

## **WORK SESSION OF AUGUST 9, 2005**

Mayor Ganz called the meeting to order at 7:32 p.m.

**PRESENT:** Mayor Ganz, Deputy Mayor Etlar, Councilmembers Caan and McCarthy.

**ALSO PRESENT:** Manager/Municipal Clerk Kwasniewski and Assistant to the Municipal Clerk Van Kruiningen

**ABSENT:** Deputy Mayor Weinstein and Assistant Municipal Clerk Bojanowski.

### **Review of Tentative Agenda 8/16/05:**

No Changes.

### **Special Meeting Agenda:**

Deputy Mayor Etlar asked to have Resolution #222-2005 removed from the Consent Agenda and put on non consent calendar.

### **Open Space Petition:**

Manager/Municipal Clerk Kwasniewski stated they agreed to invite representatives from the group of people who signed the petition requesting an item to be put on the ballot for November. The signatures have been checked on the petition and they are still in need 1235 signatures. The Mayor and Council announced at the last meeting they would put the question on the ballot regardless of the fact that they were short because they were given incorrect information when they started. They are still continuing to get additional signature. She spoke with Borough Attorney Lustgarten and they had questions on the wording of the petition. They wanted it to be a binding question and but she did not believe it could be. Borough Attorney Lustgarten felt there was a material defect in what was circulated, but he felt it is a nonmaterial deviation. He added if people were willing to sign a petition for binding presumably they would sign it for non binding.

Borough Attorney Lustgarten referred to the statue and stated some points that needed to be rectified and then the Council can decide to put this on the ballot regardless of lack of signatures. He stated the referendum has to be in the form of a question which is not a major problem once they are in agreement with what the substance should be. He felt they needed to take Sections, A,B, and C and put them into a clear question and clarify the shall and may in the sections.

Mayor Ganz asked what the time frame was. Borough Attorney Lustgarten stated it was 74 days prior to the election and should be done no later than September 1<sup>st</sup> work session. Deputy Mayor Etlar stated it was clear to him and was for sending this to the ballot. He did have some questions about this being binding and felt they could find solutions to A,B and C. Councilmember McCarthy agreed with Borough Attorney Lustgarten and felt people had put a lot of time and effort into this over the last year. He felt they could work out language that everyone would be satisfied with and go forward. Councilmember Caan supported it also, but as Borough Attorney Lustgarten stated it could not be a binding referendum by law and that was his only concern. Mayor Ganz agreed also and felt they could resolve this tonight.

Ed Trawinski, 3-33 Lyncrest Avenue was here to represent CCRF and himself on this petition. When his client asked how many signatures were needed they were given a different number. Then his client was told there were more needed. His client went back and got more signature and are still working on getting more. Those signatures will be handed into Manager/Municipal Clerk Kwasniewski tomorrow. He felt it would be helpful if they could receive a list of the people who were knocked off the list for not be registered voters. Manager/Municipal Clerk Kwasniewski stated she would get him a copy of the petition that shows who was taken off. Mr. Trawinski wanted everyone to know the hard work that went into getting these signatures.

Mr. Trawinski did not agree with Borough Attorney Lustgarten about it being non binding. He explained his client has a fundamental disagreement, and though they appreciate the willingness of the Council to put the petition on regardless of the number of signatures they still have two concerns. The first being that if they met the required amount of signatures they want to have their form of the petition on the ballot subject to it being phrased in the form of a question, since he agreed with Borough Attorney Lustgarten on that point.

Borough Attorney Lustgarten stated he would work with Mr. Trawinski on the wording so they could agree on the petition. Councilmember McCarthy suggested having them discuss this and bring back to the Council by their Friday mail packages.

There was a consensus to have Borough Attorney Lustgarten and Ed Trawinski work on the language.

Maureen Moriarity, 14 Burnham Place asked if the money from this tax could be used for the Recreation Center. Borough Attorney Lustgarten replied absolutely not.

Matt Ahearn, 6 Beekman Place complimented Borough Attorney Lustgarten on the work he did on this matter.

Harvey Rubinstein, 28 Rutgers Terrace asked what protects this Borough twenty years from now from the funds being used toward something else. Borough Attorney Lustgarten explained it cannot be used for anything else. It would be a illegal act and the statue would protect it.

Larry Koplik, 6 Reading Terrace thought it was not the petitioners option to specify if they are binding or not binding but a matter of law. Borough Attorney Lustgarten agreed.

Louise Orlando, 12 Arlington Place asked if it was correct because the Mayor and Council are putting this on the ballot in November that it is not necessary to have the required number of signatures. Mayor Ganz stated that was correct.

Mike Rooney, 14 Burnham Place commended the Council for supporting this and allowing Fair Lawn to join over 20 other communities in Bergen County who already have open space trust funds.

Maureen Moriartiy, 14 Burnham Place stated a number of municipalities in Bergen County have used binding for their open space referendum. Borough Attorney Lustgarten disagreed, he felt those municipalities were wrong.

Felice Koplitz, 6 Reading Terrace stated this money would be matched by Green Acres money and wanted to know the way this referendum is being worded. Mayor Ganz stated they have to have a project that is Green Acres eligible. Green Acres has to approve it and that is a lengthy process. They could raise the money for a period of several years and never have it matched. Borough Attorney Lustgarten stated if anyone asked if it was a guarantee that if this passes there will be Green Acres matching the answer would have to be no. The Borough can request the funds but he would not tie the two together in an explanation about the referendum.

Craig Miller, 5 Ramapo asked if this gets passed how soon does the Borough get to use the money to purchase property. Borough Attorney Lustgarten stated once the levy is collected the process would be to identify a property, see if there is enough money for it and then authorize the purchase.

**Hartley Place Petition - No Parking Request:**

Manager/Municipal Clerk Kwasniewski stated they have received a petition from several people on Hartley Place complaining that commuters are parking in front of their houses. There is a corner there that they cannot see around. Traffic Officer Franco went out and checked it a couple of times and concurred with the residents that it appeared that the commuters were parking there. Officer Franco stated that it was just the first three houses on the block and recommended including the entire block because they are going to ask that anyway when this passes. Mayor Ganz was reluctant to extend it beyond the petitioners request in the absence of the consent of the people on the other portions of the block. Officer Franco suggested asking if they would petition the rest of their block. Mayor Ganz felt that was a good idea.

Manager/Municipal Clerk Kwasniewski stated Officer Franco has told them that they would not be able to park in front of their own houses either. Once the restrictions is put in place that they would not be exempt from it and they seem to understand that. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski what her position would be on sending this back to the petitioners and seeing if they wish to extend this restriction. Councilmember Caan suggested getting a consensus tonight on what they have asked for and then send it back with the understanding that it may be extended. If for some reason the other petitioners do not want it extended this would be in place already.

The consensus was to restrict parking as requested.

Manager/Municipal Clerk Kwasniewski stated there is a neighbor on that block that is having a problem because he lives in a two-family house that has never had a driveway. Up to this point they have used the driveways and parking lots of the neighbors but those arrangements are not going to be available to them anymore. She suggested issuing a monthly hardship pass until they can find another solution. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to come back with the details on the house and ask the Engineer for a sketch to see if there is another alternative. Deputy Mayor Etler believed there would be no other alternative. They could delay it but felt what they should do is offer a certain amount of sticker time that they could be on the streets and have it reviewed maybe every month. Mayor Ganz stated Manager/Municipal Clerk Kwasniewski could handle that but they did need to look at it and get a sketch of the area.

Manager/Municipal Clerk Kwasniewski stated they will receive the hardship sticker while they can see what else can be done.

### **Bike Route:**

Manager/Municipal Clerk Kwasniewski stated there was a concern on the bike route because of the area by the Ambulance Corp and the ramp down from Route 208. They asked Officer France to come up with a suggestion of what to do with it. She explained Officer Franco suggested calling it a Bike Route instead of calling it a Bike Lane. She stated bikes are supposed to go with the traffic but if they go with the traffic in that area it is particularly dangerous.

Traffic Officer Franco checked with several of his peers and the Department of Transportation guidelines on bike lanes which was his initial suggestion to have someplace for bicyclists to ride rather than in the open area. It would be a lot of work, money and land acquisition to do a bike lane in that area because it has to be established along the right of way. He explained that is technically a roadway even though there is no curbing etc. The bike lanes have to be adjacent to the roadway itself. They would become part of the roadway and they would be by the Ambulance Corp driveway and parking spaces and they would be in Daly Field on both sides of the roadway. He explained it would be a very difficult situation to do. He suggested signing it as a bike route and let bicyclists navigate the area as they have been doing in the past. Officer Franco stated bicycles are supposed to abide by the rules of the roads just as a vehicle does.

Mayor Ganz asked if they could put signage up that stated suggested bike route. Officer Franco stated they could post periodic signs along the route that says bike route. Deputy Mayor Etlar asked how they could move this along. Officer Franco stated they just need to establish the route and put up the signs. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to come back with a proposal on the costs of the signs.

### **Expansion of the Rescue Building:**

Councilmember Caan stated there was preliminary meeting with the members of the Board of Education. He stated things were very positive but he still needs to get more answers which he will bring back at the next meeting. Mayor Ganz stated this will be going before the Planning Board on Monday. Officer Franco felt vacating Fairclough Place felt it would be in the best interest of the Rescue Squad. Mr. Winston felt that opinion may not be shared by the full Planning Board based on information that has been provided by the board secretary. He felt it might be helpful if Officer Franco could attend the next Planning Board meeting. Officer Franco believed he could make it. Councilmember Caan stated the opinion of the member of the Board of Education was they would be in favor of it. They felt it would be much safer from their point of view. Deputy Mayor Etlar felt they need to give this a close examination and has not yet come to a decision on this.

Officer Franco asked Mr. Winston to get him the information that he received on why this may not work so he could be prepared for the meeting. Mr. Winston explained it was drawings of the current area and the proposal as described by the Rescue Squad to the Planning Board's secretary.

**COAH:**

Ron Mondello explained the situation with COAH. He gave a brief background. On October 2, 1996 Fair Lawn received 2<sup>nd</sup> Round Certification from COAH. The Mayor and Council at that time agreed to overlay zones for Daly field, Archery and Haywood. The certification protection was to expire last year so he filed a motion requesting an extension. The motion was granted but COAH required that the overlay zone be adopted by September 12<sup>th</sup>. If Fair Lawn does not do this it will be dismissed from COAH and will have no protection against a Builder's Remedy.

Borough Attorney Lustgarten stated when they agreed to a prospective overlay zone for Daly, Archery and Haywood he did not believe at that time they were zoned R-1-1. He asked if COAH knew there was a change in zoning and whether or not it makes a difference. Mr. Mondello spoke with the planner that recommended that COAH grant the extension of 2<sup>nd</sup> Round and they knew that area was rezoned. He did not know why they were requiring an overlay because typically that is used when a zone is not residential and then you put a residential with COAH component overlay. Mr. Mondello stated when COAH refers to Daly Field they are referring to all three tracts.

Deputy Mayor Etlar asked if COAH could force them to change a zone. Mr. Mondello stated they cannot force that change but they can force Fair Lawn to put a COAH component into this zone. He stated that is only if someone builds. If no one builds they have nothing to worry about.

Councilmember McCarthy asked if there were any other parcels in Fair Lawn that were overlay zones. Mr. Mondello stated there are other ones although he was not sure what they were. He explained the problem at hand is that this is the only thing COAH is focused on right now. Either they adopt this overlay or they lose certification. They do not care about any other overlay zone in Fair Lawn. He tried to present Mayor Ganz's idea of moving the COAH obligation from Daly Field to the other areas, but COAH said no. He explained a builder could come in now and put up single family units, but there is no COAH component. He explained what COAH is saying is that area is zoned for residential and if a builder comes in and wants to put up houses, they better do a COAH component if they want their second round Certification.

Borough Attorney Lustgarten stated effectively the overlay zone increases density from 4 an acre to 6. He explained if they lose 2nd Round Certification and a builder came in and wanted to put up 8 or 10 units per acres and they do not have the COAH protection they would have a major fight. The builder could come in and say the zoning code does not apply anymore and as long as his application is reasonable to onsite, offsite egress etc, they lose their density argument. Mr. Mondello stated that density is specifically spelled out. He read the regulation from 5:93-5.6b1 and explained the reason for that density was because they received a vacant land adjustment.

Mayor Ganz asked if a builder could come in and say they want to put in 250 units in that area. Borough Attorney Lustgarten stated the seriousness of not

have this certification is that a builder can come in and show that what he is requesting to develop works in the sense of ingress, egress, parking, height and etc. The builder is not bound to the existing zoning code density and that would be shown through experts. He explained what the Page Six

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town loses without the certification is to say to the builder they must go through multiple variances because they are in violation of the zoning code. Borough Attorney Lustgarten stated definitely to the latter but was unsure about the tower but without the certification a much higher density and structure.

Mayor Ganz stated they need to do this immediately because it has to be done by September 12<sup>th</sup>. Borough Attorney Lustgarten suggested authorizing Mr. Mondello to work out the language and advise COAH that they are going to introduce it prior to the 12<sup>th</sup>. Mr. Mondello stated they want to see the ordinance ahead of time and they have one of the planner waiting to see it. He recommended going back to COAH to see if they will move that obligation from Daly Field to Archery and Haywood although he believed the answer would be no. He added if they do not accept it then they should just adopt the overlay.

Borough Attorney Lustgarten suggested working concurrently on preparing the overlay.

There was a consensus to follow Borough Attorney Lustgarten recommendation.

Mayor Ganz stated they would introduce this at next week's meeting and adopt it at a special meeting on September 6<sup>th</sup>. Borough Attorney Lustgarten felt that people should understand so they do not misinterpret what the Council is going to do. He explained this is a COAH mandate. He felt when this ordinance gets introduced they need to state it again for people who are not in the room tonight, this does not change the Council's position with respect to Daly Field. They are being mandated to do this by the State Agency but there is no change in their position on Daly Field.

#### **New Jersey Transit Canopy for Radburn:**

Manager/Municipal Clerk Kwasniewski stated they received a letter from Mr. McDermott of New Jersey Transit who would like to proceed with the canopy. They had made a

presentation to her, Mayor Ganz and Deputy Mayor Weinstein in May. They had raised some questions because they wanted to make sure the plan fits with the neighborhood. Mayor Ganz asked if the canopy could be heated, which it could not be because they do not provide heating but they will set it up so it will have the slate roof. This canopy would cover between 250- 300 passengers. She explained New Jersey Transit still needs approval from the Historic Society before it is done.

Deputy Mayor Etlar asked where the expansion would be. Manager/Municipal Clerk Kwasniewski explained it was not an expansion but a canopy so the commuters would not have to stand outside in the rain or snow. Deputy Mayor Etlar would have preferred that they provide a small drawing so they could get an idea of what this is. Councilmember McCarthy believed it was a great idea. He has commuted on several occasions and on a rainy day there is limited space to stand out of the rain.

Mayor Ganz thanked Senator Coniglio and Assemblyman Gordon for their efforts and making this a priority.

There was a unanimous consensus on Manager/Municipal Clerk Kwasniewski proposal based on the subcommittee recommendation.

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Manager/Municipal Clerk Kwasniewski stated she would let Mr. McDermott know and they can appear before the State Historical Preservation office, and then get their construction permits from DCA. They expect this will take a year or so to complete this project.

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### **Rotary Clock Donation:**

Manager/Municipal Clerk Kwasniewski brought a drawing of Municipal Building's front yard showing what they have and where they might put the clock. It also showed where the memorial statue of Officer Collura was going to be put. Rotary would prefer to have it at the Library. She explained the Library Board of Trustees are concerned who was going to pay for the installation. She explained to Tim Murphy, the Library Director, the Rotary is donating the clock and they would use the Borough's electrician so there would be no expense the Library would have to bear. She spoke to Charlie Rubel of Rotary and he advised her it comes with a maintenance package for the first year. Manager/Municipal Clerk Kwasniewski stated they would be taking on the cost of the electricity. Mayor Ganz asked if they are paying this as a bill for the Library, which is subject to one set of rules in the budgetary process or are they paying the electricity independently. Manager/Municipal Clerk Kwasniewski stated she would find out.

Councilmember Caan stated they have some specs. Deputy Mayor Etlar wondered if where they were proposing to put it now was too busy. Mayor Ganz felt it did not work well here but very well at the Library. Deputy Mayor Etlar agreed. Councilmember Caan was happy. Rotary liked it better at the library. He added he had some additional information and specs on different clocks. He passed out the specs. Manager/Municipal Clerk Kwasniewski stated there were concerns about the clock being too Victorian for the setting.

Councilmember McCarthy agreed that the Library was better, the memorial for Officer Collura was going here and that is a very solemn memorial. He added although the clock tower is very nice, he did not feel anything should be in that general vicinity that would draw

attention away from the memorial.

Manager/Municipal Clerk Kwasniewski stated the Library would make the Rotary happy because that was originally where they wanted it. She added there was also two different heights and felt the shorter one would be better for the Library.

Mayor Ganz asked the Council if they were comfortable with putting the electricity and maintenance in the municipalities budget after the first year. Deputy Mayor Etlar and Councilmember McCarthy were in agreement. Councilmember Caan wanted to know what the cost would be. Deputy Mayor Etlar felt it would be a minimal amount. Mayor Ganz explained the Library does not wish to incur the costs and asked him if he would be in favor. Councilmember Caan felt he could not agree until he knew the cost. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to come back to the Council with the costs. He added they would go over this at the next meeting.

### **Conveyance of Property by the Board of Education:**

Manager/Municipal Clerk Kwasniewski stated this is about the letter from the attorney telling them that they owe them \$5,000.00. She explained when Mr. Cosgrove went back

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to the Board of Education to ask for the extra amount of land and they agreed, it necessitated moving the discus area. She explained the \$5,000 is the cost for moving that area. She received the copies of the specs from Paul Stabile. She believed what happened was that Mr. Cosgrove indicated that they would pay for this. Mayor Ganz asked her to get in touch with Mr. Cosgrove and get a definite answer on that.

Borough Attorney Lustgarten stated they need the metes and bounds for the easement agreement. He explained even if they resolve the \$5,000 he still did not have the attachment for the metes and bounds. They do not have the easement in recordable form yet.

Mayor Ganz stated assuming that Mr. Cosgrove has in fact made a representation that the Borough would cover the cost of moving the discus pit, was there any objection to transferring those funds to the Board of Education in order to get the 35 additional spaces.

There was a unanimous consensus.

Mayor Ganz asked Borough Attorney Lustgarten how long it would take from the time he received the legal description. Borough Attorney Lustgarten stated once he gets the legal description it was a matter of a phone call. Mayor Ganz asked if there is any resolution that is required of this governing body to have it prepared by Tuesday.

### **Cablevision Renewal:**

Manager/Municipal Clerk Kwasniewski and Borough Attorney Lustgarten met with Cablevision and sent them a joint memo explaining exactly what has transpired. She explained they would like the Borough to give them a 15 year franchise renewal. She explained it is not actually 15 years because it goes back to when it actually expired. Mayor Ganz explained the grant they were referring to is a grant that can be used for

limited purposes including the acquisition of camera equipment for the Board of Education and paying for high speed internet service for the Board of Education and Borough of Fair Lawn among other things. Manager/Municipal Clerk Kwasniewski stated they would not be paying for the schools internet service just the Borough's service. Mayor Ganz understood that the acquisition for the equipment for the school is a priority. The priority for the Borough is the high speed internet.

Borough Attorney Lustgarten stated the \$19,000 worth of equipment that the Borough will get from Cablevision and help the school utilize the education access channel might be a point to say they may not want to ask for the \$5,000 for the discus area. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to speak with Mr. Stabile and see what she can do.

Deputy Mayor Etlar asked how the Cable Television Committee going to fit into this proposal. It looked like to him they have already made a decision on what to do. Borough Attorney Lustgarten explained the committee has submitted suggestions which they incorporated into their discussion with Cablevision. The committee was not shut out. Deputy Mayor Etlar asked how the committee would fit into this then. Borough Attorney Lustgarten explained they are just reporting back but nothing is binding. They simply brought back to the Council what they believed was the best offer.

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There was a consensus to turn over Manager/Municipal Clerk Kwasniewski and Borough Attorney Lustgarten's memo to the Cable Television Committee and have them get back to the Council by September 13<sup>th</sup> with their report.

### **Ground Breaking for 911 Memorial:**

Manager/Municipal Clerk Kwasniewski stated they have been waiting for Mr. Levy to finish his drawings. Jane Spindell called her and thought it would be a good idea to have a ground breaking ceremony this September 11<sup>th</sup> to show they are proceeding with this memorial. The specs are done with the exception of the plan and they would be ready to go out to bid.

Mr. Levy stated his office developed the plans based on Ms. Spindell's designs and the final drawings will be delivered Monday. Mayor Ganz asked him to give Manager/Municipal Clerk Kwasniewski copies so she could circulate them to the Mayor and Council and Engineering.

Deputy Mayor Etlar asked if they would have the opening on September 11<sup>th</sup>. Mr. Levy explained they would have a ground breaking. The construction plans have to go out to bid but they do not want to have even a ground breaking without having the set of plans available to show people what they can expect.

Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to mount one of the sets of drawing for display by the time of the ground breaking. Manager/Municipal Clerk Kwasniewski stated she would have it done by then.

Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to set up a time with the families for September 11<sup>th</sup> at 12:00 or 1:00 p.m.

There was a unanimous consensus to hold a ground breaking ceremony.

**Professional Services Agreement for Broadway SID and Fair Lawn EDC:**

Manager/Municipal Clerk Kwasniewski stated the Council agreed to fund both projects. She explained they need a professional service contract to fund them. She proposed a resolution for each with the corporation of DMV/DRS Creative Services, Inc, which is Donald Smart's Company. He would provide the professional management consulting service to the EDC and the Broadway SID. Mayor Ganz asked what the force of funding was. Manager/Municipal Clerk Kwasniewski explained the money was included in the budget and they will also have money from their assessment.

Deputy Mayor Etlar explained he was in agreement with the Broadway SID but not in favor of the EDC. Mayor Ganz stated they would be talking about this in their special meeting.

**Knights of Pythias Circus:**

Manager/Municipal Clerk Kwasniewski received a request from the Knight of Pythias to hold their annual circus. She explained there is about 1000 people with disabilities who come from the state institutions, veterans groups, orphanages and home for the blind. She Page Ten

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stated they would like to do this on September 11<sup>th</sup> with shows at 3:30 p.m. and 5:45 p.m. She stated they have always allowed this and have never had a problem with it.

There was a unanimous consensus to allow the circus.

**Capital Budget Projects:**

Manager/Municipal Clerk Kwasniewski stated they never completed the capital budget. She handed out a list to everyone. She wanted to know what projects they were going to do. There are some things they will need to do for the winter.

Mayor Ganz was reluctant to do this at this time with the absence of Deputy Mayor Weinstein.

Mayor Ganz explained they have fast tracked \$857,000. In addition, there is another \$324,000 that they have recommended but not taken action on. He asked Manager/Municipal Clerk Kwasniewski if she was suggesting that they have down payment

money in the budget at the present time and if they choose to take \$324,000 plus another \$500,000. Manager/Municipal Clerk Kwasniewski stated that was correct.

Mayor Ganz asked Manager/Municipal Clerk Kwasniewski what the earliest the bond counsel could draw the appropriate resolution if they had a council consensus by next week. Manager/Municipal Clerk Kwasniewski stated she could talk to them and see if they could have it for the September 6<sup>th</sup> meeting.

### **Fire Decontamination Agreement with Bergen County:**

Manager/Municipal Clerk Kwasniewski stated they are the host mutual aid for Central Bergen and they are receiving a trailer. Fire Company #3 is the designated company that is the first responders and they have had the training so they will receive the specialize piece of equipment from Bergen County under their Homeland Security money. There are some conditions on this including the storage of the trailer. The County is aware that they do not have indoor storage and although they prefer to have it inside they understand. Mayor Ganz stated this is a fully functional unit that can be used for any major event, including oil spills, train derailment etc.

Borough Attorney Lustgarten was concerned that the County of Bergen wants them to totally indemnify them. His concern was that the County has the right under the agreement to redeploy it. He urged that they get a mutual indemnification clause and did not recommend the agreement without one. Mayor Ganz suggested sending something to the County to get this worked out. Mayor Ganz stated he would call the County tomorrow to see what he could find out also.

Manager/Municipal Clerk Kwasniewski stated they would hold off until she heard back from Mayor Ganz.

### **Flood Plain Management/National Flood Insurance Program:**

Manager/Municipal Clerk Kwasniewski stated FEMA changed its Flood Plain Management Measures and they have until September 30<sup>th</sup> to make changes. They have simple changes to make. They are going to delete their current basis for the established areas and put in the new language. She explained Engineer Garrison has worked on this with Baker Engineering which was the firm hired by FEMA so that the towns would do it properly and not adopt ordinances and then not meet FEMA requirements. This language is acceptable to them and all they need to do is introduce and adopt an ordinance by September 30<sup>th</sup>.

Mayor Ganz asked what the practical effect of the ordinance was. Manager/Municipal Clerk Kwasniewski explained it has no practical effect day to day. It simply puts in the language that they are requiring. She added it is the flood insurance study for the Borough of Fair Lawn dated September 3, 2005 as opposed to just generic language. Originally the language was generic so they did not need to change the language every time the study changed but now they are asking for specific language.

Borough Attorney Lustgarten explained if they do not continue Fair Lawn in the National Flood Insurance Program it means that any of the Fair Lawn properties that are deemed to be in a flood plain or flood way could not get flood insurance. He added flood insurance is only issued by the Federal Government.

There was a unanimous consensus to adopt the ordinance.

### **Change Orders:**

Manager/Municipal Clerk Kwasniewski explained Engineer Garrison has requested three change orders. The contract for the DPW Parking Lot Improvements has come in \$4,085.10 less than the bid amount. Storm Drain Improvements 2005 came in \$2003.92 less. Roadway Improvements 2004 requires an increase of \$149.97. She explained the Council has to approve the change orders by resolution. She added they have consistently over the years done this even when the amount is lower, to show everyone that they do their best and take advantage of savings where they can.

There was a unanimous consensus to approve the Change Orders.

Upon motion by Deputy Mayor Etlar and a second by Councilmember McCarthy was recessed to the special meeting at 9:40 p.m.

Mayor Ganz reconvened the meeting at 9:50 p.m.

### **Miscellaneous Public Comments:**

Harvey Rubinstein, 28 Rutgers Terrace asked if the FEMA requirement affect private property owners and does affect flood plain. Mayor Ganz stated it does, it is a FEMA program and the map they are designated is one for September 3, 2005.

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Mr. Rubinstein stated two weeks ago a tree fell down and knocked power out and it has made him very aware of how the town trees hang over the power lines and telephone lines.

He asked if the Borough has to trim those tree or is it Public Service. Borough Attorney Lustgarten believed that Public Service trims the trees that are on the lines. Mayor Ganz stated it is Public Service's responsibility as well as a safety matter.

Mr. Rubinstein stated on Sanford Road there are branches hanging over the lines. Borough Attorney Lustgarten advised him to call Public Service and give the street address and problem and they will get a crew out. Mr. Rubinstein was thinking more about a Borough wide letter saying this condition could get worse if there is a storm. Borough Attorney Lustgarten explained you would not get them on that basis, they will want a specific area.

Mr. Rubinstein stated at Congressman Rothman's meeting he asked him about money for open space and he stated there was money in Washington and suggested the Council write a letter and apply for it. Mayor Ganz stated what Congressman Rothman actually said was there are many grant programs but they are all unfunded and the applications that the

Council has made previously for the Federal funds are not be acted on because there is no money to give out. Mr. Rubinstein did not hear him say that and later on he spoke with the Congressman's Chief of Staff and he said that the Council needs to apply for the funds. Mayor Ganz stated the Council has vigorously applied for open space funds on a regular basis for the entire eight years he has been on the Council.

Mr. Rubinstein asked if the neighbors on Fairclough have to be given notice for the July 15<sup>th</sup> meeting of the Planning Board. Manager/Municipal Clerk Kwasniewski stated it depends on whether or not they are making an application or coming as a concept. If they are coming as a concept, which is what she believed because they have not done drawings, they do not have to give notice.

Mr. Rubinstein understood that all of their parks are zoned R-1 and based on Mr. Mondello's presentation is there any reason why they cannot change the parks to P-1. He asked if the Council could do this. Borough Attorney Lustgarten stated it could be done but it does not effect us with COAH because their rules and regulations state their has to be a realistic chance of development. If the parks are dedicated parks then they have to stay as parks regardless of whether they are R-1, P-1 or whatever. COAH would not give an allocation of reducing the required units if the Borough tried to take a piece property in inventory that has no realistic opportunity to be developed.

Mr. Rubinstein asked if the canopy by the Railroad was a canopy encompassing the building. Mayor Ganz stated it would be a free standing T in the rear of the building between the Railroad tracks and the building.

Mr. Rubinstein suggested another quiver in reference to the \$5,000 for the Board of Education property may be that they promised there would be a sidewalk running from the building down to Cadmus Street. That would probably cost about \$5,000 in masonry fees.

Mr. Rubinstein asked where the fire decontamination trailer would be housed. Mayor Ganz explained it would be outside Fire Company #3's building on Plaza Road. Mr. Rubinstein did not understand why the County cannot supply a canopy.

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Arlene Rubinstein, 28 Rutgers Terrace stated years ago when COAH first came about and again when McBride proposed a hotel complex on Route 208, the Planning Board at that time passed the COAH requirement. She explained Glen Rock said to COAH at the same time they are 97% developed and could not have anymore affordable housing. They won and did not even have to go to court. She stated Daly Field is a landmark designation and asked if that had any affect on COAH. Mayor Ganz stated it does not, COAH is very clear. They told them they do this by September 12<sup>th</sup> or they will be vulnerable to a builder's remedy's lawsuit.

Ms. Rubinstein asked if they could sell their obligation just as Paramus has done. Councilmember McCarthy stated it was a percentage. Borough Attorney Lustgarten stated they could but it still has to be funded. Ms. Rubinstein asked if this has ever been considered. Borough Attorney Lustgarten stated no past Council has considered the alternate funding route. It has not been acceptable because it did not seem to be prudent to send Fair Lawn tax dollars to another municipality.

Ms. Rubinstein stated Mahwah has affordable housing and a lot of the people who have it

have rental units and cannot afford to pay the rent and no one can throw them out. The town is losing taxes and revenue from this. She asked if COAH has done anything to alleviate this condition if someone cannot pay the rent. Borough Attorney Lustgarten stated if a tenant does not pay rent they are going to be evicted. It is basic law they can claim all kinds of hardships but if the rent is not paid they will be evicted.

Felice Koplitz, 6 Reading Terrace stated the building by the railroad tracks has landmark status now and asked if the people of the town are going to be able to see drawings of the canopy. Mayor Ganz stated it is a New Jersey Transit project but believed the drawings should be available. Manager/Municipal Clerk Kwasniewski stated New Jersey Transit has to go to the State Historic Preservation office. Ms. Koplitz asked if there was someone she could speak to because she wanted to see what they would be doing. Manager/Municipal Clerk Kwasniewski stated she could give her the name and number of the person at New Jersey Transit she has been speaking to.

Ms. Koplitz suggested putting the Rotary Clock at Memorial Pool or even on River Road. She believed it was a pedestrian oriented and putting it on a heavily traffic street could cause potential accidents from people slowing down to look at it. Mayor Ganz stated they would pass it on to Rotary.

Ms. Koplitz asked if the EDC would bring together the Broadway SID and River Road SID or is it a separate organization. Mayor Ganz stated it is a separate organization but it will include representatives from both the Broadway and River Road SID as well as from other areas of town. Ms. Koplitz asked if the EDC is focusing on Radburn. Mayor Ganz explained it would be focusing on all of Fair Lawn. Ms. Koplitz asked if this would be presented at meetings that the public could attend. Mayor Ganz suggested getting in touch with Deputy Mayor Weinstein, Manager/Municipal Clerk Kwasniewski stated Stuart Herman is the president and there is a link on the website with the phone number.

Larry Koplitz, 6 Reading Terrace stated he read the newspaper today and Governor Codey signed some bills providing for open space acquisition of \$223 million dollars. Mayor Ganz stated Fair Lawn is not on the list. They have made a number applications over the years

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to be on different lists and that is just not the grant money that has made its way here. Mr. Koplitz asked what they need to do to get on this list.

Craig Miller, 5 Ramapo Terrace stated there is a petition for parking on Hartley Place for two hour parking. He stated living in the Radburn area he has noticed an increase in commuter parking on Ramapo Terrace. Mayor Ganz suggested he bring in a petition signed by the neighbors and the Council will be happy to look at it.

Mr. Miller asked if the Fair Lawn Police check over night parking restriction on every street every night. Borough Attorney Lustgarten stated they use a call in system which is run by an independent agency. People call in their address and plate number and when the patrol cars patrol the town they will check cars parked between 2:00 a.m. and 5:00 a.m. against their list. If that plate number has not been given permission to park through the call in system they will get a ticket. He cannot guarantee that every single street, every night is patrolled he did not know. Mayor Ganz stated they have 111 miles of roadway, six patrol cars and they just cannot get to all the streets. It is on a rotation system.

Maureen Moriarity, 14 Burnham Place stated she is very pro COAH but wanted to know if it was correct that they could not make the town rezone property. Mayor Ganz stated that was correct. She asked if 50 houses were built on the Haywood property, how many of those would be affordable houses. Borough Attorney Lustgarten believed it was percentage but also had to do with an inventory, units available, space available so it is not a clear percentage, maybe about 20% but it is a sliding scale.

Suzanne DiGeranamo, 6 Beekman Place asked if the canopy at the Radburn Station was going to be a high level platform. Mayor Ganz explained they are using the existing platform with freestanding structure on top of it to shelter commuters from the elements. Ms. DiGeranamo asked if they received a confirmation from New Jersey Transit that they will not change the height. Mayor Ganz stated they have not received any information from them that they are considering changing the height of the platform.

Ms. DiGeranamo asked who gave authorization to the Mayor and Council to include Daly and Archery into COAH. Borough Attorney Lustgarten stated no one needed to give authorization. They just look at the available space to use as part of the calculations. Ms. DiGeranamo stated then they could have looked at Berdan Grove. Borough Attorney Lustgarten stated they did look there. Ms. DiGeranamo asked why they picked Daly and Archery. Borough Attorney Lustgarten repeated he believed it was a planner they had who recommended it to meet COAH's requirement.

Ms. DiGeranamo asked about Daly, Archery and Haywood. She wanted to know on basis they were declared vacant land. Borough Attorney Lustgarten stated Daly and Archery were clearly vacant. He did not know when the buildings were taken down on Haywood, but they may have been vacant at that time. He explained again the history and COAH's procedures. Ms. DiGeranamo asked if anyone ever objected to including these parcels. Borough Attorney Lustgarten did not recall but did not believe so. He asked Mr. Levy to answer the question.

Scott Levy, 2-19 Lyons Avenue stated he was on the Planning Board then. All lands both public and private that were open were looked at, by COAH, the State and planners that

were involved. There was certain criteria that they looked at, whether the lands were really able to be developed. Dedicated park lands were taken off right away. He explained the parcels Ms. DiGeranamo was referring to were considered open lands but could be realistically developed for houses. Ms. DiGeranamo asked why they were known as open land. Mr. Levy stated because at that point it was not known they were a dedicated park land. He explained COAH gave Fair Lawn a number and if they did not come up with their own solution that they agreed upon then they would have been stuck with a higher number then they negotiated. He added Mr. Trawinski and Mr. Kantowitz were involved with this at that time. He tried to explain that dealing with COAH is not easy.

Ms. DiGeranamo stated no one ever objected to the Planning Board who was considering at the time that these were parks not vacant lands. Borough Attorney Lustgarten explained COAH defines this as open space not parks. Ms. DiGeranamo stated the third solution that was trying to convince COAH to put Daly Field obligation on the adjoining parcels which is Archery and Haywood. She stated that is disingenuous to COAH because they cannot use Archery because it is a dedicated deeded recreational land. Mayor Ganz stated he was familiar with that but COAH has placed a number of units on it. His thought was if they

could move the units off Daly Field and it can stay green under all scenarios and the number of houses that would go into that component would move over to the north. Ms. DiGeranamo stated he was saying it would move to Archery and she was trying to explain that Archery is dedicated deeded recreational area and could not be put on it. Mayor Ganz understood what deed restricted was but an overlay has nothing to do with it. If it cannot build on it then you cannot build on it, but does not mean they cannot overlay it. Ms. DiGeranamo stated that gets back to the point that was made, if no one builds on these parcels then there is no issue or problem. Mayor Ganz stated that was correct. Ms. DiGeranamo asked the Council if perhaps they could get the Radburn Associates Trustees to agree to stop the development. Therefore, they would have no development on the three tracts and they would have nothing to worry about with regard to COAH. Borough Attorney Lustgarten respectfully explained there conclusions were incorrect. This is not just directed to Daly, Archery and Haywood. The COAH requirements are Borough wide and if a builder came in and found some other space and they have no certification, then they cannot be stopped with the zoning code because there is no COAH certification. He added this is a builders remedy and the courts do enforce it.

Ms. DiGeranamo asked them to convince COAH that these are parklands. Mayor Ganz stated they have tried that and the argument has failed over and over.

Louise Orlando, 12 Arlington Place wanted to put a little of a perspective on COAH. She explained Harvey Moscowitz did the plan. She stated this goes back to 1987 when there were actually 4 or 6 areas in Fair Lawn that were identified as places that possible new construction could take place that had to be considered for COAH certification as that time. It was not limited to Archery, Daly or Haywood. She did not remember exactly what the other parcels were. There was no ability to change COAH's position because of the certification issues. Daly Field is a developable parcel at the time. The fact the Borough Council at that time

determine to state that they wished to have it green does not change that fact.

She felt that there is nothing wrong with affordable housing. It is not something that should be shunned in the Borough of Fair Lawn. She believed people should understand COAH is COAH, they are demanding the certification by September 12<sup>th</sup> and the Mayor and Council have no opportunity to do other than what they have done tonight.

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Maureen Moriarity, 14 Burnham Place asked if there is a building on Haywood Tract would the Council be able to designate more housing for Affordable Senior Housing. Mayor Ganz stated if building was going to take place on one of those properties, a COAH component is going to be required. He stated that is the purpose of the overlay zone, it guarantees that. Borough Attorney Lustgarten believed that answer to her question was no. He stated when a developable tract is looked at and there are a certain amount of units to be built, whatever the COAH formula is, is going to apply to those units. They cannot grab more of the inventory that Fair Lawn is required to build and dump it onto one site.

Felice Koplitz, 6 Reading Terrace asked if the COAH obligation is ever fulfilled. Borough Attorney Lustgarten explained if there is an expanding town, the developers are required to put in the COAH units so they eventually meet the COAH numeric requirement. The Second option would be to buy your way out. He explained as an example, if you put up 100 units and then send that money that is equivalent to another municipality. Ms. Koplitz asked if this Mayor and Council would consider doing that. Mayor Ganz believed the current rate is between \$30,000 to \$50,000 per unit so they are talking about \$3.5 to \$5 million dollars that would come from the taxpayers. Ms. Koplitz stated they risk losing Berdan Park, Memorial Park, if they could lose the other three parcels why not these. Mayor Ganz stated she was wrong. He explained public parks in Fair Lawn are protected and are not in the COAH inventory. The Council cannot sell them and a developer cannot condemn them or build on them. Ms. Koplitz asked Daly Field and Archery Plaza are open to this because they are private. Mayor Ganz stated that was correct. Ms. Koplitz stated

even though it is a National Historic Landmark it has no protection. Mayor Ganz stated that was correct.

Ms. Koplitz asked if Washington would help them. Louise Orlando asked why would Washington say they want to help keep poor people out of your town. Ms. Koplitz because they made it a National Historic Landmark. Ms. Orlando stated that would be keeping poor people out and COAH is for the purpose of allowing poor people to live in this town.

Councilmember McCarthy agreed the National Historic Program is a worthwhile program. Unfortunately, people in Trenton are concerned with the social legislation dealing with COAH and that is their priority. If Fair Lawn loses its certification other lands could be jeopardized by mishandling this situation. He agreed that saving open space was very worthwhile and important, however, the people on this Council for Affordable Housing have been mandated by the Supreme Court to provide affordable housing. He added if Fair Lawn had the chance, could they plead their case and say put it on other pieces of properties, put it here or there, lower or increase numbers, absolutely he agreed. Unfortunately, in reality they would be exposing themselves to the builder's remedy and COAH could say the argument was great but they still disagree. This Council is doing what they can to preserve open space and deal with the situation that is in front of them. They are dealing with what the Council of twenty years ago decided and now this Council is doing what is best for the Borough and not leaving Fair Lawn open to a builder's remedy.

Ms. Koplitz stated this Council keeps saying they want Daly Field to remain green. She

asked if that was just talk since they have the builder's remedy looming over them. Mayor Ganz stated if the Council does nothing on September 13<sup>th</sup>, a builder's remedy suit could be brought to build on Daly Field and Haywood Tract. Borough Attorney Lustgarten stated he believed there is a misinterpretation of what the Council has to do by implementing Page Seventeen Work Session August 9, 2005

COAH regulations. He asked people not to leave the meeting believing that the COAH overlay is a backing off of their beliefs to keep Daly Field green. He explained the alternative of not doing this and what could happen. They are protecting the entire town by

doing this and this is the best alternative they have at this point.

Craig Miller, 5 Ramapo Terrace asked if COAH had looked at any Borough park property. Borough Attorney Lustgarten explained when the rules and regulations were first implemented for 1<sup>st</sup> Round Certification every potentially develop able piece of property in any Borough, private or public, was looked at. Some of the land was automatically excluded because it could not be developed for various reasons. Parks were considered but then taken off because they could never realistically be developed.

Harvey Rubinstein, 28 Rutgers Terrace asked to see the old file with the Harvey Moscowitz report with COAH information that someone could refer to and look up information. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to look for the file and get back to Mr. Rubinstein. Mr. Rubinstein asked when the McBride Property was developed did that satisfy any part of Fair Lawn's obligation with COAH. Mayor Ganz stated it satisfied 52 units. Mr. Rubinstein remembered originally there was a huge number that COAH asked for. Borough Attorney Lustgarten stated that was correct but it was knocked down to about 1/6 of what they asked for at first.

### **Closed Session:**

Upon motion by Councilmember McCarthy and seconded by Deputy Mayor Etler, the following closed session resolution was unanimously adopted at 10:55 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, Anticipated Litigation and Labor 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 formal action by either the Borough Manager and or the Mayor and Council within 60 to 90 days if formal action is taken, Contract Negotiations within 180 days except for legal strategy, and Labor Negotiations within 30-60 days upon formal resolution if the matter is resolved; 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.

### **ADJOURNMENT**

Upon motion by Councilmember McCarthy and a second by Councilmember Caan, the meeting

was adjourned at 11:20 p.m.

Respectfully submitted,

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

The undersigned have read and approve the foregoing minutes.

Mayor David L. Ganz

\_\_\_\_\_  
Councilmember Allan Caan

Deputy Mayor Martin Etlar

\_\_\_\_\_  
Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein