

REGULAR MEETING OF MAY 10, 2005
Westmoreland School

Mayor Ganz called the meeting to order at 7:40 p.m. Assistant Municipal Clerk Bojanowski read the following statement of compliance:

In accordance with the Open Public Meetings Act, annual notice of all meetings of the Borough of Fair Lawn was published in the Record issues of December 18, 2004. Notices were also posted on the bulletin board located on the first floor of the Municipal Building and the Maurice Pine Free Public Library. Copies were mailed to the North Jersey Herald and News and the Shopper. The annual notice identified the times and locations of the Council meetings and work sessions.

PRESENT: Mayor Ganz ,Deputy Mayors Etler and Weinstein(late 8:35 pm) and Councilmembers Caan and McCarthy.

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

PROCLAMATIONS: **National Hepatitis B Awareness Week**
 National Better Hearing and Speech
 and Hearing Month

Assistant Municipal Clerk Bojanowski read the proclamations.

COUNCIL COMMENTS

Deputy Mayor Etler read his April activity report which included the following activities he attended: breakfast meeting for Rabbi Glazer at Temple Beth Shalom, Hockey Association Dinner, D.A.R.E. Ceremony at Memorial School, Bike Rodeo at Memorial School, Planning Board Meeting, Field Hockey Dinner, Mary Ann Collura Plaque presentation by the Clifton Police Department at our City Hall, Eagle Scout Presentation at the Presbyterian Church on 17th Street, Senior Volunteer Recognition Dinner at the Senior Center, D.A.R.E Graduation at St. Anne's Church, Heavy Rescue inspection services, Fire Department Northern Bergen County Mutual Aid meeting, Fire Department Annual Dinner, Litter Clean up Program sponsored by our Recycling Department.

Councilmember McCarthy stated last week at the work session they were contacted by various residents on Chandler Drive about their problem with parking. He added with everyone help they have found an additional 85 spots for the residents. He added if people have a problem they should contact Mayor and Council. He wished the High School Sports teams the best of luck as they enter both County and State tournaments.

Mayor Ganz learned that Frank Montabbano, a former member of the Council passed away this morning and asked for a moment of silence in his memory.

Mayor Ganz reported the Council met with the Board of Education to discuss the future of the school budget that was defeated. He added more than 30 residents were in attendance and commented on it. The Council is continuing to work with the Board of Education on the budget and will continue to give the public progress reports as they are available.

ORDINANCE: FIRST READING

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

Ordinance No. 2015-2005

AN ORDINANCE FIXING THE SALARIES OF CERTAIN EMPLOYEES OF THE BOROUGH OF FAIR LAWN, BERGEN COUNTY, NEW JERSEY AS AMENDED. (PBA/SOA)

Borough Attorney Lustgarten explained this is the introduction of the salary ordinance based on the settlement with the PBA. Manager/Municipal Clerk Kwasniewski stated there was an unanimous approval of the union members.

There being no further discussion, upon motion by Deputy Mayor Etler and a second by Deputy Mayor Weinstein, Resolution No. 164-2005 introducing Ordinance No. 2015-2005 was unanimously passed.

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

Ordinance No. 2016-2005

AN ORDINANCE FIXING THE SALARIES OF CERTAIN EMPLOYEES OF THE BOROUGH OF FAIR LAWN, BERGEN COUNTY, NEW JERSEY AS AMENDED.

Borough Attorney Lustgarten this ordinance sets the new minimum and maximum rate for the Zoning Officer and the technical assistant Construction Official.

There being no further discussion, upon motion by Deputy Mayor Etler and a second by Deputy Mayor Weinstein, Resolution No. 165-2005 introducing Ordinance No. 2002-2005 was unanimously passed.

RESOLUTIONS BY CONSENT #16-2005

Upon motion by Deputy Mayor Etler and a second by Councilmember Caan, Consent Agenda 16-2005 containing the following items was unanimously adopted.

- a. Resol. #166-2005 - Rescind Resolution No. 145-2005 and Extend Contract for Storm and Sanitary Sewer Cleaning and TV Inspection
- b. Resol. #167-2005 - Authorizing Estimated Tax Bills
- c. Resol. #168-2005 - Extend Contract for HVAC Repair and Maintenance
- d. Resol. #169-2005 - Approval of Minutes
 - Budget Meeting 2/22/05
 - Regular Meeting 2/22/05
 - Budget Meeting 2/26/05
- e. Resol. #170-2005 - Approval of Raffles and Bingos:
 - St. Anne Church, Non draw raffle
 - Fair Lawn HS PTA Marathon, On-premise 50/50
- f. Resol. #171-2005 - Refund of Overpayment of Taxes - Veteran's Disability
- g. Resol. #172-2005 - Authorize Rebidding - DPW Parking Lot Improvements
- h. Resol. #173-2005 - Authorizing Inclusion in the Bergen County Community Development Program

MISCELLANEOUS PUBLIC COMMENTS

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

Donal Meyers, 8-22 Mayfair Terrace wished to discuss the problem with children riding the motorized scooters in town. He stated they have one particular child who is constantly riding by their house and revving the engine on his scooter. They called the Police Department and were told there was nothing they could do about it. He added two weeks ago at one these meetings they were told to contact the Borough Manager because there should be something that could be done about it. He asked them is there something that can be done about this problem. Mayor Ganz asked if they contacted the Manager. Mr. Meyers stated he had not had a chance yet. Deputy Mayor Etlar stated the Police are essentially correct they cannot do anything until legislation to regulate the scooters is passed.

Mr. Meyers asked if there was anyway they could draft a law which states if it has a motor they must have license for it. Mayor Ganz stated the State has a regulations for motorized vehicles. The County has banned them on County Roads and Parks. Mr. Meyers stated it is a waste of time to call the Police Department. Mayor Ganz stated that was not true but they should call the Manager. He added there are several things that could be done. Manager/Municipal Clerk Kwasniewski stated what the police are generally doing are handling this under a community policing type action. She explained if they see something, they can go out and has seen them have the child walk the scooter home and then talk to the parents. She stated she will talk to the Police Chief and have him speak to the dispatchers who are advising people there is nothing that could be done. She added they cannot write summons but having been trying through education to get some relief.

Mr. Meyers stated two weeks ago Mayor Ganz mentioned the BCIA was preparing a comparison of the costs to the Borough to fund the Recreation Center. Mayor Ganz stated he received the comparison at 4:30 p.m. today. He stated the result of the comparison shows \$120,000.00 less expensive for the Borough to go through BCIA. Mr. Meyers stated he had his own analysis which he presented to the Council. He stated it basically concludes that as a result of financing through the BCIA the Borough has overpaid by 2.6 million dollars. He found that the cost sheet that was provided by Borough pursuant to his OPRA request has a stated interest rate which was different from interest that was actually used in the debt service. He stated that difference alone was almost 2.3 million dollars. The difference in the professional fees was between what the Borough would have paid to finance it themselves and professional fees incurred for setting up the non profit and all the professionals was another \$113,000.00 which is strictly a Pay to Play premium. He also stated the Borough could have drawn the money down as it was needed instead of placing the bond issue up front. That analysis yielded another \$271,000.00 in savings. The total when added all up was \$2,680,187.00 that the taxpayers overpaid on the financing of the Recreation Center.

Borough Attorney Lustgarten asked what legal fees were incurred for setting up for establishing the non profit and who was it paid to . He was curious as to what Mr. Meyers was saying. He added Mr. Meyers was making accusations or statements which he was certain were facts and he wanted to know the answer. He felt he was wrong. Mr. Meyers replied he was an OPRA request in for the documents that make up the \$177,000,000 that the Mayor announced two weeks ago and that document will be posted on his website. He added right or wrong the truth will be told. Borough Attorney Lustgarten stated Mr. Meyers is making these statements without having the facts. He wished to know since he said legal fees were paid, who and how much were they paid. Donald Meyers stated he could tell him how much and that amount is \$21,501.58 and that amount was announced to the public by Mayor Ganz for the lawyer. Borough Attorney Lustgarten stated he did not bother to check to see if the Fair Lawn Community Center lawyer was the same lawyer who established the non profit organization. He added for Mr. Meyers and the public who he was misinforming that he set up the non profit corporation in December 2003. He added it did not cost the Borough anything for his legal services. The only cost to the Borough was the filing fee and the purchase of the corporate books.

Borough Attorney Lustgarten explained to Mr. Meyers he should not make statements without first getting the facts. He is making himself look foolish and doing a disservice to everyone up here and making misstatements to the public. He is the one who did it and knew what it cost and reiterated that Mr. Meyers has incorrect information.

Mr. Meyers stated the \$21,000.00 in fees that was paid to the Community Center's lawyer would not have been paid if that entity had not been set up in the first place. Borough Attorney Lustgarten stated he was wrong and asked him to try to let him educate him on this and maybe he would have a different opinion. Borough Attorney Lustgarten asked Mr. Meyers if he had any concept or idea of the interrelationship of all the functionaries who set up this whole program to

get this building. Mr. Meyers stated this is the time for public comment and what Borough Attorney Lustgarten was doing was a lawyers trick by taking him off the track of what he needs to do here tonight which is get to the bottom of what happened.

Borough Attorney Lustgarten added although he does not read Mr. Meyer's website someone told him that he had accused him personally and someone else of criminal conspiracy in violating bidding laws. He asked Mr. Meyers if he made that statement and if he did not then he would not pursue it, however, if he did that is a defamatory statement because it is untrue. Mr. Meyers believed that the setting up of the Community Center, Inc. was nothing more than an alter ego of the Borough of Fair Lawn established with the purpose of bypassing state law related to the bidding of public contracts. He added Borough Attorney Lustgarten set up the non profit corporation. Borough Attorney Lustgarten asked him again if he stated that he and the Mayor and others were involved in a criminal conspiracy with respect to the bidding laws for this Community Center. Mr. Meyers stated it was his opinion that what the Borough of Fair Lawn did in the establishment of the Community Center, Inc. is very possibly a criminal act. Borough Attorney Lustgarten asked Mr. Meyers if he said it or not and if he did he was telling him to retract it. He stated if he is accusing him of criminal conspiracy he is defaming him. He added Mr. Meyers better have facts to support this so called conspiracy. He explained to Mr. Meyers what he needed if he planned to pursue this and asked him if he had all the facts. Mr. Meyers stated it is at least possible that this took place.

Borough Attorney Lustgarten held up an offering statement that relates to the Bergen County Improvement Authority and the Rec Center project. It lists all the people involved. He added Mr. Meyers stated the bond counsel did not review this, but that was not true either and if he read it he would see they did review it. Borough Attorney Lustgarten read from the book and advised Mr. Meyers of different pages he could find information on. Mr. Meyers stated the cost sheet that was given out by Borough states that Parker McCay was Counsel for the County. He asked Borough Attorney Lustgarten if he was stating that they were Counsel for Fair Lawn as well.

Mr. Meyers asked who the bond Counsel was that was hired by the Borough. Borough Attorney Lustgarten stated it was Parker McCay.

Borough Attorney Lustgarten read from the official statement again trying to educate Mr. Meyers. He explained the State approved the whole financing from the BCIA, the Borough, the 501(c). He wants to charge them with conspiracy or say there is a possibility of conspiracy he suggested he bring in the New Jersey Department of Community Affairs or the Finance Board. They had to give preliminary approval pursuant to statue before doing anything. Mr. Meyers asked were they aware that Fair Lawn Community Center Inc. had no assets and no independent existence other than as an alter ego of the Borough of Fair Lawn. Borough Attorney Lustgarten stated it is not an alter ego to the Borough.

Borough Attorney Lustgarten stated after the Council preliminary initially the proposals from three or four potential construction contractors the whole matter was passed off to the Board of Trustees. He explained the origin of the Board of Trustees. He added John Cosgrove was asked

by the Mayor if he wanted to serve on this Board. One of conditions of Mr. Cosgrove was he wanted to pick the trustees and there was discussion if Council members should or should not be on the Board. The consensus was so that the Council and the Borough stayed at arms length no one from the Council, the Manager or himself would be on this Board. The only person from administration on it would be the Superintendent of Recreation. All the people who were selected as trustees were selected by Mr. Cosgrove. He stated when he says alter ego legally that did not happen and factually it did not happen. Before people start making assumptions of what they think is happening they should make a phone call to him, the Mayor or the Manager asking what this is all about then they would explain it to them.

Mr. Meyers stated the Closed Session minutes from April 18th say that the Fair Lawn Community Center, Inc. was going to be informed of the contractors and the contractors would be prioritized. Borough Attorney Lustgarten read the letter sent to the trustees on April 15th. Mr. Meyers asked who were the trustees on April 15th. It was the Borough Attorney, Manager/Municipal Clerk Kwasniewski and George Frey because he did not resign his position until June 8th. He added that means they wrote that letter to themselves and it is very nice they could write a self serving letter stating they will not tell them who to pick but the Board of Trustee did not exist at that time.

Borough Attorney Lustgarten stated he did resign on June 8th but after he and the Manager resigned, the trustees interviewed contractors. The summary of costs went to Mr. Cosgrove on September 7, 2004. He added in order for Mr. Meyers to believe there is a conspiracy he should include the whole Council, Board of Trustees, BCIA, the Freeholders, Bond underwriters, Bond Counsel etc.

Mr. Meyers stated he has a real problem with this letter of April 15, 2004. The March Group who is the contractor who ultimately got the contract had a quote in for \$8.6 million dollars. He added now what they are saying is that same contractor ended up with an estimated cost that came to \$12.7 million dollars. He stated none of this took place under the supervision of the Borough Council and it is as if a blank check was written. He added they said this letter detailing the \$12.7 million dollars in costs was dated September 7, 2004 yet the ordinance authorizing a \$13 million bond issue was first introduced on June 1, 2004 three months before that letter was written. He suggested these costs were determined a lot sooner than the paperwork they are trying to put up as what he felt is a smokescreen. Borough Attorney Lustgarten stated he was entitled to his opinion but was very wrong.

Mr. Meyers stated the Fair Lawn Community Center is very much an alter ego of the Borough of Fair Lawn. The contractor was selected by the Borough Council and they did all the interviews. The amount of the financing was determined by the Council before the Board of Trustees were even appointed. He added at the

end of the day the Borough is getting back the building so they pick the contractors, arrange the financing because the minutes are replete with BCIA providing the financing all through the latter part 2003 and into 2004. The amount of financing was determined before the Board of Trustees were even selected and the Fair Lawn Community Center, Inc. is an independent legally separate corporation with no money to pay its bills other than what the Borough of Fair Lawn has given it in a bond issue. He stated at the end of day the

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building comes back to the Borough and the trustees of that Fair Lawn Community Center have no say in its running except to give the Mayor and Council advice that they will either accept or reject.

Borough Attorney Lustgarten stated the whole concept was that BCIA could provide the funding. The non profit corporation would be the trustees oversee the construction and would have input after the building was constructed. The land would be leased to the non profit so the building could be built. He stated at the end of the day the Borough of Fair Lawn will pay for this building and will get the building. The Recreation Center is being built for the residents of Fair Lawn and he may not like it but at the end of day funding is in place and Fair Lawn gets the building to provide services to children, seniors, basketball, walking track, theater and such. He stated unless and until Mr. Meyers can find a statute, rule or regulation rather than his accusations but a clear violation of anything he felt he should stop offending all the people sitting up here. He added if he did not like the Recreation Center that was fine but to think he has a gotcha on this by pure speculation that is not a nice thing to say and he should present real facts. Mr. Meyers stated this building was put up without anyone's input and it is more than the community can afford.

Michael Rooney, 14 Burnham Place asked what the status was on the Burgis Associates study. Manager/Municipal Clerk Kwasniewski stated it is not in yet but there is a meeting scheduled with Deputy Mayor Weinstein, Councilmember McCarthy and Mr. Burgis on May 13, 2005. She added

after the meeting they will do a final report and present it to the rest of the Council. Councilmember McCarthy stated it will be an informal presentation just to see what Burgis has been doing over the last few months. Mr. Rooney asked them to summarize what direction they gave Burgis. Deputy Mayor Weinstein stated they did ask to keep Daly Field green and to see what could be built there and talk to the residents. Mr. Rooney stated it would be general as far as what can and cannot be developed there and asked what the next step would be. Mayor Ganz the study will come to the whole Council and they will evaluate it and decide what the next step is.

Robert Gulack, 4 Bancroft Place stated it sounded that someone said the same law firm was bond counsel for Fair Lawn and for Bergen County and asked if that was the case. Borough Attorney Lustgarten explained who the Counsel was. Mr. Gulack thanked him for clearing that up. He thought they said it was the same and that was not the case.

Mr. Gulack hoped they were all on the same page with regard to the work that Burgis Associates is now doing. They have Daly Field, Archery Plaza and the Hayward Tract which are included on both the National Registrar Historic Places. He hoped they would not be looking to use any proposals that which in effect use Federal, State, County or Borough Funds in any way that encroach in any way of the historical nature of any of these properties because that would be subject to review by the appropriate National State authorities. Mayor Ganz stated there has been no talk of using any of those funds.

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Kenneth Tacobacci, 7-36 Henderson Boulevard stated the noise of the motor scooters is deafening from day to night. He stated this law has been around since 2000 and asked why they cannot do something about this noise. Mayor Ganz stated they have had discussion for several years and on a town level they have gone as far as they could legally go. Mr. Tacobacci there are State laws that other towns recognize but for some reason Fair Lawn does not. He read from the law under title 39-4-71. He asked why doesn't Fair Lawn recognize this particular law. Borough Attorney Lustgarten stated in his opinion those municipalities that pass these ordinances if they are challenged they will lose. They debated this about two years ago and looked at every single option.

Mr. Tacobacci stated there are citizens who are asking for some peace and quiet. Mayor Ganz stated Manager/Municipal Clerk Kwasniewski is very sensitive to this. He added they are aware this is happening besides the peace and quiet issue it is just dangerous for them because they do not obey traffic signals, they do not have brake lights and drive fast. He have required any person who has such a vehicle to register it and if it is not it can be seized by the police. He also suggested he speak with Manager/Municipal Clerk Kwasniewski and she will get in touch with the Police Chief. Mr. Tacobacci stated that does not address the noise issue. It addresses the legality of registering the vehicle and doing things by the law but does not silence the motor or noise. He also read from the Fair Lawn Noise Ordinance. He stated excessive sound is a serious hazard to the public health, welfare, safety and the quality of life. He asked why the Police cannot enforce this ordinance. Mayor Ganz stated they have to get a meter to measure the sound. Manager/Municipal Clerk Kwasniewski explained scooters are not above the sound level. The

noise ordinance concerns decibels and scooters are not above the decibels level for giving a ticket. They have to go by the readings by the meter and what the statute states.

Borough Attorney Lustgarten recollected that when they examined the specs for these motor scooters he believed the decibels were in the 60 decibel range and the ordinance states it has to be over 70 or 75 decibels. Although they are very loud they do not fall above the ordinance level. He felt this would be a perfect situation for Community Policing to try to come to the neighborhood when these kids are there and try to talk to them. Mr. Tacobacci stated there is just no let up. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to send a note to Chief Rose and see if Community Policing can go over to Henderson Boulevard.

Russ Mensch, 20-11 Gordon Place asked when they review the School Budget to take into consideration the music program particularly Marching Band Color Guard. He felt this is something to be considered the Marching Band Color Guard is 79 members it is the largest Varsity athletic team and they represent not only the Fair Lawn High School but Borough of Fair Lawn from the entire east coast in their competition to New York State to Walt Disney World in Florida. They are the number four Marching Band in the entire Country and represent this community with great pride. He asked them to take this into consideration. Mayor Ganz stated they just came from a meeting with the Board of Education. He knows the kids in the Marching Band do a lot and are they are not going to do any cuts in a cold hearted way but they have to be responsible to the residents of the Borough.

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ADJOURNMENT

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

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

Mayor David L. Ganz

Councilmember Allan Caan

Deputy Mayor Martin Etler

Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein

