We are going to do all of these things with about the same number of full time employees as the Borough had 10 years ago. In fact, the rate of increase this year more or less matches the average increase over the last 15 years. As usual, the bulk of your taxes, about 2/3 of them, cover the Board of Education.

That having been said, after the other Council members have their say, we welcome your comments on the 2005 budget.

Deputy Mayor Etler stated this is a budget he could look at and support and he will be voting yes for it.

Deputy Mayor Weinstein stated this budget preserves our past, what we have now and our seeds for our future. It give dollars to the emergency services. It gives dollars to our DPW to pick up the garbage, recycling, cut trees, repair sewer lines. It also gives dollars to the parks. We have new backstops, the tennis courts have repaired, they have bought new clay for the fields. This budget also gives the seeds for the future growth of this town. There is dollars for the Economic Development Corporation, Broadway Improvement District as well as dollars for the building of the Community Center. He strongly supports this 2005 budget.

Councilmember Caan stated this budget took a lot of hard work and time to get the numbers straight. Services were not cut, they were increased throughout the Borough for example Sunday opening for the Library during exam periods for student. It also keeps in place the programs that are ongoing. It replaces on an ongoing basis police cars that need replacing in a manner that makes sense. They continue putting aside the same \$100,000 for trees every year. This is something that they have been doing, it is consistent, it makes sense and he was happy to support this budget.

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Councilmember McCarthy stated he would like to keep his remarks brief and not repeat all of the comments that have already been stated by his colleagues. While most people were home sleeping on Saturday mornings or eating dinner at home on Tuesday nights, he and his colleagues along with the Borough Manger, CFO and all Department Heads were meeting across the hall in Borough Hall discussing one of the two most important items facing our residents, the municipal budget. After hours of meetings and discussions, a budget was created that he believes balances the needs of all of our residents against our financial constraints. He thanked the State Legislators, Senator Coniglio, Assemblyman Gordon and Assemblywoman Voss for their assistance in obtaining State Aid for the

Borough and its residents.

As he stated last year and when the budget was introduced, the most reoccurring comments that he heard was from the residents was that in order to lower taxes, they should eliminate or reduce programs, which all happen to be the ones that they and their families are not using. We should also add more to the programs that they believe are important since they are utilized either by themselves or their family members. However, the difficult balancing act is that every program, no matter how small. is important to someone. To each resident who utilizes our library, pool, recreational programs, senior center, minibus or Borough Nurse, that program is the most important program to them.

Councilmember McCarthy stated that the commitment of the Council is to each of the more than 31,000 residents, and please rest assured that each program to which the Council allocates tax dollars is significant to someone in the Borough.

Upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein, the time for the public hearing on the amendments to the budget was unanimously opened.

Donal Meyers, 8-22 Mayfair Terrace urged that the budget be rejected. The Gordon Grant was supposed to be returned to the taxpayers of Fair Lawn. The taxpayers were supposed to be getting property tax relief.

Stuart Golding, 14 Rutgers Terrace asked if the four police officers that were hired were replacements. Mayor Ganz explained two were replacements and two were new police officers. Mr. Golding stated Mayor Ganz had said there were no changes between last year and this year as far as personnel and that is not true if they are putting two new officers on. He added he does not see the officers around town when he is riding his bike. He stated what he does see is cars speeding down Fair Lawn Avenue especially between 8:00 a.m and 9:30 a.m. He did not know where the police officers were or why the town needs more police officers.

Mayor Ganz stated they have two new officers because Police Chief Rose wanted six new officers and agreed with the Council that two new officers would be satisfactory to maintain adequate security for the Borough. He added he would not second guess the Police Chief in these critical times. Deputy Mayor Etler did not believe anyone gets around town more than he does on his scooter. He stated he could not go from sector to another without seeing a police car. This is a request from the Police Chief who made a very good case and that is why two extra officers were added.

Deputy Mayor Weinstein explained that takes time and effort to analyze the situation. They have recently received grant money for traffic calming devices and he believed the traffic has slowed down already.

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Mr Golding felt they should have more officers on Fair Lawn Avenue in the morning. He felt someone should take a look at this situation before there are serious accidents.

Howard Mark, 12-23 Ferry Heights asked how the Recreation Center would affect taxes. Mayor Ganz stated it would be a budget issue next year. Mr. Mark asked how much it would be for next year. CFO Eccleston stated they only have preliminary figures now they have not been finalized. They will have to do a study on how many staff members are needed.

he was wrong but if he looked at the monthly reports he would see the number of speeding tickets that are given on a monthly basis. He added those reports are available at anytime.

Arlene Rubinstein, 28 Rutgers Terrace asked how much surplus is recommended by the State. Mayor Ganz repeated the amount of the surplus that he had previously given in his opening remarks which was \$2,395,000.00. compared with \$1,945,000.00 from last year. Mrs. Rubinstein asked what the recommended percentage of the budget that should be reserved in surplus. Mayor Ganz stated when they apply for extraordinary aide they were told that the surplus was too high for them to qualify for extraordinary aide.

Mrs. Rubinstein stated as a former Board of Education president she remembered that the State recommended a certain percentage of the budget to be held in surplus. CFO Eccleston stated the State does not recommend anything for them, it is different for the Board of Education.

Upon motion by Deputy Mayor Weinstein and a second by Councilmember McCarthy, the time for the public hearing on the amendments to the budget was unanimously closed.

Attorney Lustgarten stated in the August 16, 2005 Manager's Report, the motor vehicle summons issued year to date was 5,543 separate summons.

ORDINANCE: FIRST READING

Upon motion by Councilmember Caan a second by Deputy Mayor Etler, it was unanimously agreed to read the following ordinance by title.

Ordinance No. 2021-2005

"AN ORDINANCE TO PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS THEREFORE"

Mayor Ganz explained that this ordinance is a Statewide Livable Communities grant in the amount of \$23,000 for improvements to the Library.

Upon motion by Deputy Mayor Weinstein and a second by Deputy Mayor Etler, Resolution No. 223-2005 introducing Ordinance No. 2021-2005 was unanimously adopted.

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Upon motion by Councilmember Caan a second by Deputy Mayor Weinstein, it was unanimously agreed to read the following ordinance by title.

Ordinance No. 2022-2005

"AN ORDINANCE TO PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS THEREFORE"

Mayor Ganz explained that this ordinance is a Statewide Livable Communities grant in the amount of \$20,000 to upgrade and replace of equipment.

Upon motion by Deputy Mayor Weinstein and a second by Councilmember Caan, Resolution No. 224-2005 introducing Ordinance No. 2022-2005 was unanimously adopted.

Upon motion by Councilmember Caan a second by Deputy Mayor Weinstein, it was unanimously agreed to read the following ordinance by title.

Ordinance No. 2023-2005

“AN ORDINANCE TO PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS THEREFORE”

Mayor Ganz explained that this ordinance is a Statewide Livable Communities grant in the amount of \$17,000 for the acquisition of a water slide.

Upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein, Resolution No. 225-2005 introducing Ordinance No. 2023-2005 was unanimously adopted.

Upon motion by Councilmember Caan a second by Councilmember McCarthy, it was unanimously agreed to read the following ordinance by title.

Ordinance No. 2024-2005

“AN ORDINANCE TO PROVIDE FOR A CERTAIN CAPITAL IMPROVEMENT IN THE BOROUGH OF FAIR LAWN AND TO PROVIDE FOR THE RECEIPT, ACCEPTANCE AND DEPOSIT OF FUNDS FROM THE STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION THEREFORE”

Mayor Ganz explained that this ordinance is for a Department of Transportation grant in the amount of \$95,000 for roadway improvements to Bellair Avenue.

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Upon motion by Councilmember Caan and a second by Deputy Mayor Etler, Resolution No. 226-2005 introducing Ordinance No. 2024-2005 was unanimously adopted.

Upon motion by Councilmember McCarthy a second by Deputy Mayor Weinstein, it was unanimously agreed to read the following ordinance by title.

Ordinance No. 2025-2005

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR

LAWN 2000, SPECIFICALLY CHAPTER 49, ENTITLED "AFFORDABLE HOUSING" BY ADDING SUBSECTION 49-14 R-1 RESIDENTIAL WITH INCREASED DENSITY AND AFFORDABLE HOUSING COMPONENT OVERLAY DISTRICTS

Mayor Ganz explained this ordinance will create an overlay zone for affordable housing on the Daly Field tract, Archery Plaza and the Heyward tract.

Ron Mondello, 0-100 27th Street, explained that he had spoken to Barbara Walsh from the Council on Affordable Housing who recommended that the Borough adopt this ordinance before September 10th and submit it to COAH to prevent the Borough from being automatically dismissed leaving the Borough of Fair Lawn unprotected from a builder's remedy.

Upon motion by Deputy Mayor Weinstein and a second by Councilmember McCarthy, Resolution No. 227-2005 introducing Ordinance No. 2025-2005 was unanimously adopted.

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

Ordinance No. 2026-2005

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 108, ENTITLED "FLOOD DAMAGE PREVENTION", MORE SPECIFICALLY SECTION 108-7, ENTITLED "BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD"

Mayor Ganz explained this ordinance establishes the flood hazard zone which is identified by the Federal insurance Administration. The Flood Insurance Study is on file in the Engineer's office.

Upon motion by Deputy Mayor Etlar and a second by Councilmember Caan, Resolution No. 228-2005 introducing Ordinance No. 2026-2005 was unanimously adopted.

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RESOLUTIONS BY CONSENT #24-2005

Upon motion by Deputy Mayor Etlar and a second by Councilmember Caan, Consent Agenda 24-2005 containing the following items was unanimously adopted.

- a. Resol. #229-2005 - Approval of Minutes:
 - Special Meeting - 4/26/05
 - Closed Session - 4/26/05
 - Regular Meeting - 4/26/05

Work Session - 5/3/05
Special Meeting - 5/3/05
Closed Session 5/3/05
Special Meeting with Bd of Ed 5/10/05
Regular Meeting 5/10/05
Special Meeting 5/17/05
Work Session 5/17/05
Special Meeting 5/17/05
Closed Session 5/17/05

- b. Resol. #230-2005 - Approval of Knights of Pythias Circus
- c. Resol. #231-2005 - Authorizing Application of Municipal Alliance Grant for 2006
- d. Resol. #232-2005 - Adoption of 2005 Municipal Budget
- e. Resol. #233-2005 - Adoption of River Road SID Budget
- f. Resol. #234-2005 - Adoption of Broadway SID Budget
- g. Resol. #235-2005 - Authorizing Tax Appeal Settlement - Sandvik, Inc.
- h. Resol. #236-2005 - Authorizing Execution of Agreement with QualCare, Inc.
- i. Resol. #237-2005 - Approval of Raffles and Bingos:
 - The Children's Therapy Center, Off-prem 50/50
 - Fair Lawn Friends of Music Assoc., Off-prem 50/50
 - Fair Lawn Jewish Center, Instant Raffle
- j. Resol. #238-2005 - Municipal Open Space, Recreation, Farmland and Historic Preservation Trust Fund
- k. Resol. #239-2005 - Change Order - DPW Parking Lot Improvements 2005
- l. Resol. #240-2005 - Change Order - Storm Drain Improvements 2005
- m. Resol. #241-2005 - Change Order - Roadway Improvements 2004

MISCELLANEOUS PUBLIC COMMENTS

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

Harvey Rubinstein, 28 Rutgers Terrace was surprised that the Council just learned about the litigation this evening. He stated at the Planning Board meeting last night Barry Winston mentioned litigation. He added that Mr. Winston said they are prepared to act, the Council has to hire a planner to provide a planning element to go along with whatever it is that Mr. Burn, Esq. will prepare. Mayor Ganz stated Mr. Winston is misinformed because the Council informed him in the transmittal document that Mr. Burgis was available for whatever planning

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work that needs to be done. Mr. Rubinstein understood it that Mr. Burgis was not hired. Mayor Ganz stated he personally spoke to Mr. Burgis and he said he would be available at no additional cost. Mr. Rubinstein believed someone should send Mr. Winston a note telling him it is time to move forward.

Mr. Rubinstein stated they brought up vacating Fairclough Street at the Planning Board meeting. He pointed out to the Planning Board that no one asked about traffic circulation once the Recreation Center is open. Mr. Rubinstein asked if there was a status report on the \$5,000 the Board of Education was asking for on that property. Manager/Municipal Clerk Kwasniewski

explained the \$5,000 is the cost of relocating the discuss.

Mr. Rubinstein spoke about the change from commercial to multi-use dwelling on the corner of Lincoln Avenue and Harristown Road. He believed making the left hand lane turn from Lincoln Avenue to Harristown Road could cause accidents. He asked the Council to look at that before they allow a digress onto Harristown Road for multiple townhouses. He added Deputy Mayor Etlar had brought up the lack of rear yard space, which was only presented as five feet.

Mr. Rubinstein asked for clarification on curb cuts.

Attorney Lustgarten stated the double curb cut is prohibited because it is not permitted. Prior Councils did not want the semi circular driveway to effectively eradicate the front lawn. Mr. Rubinstein believed it should be codified in some way so everyone is guided accordingly.

Mr. Rubinstein asked about the Fire Decontamination Agreement with Bergen County. He believed there should be a cover for the trailer because this is a vital piece of equipment that responders need. He felt this equipment needed to be protected from vandalism and the elements. He felt Mayor Ganz should bring that to the Freeholders and he did not believe it would cost an excessive amount of money to provide that protection for that equipment. Mayor Ganz invited Mr. Rubinstein to come to Hackensack on Wednesday night for the Freeholder meeting. Mr. Rubinstein declined but felt they should not take that piece of equipment because if it fails when it is really needed then what is the sense. Mayor Ganz explained the County's opinion was that it was wise for Fair Lawn to accept it. The County was okay with Fair Lawn and other municipalities who have this equipment staying outside which is designed to take the elements.

Mr. Rubinstein suggested sending Congressman Rothman and his Chief of Staff a letter with all the applications and implore him to get the funds for open space.

Mr. Rubinstein asked if there was a COAH file that can be viewed so people could read the history and find out what is going on with COAH. Manager/Municipal Clerk Kwasniewski stated there is a file and all he needs to do is come in and it would be made available to him. Arlene Rubinstein, 28 Rutgers Terrace asked if there was a zoning or planning enforcement code officer who inspects the various construction that have been approved by the Zoning Board. Manager/Municipal Clerk Kwasniewski stated the Building Inspector does that after a person gets their variance they must then apply for a building permit. She explained the building permit requires a variety of inspections depending on what it is that is being done. She added that all of their inspectors make those inspections.

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Mrs. Rubinstein spoke about the residents that came before the Zoning Board regarding houses on Mandon Place and Scribner Road. Houses were demolished and mansions are being built. She suggested that the Zoning Board go out to visit the sites when they get a site plan. She stated people are coming before the Zoning Board and lying, they are getting permits to do whatever they please. Mayor Ganz stated he could not speak for the current Zoning Board but when he served on it for ten years they made site inspections of every single property. Mayor Ganz stated he would pass her comments on to the Zoning Board.

Kathy Moore, 13-16 Plaza Road, felt there was a lot of miscommunication going on regarding the updating of the Master Plan. She wondered if the Planning Board knows that the Burgis firm has offered to do it for free.

Stuart Golding, 14 Rutgers Terrace stated he was at the meeting last night and Mr. Winston

stated that there was a planning component that had to go into this and he was not going to do it and was waiting for someone to tell him to. He added someone needs to tell him to do this or nothing will get done. He added there was a lot of people there so there was no miscommunication there. Mayor Ganz stated there is obviously a serious miscommunication since the Manager/Municipal Clerk Kwasniewski had the conversation and there was clear advice given from him to the Manger and by the Manager to the Board. Mr. Golding asked if they are going to be discussing this Landmark lawsuit next. Mayor Ganz advised him they would be discussing it in Closed Session.

Michael Rooney, 14 Burnham Place asked if it was Landmark who filed the suit against the Mayor and Council and Planning Board. Attorney Lustgarten explained there were two plaintiffs and the defendants were the Borough of Fair Lawn, the Mayor and Council of Fair Lawn and the Planning Board of Fair Lawn. He stated Landmark was a plaintiff and the second plaintiff was Bergen Development Group, LLC. Attorney Lustgarten received a courtesy phone call yesterday from the attorney who is representing Landmark who indicated that the lawsuit was filed last Friday. He asked him to fax the lawsuit to him which he did and he brought it in to Manager/Municipal Clerk Kwasniewski this morning and it was distributed.

The same phone call was made to Mr. Burn which is how the Planning Board knew about this last night. He explained that the lawsuit is claiming the R-1-1 designation is inappropriate for the zoning for the three tracts. They are asking that the rezoning of the Heyward Tract be rescinded. He explained the complaint has about 103 separate paragraphs and it gives a historical background to the three properties, the zoning, the Master Plan, current zoning ordinances etc. This will be the first opportunity he will have to discuss this with the Council. He added they have not been formally served with this but it is in the works.

Mr. Rooney asked what the approximate time frame for this to play itself out. Attorney Lustgarten stated this has a more limited time frame and if he had to guess he would say 8-12 months. Mr. Rooney asked if it would preclude any action by the Council or Planning Board regarding the properties. Attorney Lustgarten stated there is no restriction on governmental action at this point.

Mr. Rooney understood that Mayor Ganz had asked the Planning Board Attorney to draft the correction to the Master Plan to bring it in conformance with zoning. Mayor Ganz stated he did that a month ago. Attorney Lustgarten asked Mr. Rooney to use the word change not correct. Mr. Rooney asked what the time frame would be on this since they have been waiting since November. Mayor Ganz stated he would make phone calls this evening and find out why the responsible parties it was given to did not have it done.

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Howard Mark, 12-23 Ferry Heights asked why the Council did not allow the people of Fair Lawn to decide if they even wanted the new Recreation Center. Mayor Ganz stated the Council in its collected judgment made a decision that recreation was good for the Borough of Fair Lawn and its 32,000 residents.

Mr. Marks stated in reference to keeping Daly Field green it does not mean 20 or 30 percent development and 70 to 80 percent green. It means 100 percent green as far as how he views it. He asked the Council what their idea is on that. Mayor Ganz stated the Council has been very consistent saying that they want Daly Field to be green. Mr. Marks stated he was asking this because of what happened on the Naugle House. He stated he had a resolution dated October 28, 2003, No. 311-2003 where they promised Green Acres and nothing happened. Mayor Ganz explained there was no funding available to assist in that. That is why the Borough reached an agreement with the developer in order to preserve the Naugle House.

Mr. Marks stated they passed Ordinance No. 1989-2004 where they rezoned it from residential to

townhouse. Mayor Ganz stated that was not accurate information. Mr Marks stated the Ordinance was introduced September 14, 2004 and there were two letters from August 14, 2004 and October 22, 2004. Mayor Ganz stated there is a requirement that the developer enter into a developer's agreement to be signed by the Mayor and Council and approved by the Board of Adjustment in order to ensure that the Naugle House will be preserved. He added that agreement was reached with the attorney representing the developer before the Ordinance was introduced. Mr. Marks stated this is the information he received and it stated to be preserved up to building code not preservation standards. He did not understand how they can say they are preserving the house. He believed there should be a preservation easement and should be up to preservation standards not just up to building code. Mayor Ganz stated that was not the agreement that was made.

Mr. Marks stated if they build on the land and just preserve the house it is no longer a historical farm. Deputy Mayor Etler stated the Mayor has adequately expressed the point that safeguards are in place that the Naugle House is going to be brought up to code when it is rebuilt. He added the Zoning Board is going to see that everything is up to code. Mr. Marks felt they need more land around the Naugle House. Mayor Ganz explained that was not going to happen. Attorney Lustgarten explained the agreement again. He believed this was the best way to preserve the Naugle House or the they could have lost the house completely. Mr. Marks stated the zoning says 12 townhouses and wanted to know why. Mayor Ganz stated the developer wanted 22 houses at the start. Attorney Lustgarten stated regardless of what the number is for the townhouses the point is the developer could have taken it down. He added if he did that this government would have had no right to stop it. Mr. Marks felt there was no compromise or bending on the developer's part. Attorney Lustgarten stated that when they came in with their original numbers the Council negotiated a lower number. Maybe some people still find that to be too high and he would respect that but that was the best deal they could get. He added at the end of the day the Naugle House will be preserved and that is what is important.

Mr. Mark stated on the tax bill there used to be the total budget on it and he did not see it on his this time. Manager/Municipal Clerk Kwasniewski stated they sent out estimated bills but there was no change on them.

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Stuart Shaw, 19-32 Chandler Drive asked about changing the Master Plan and asked when the head of the Planning Board said he needed an element and the Council corrected him and advised him he was misinformed. Mayor Ganz stated he would speak with the Chairman of the Planning Board and find out whether he wants to use their planner or use his own. Mr. Shaw stated that is what they were waiting to hear and asked if they could get an answer tomorrow on the status. Mayor Ganz stated he could not make a promise that the Chairman of an independent board will or will not be responsive. He stated he would relay his discussion with the Chairman to Manager/Municipal Clerk Kwasniewski and they are welcome to call her to find out.

Mr. Shaw said he was at the Zoning Board hearing about the Naugle House and no one promised to fix up the house. Mayor Ganz stated he was not suggesting that he was misreporting what took place but that was not true. He was at that meeting with Attorney Lustgarten where numerous promises were made. Mr. Shaw addressed the difference of what is understood between Council meetings, Zoning Board meetings and Planning Board meetings. He felt they need someone to follow up and make sure what they think is going on is actually happening. Mayor Ganz stated a developer's agreement is required and it will require the signature and approval of the Mayor and Council. It will say what the Mayor and Council want it to say or it the

to hear Attorney Lustgarten give the Council that advice at this time. He encouraged the Council to follow Attorney Lustgarten's advice from several years ago. Mayor Ganz stated they were going to give Mr. Winston the opportunity to select the planner of his choice to get it done. The Council will decide how and whether that will be funded. Mr. Trawinski asked if Mr. Winston or the Planning Board make the selection that it is going to be based upon this verbal agreement that has been negotiated at no cost, or would that agreement be reduced to writing between the Borough and Burgis and Associates. Mayor Ganz stated it was going to be up to the Planning Board chairman to decide who he wants to use.

Mr. Trawinski stated the ordinance that put the R-1-1 zoning on Daly, Haywood and Archery was done contrary to the Master Plan. For that ordinance to be effective there had to be a resolution stating the reasons why it was adopting contrary to the Master Plan. It seemed to him in face of the litigation and given the time a decision rule, that Attorney Lustgarten, Manager/Municipal Clerk Kwasniewski and Assistant Municipal Clerk Bojanowski should see if that resolution exists stating the reason. He added if it does not exist they should take the corrective action or indicate when they readopt the R-1-1 zoning that there is no need for such a statement any longer because the Master Plan no longer had that inconsistency with the zoning.

Attorney Lustgarten recalled that one of the rationales for the inconsistency between the zoning ordinance and Master Plan was specifically with the tract being consistent with the surrounding tracts. Mr. Trawinski asked about the litigation and whether or not the public may have a copy of the suit since they are now aware of its existence. Mayor Ganz stated he would get a copy to him as soon as they have a filed copy from the court. Mr. Trawinski was not happy with that answer. Mayor Ganz suggested he put an OPRA request in and they would get him a copy.

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Kathy Moore, 13-16 Plaza Road asked if the lawsuit includes Archery Plaza. Attorney Lustgarten explained it does not specifically state they want to build certain number of units. He stated that basically it says that the R-1-1 zoning for the Heyward tract is improper and should be vacated and in general that the town should be compelled to zone for multiple family housing. He added the suit talks about all three parcels. Ms. Moore believed the Radburn Association owned Archery Plaza and that it was zoned as a park. Mayor Ganz believed the Radburn Association did own Archery Plaza but explained to her they would not discuss the lawsuit tonight.

Harvey Rubinstein, 28 Rutgers Terrace was confused about what Attorney Lustgarten said about the Naugle House and proceed to walk around in a circle in the Council Chamber explaining that he felt this discussion keeps going around. He asked when they reach this agreement to preserve the Naugle House, did they just throw out the ordinance of R-5-1 or are they still under the ordinance and seeking variances from or within that ordinance. Mayor Ganz stated they are seeking variances. Deputy Mayor Etlar believed it is zoned R-1-5 and is a townhouse zone and they are entitled to build 10 houses on an acre.

Stewart Shaw, 19-32 Chandler Drive asked Attorney Lustgarten to repeat what he said about the only choice they had about the Naugle House. Attorney Lustgarten stated it was the best deal they could get since there is no money for condemnation to make the purchase.

Arlene Rubinstein, 28 Rutgers Terrace stated she has gone to every Zoning Board Work Session and Public Meeting. She stated at the Zoning Board meeting Mr. Nadoni has not even changed the site plan one bit to comply with the Engineer's requests. There is a lot of double talk. She

added some of the members of those boards do not even know where the site is based the questions they ask and the comments they make.

Howard Mark, 12-23 Ferry Heights stated they should have a performance bond so if the developer does not fix the house Borough could do it. Mayor Ganz stated that is done in the developers agreement.

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

ADJOURNMENT TO WORK SESSION

Upon motion by Councilmember McCarthy and a second by Deputy Mayor Weinstein, the meeting was adjourned to the Work Session at 10:11 p.m.

Respectfully submitted,

Joanne M. Kwasniewski, RMC/CMC/AE
Manager/Municipal Clerk

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The undersigned have read and approve the foregoing minutes.

Mayor David L. Ganz

Councilmember Allan Caan

Deputy Mayor Martin Etler

Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein