

SPECIAL MEETING OF MAY 31, 2005

Mayor Ganz called the meeting to order at 7:31 p.m.

PRESENT: Mayor Ganz, Deputy Mayors Etler and Weinstein and Councilmembers Caan and McCarthy.

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

MANAGER'S REPORT:

Manager/Municipal Clerk Kwasniewski thanked everyone who participated in the Memorial Day Parade as well as everyone who came out to watch it. She added the parade went very well and everyone had a good time.

Manager/Municipal Clerk Kwasniewski stated Memorial Pool is now open on the weekends. They will begin filling Walsh Pool on June 13th and will be open both pools during the week once school closes.

ORDINANCE: FIRST READING

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

Ordinance No. 2017-2005

BOND ORDINANCE AUTHORIZING THE CONSTRUCTION AND COMPLETION OF VARIOUS CAPITAL IMPROVEMENTS AND THE ACQUISITION OF VARIOUS PIECES OF CAPITAL EQUIPMENT IN AND FOR THE BOROUGH OF FAIR LAWN, COUNTY OF BERGEN, NEW JERSEY; APPROPRIATING THE SUM OF \$940,800 THEREFORE; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OR BOND ANTICIPATION NOTES OF THE BOROUGH OF FAIR LAWN, COUNTY OF BERGEN, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$896,000; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING

Mayor Ganz explained this is a fast tract bond ordinance that includes the restructure and resurfacing of Borough roads, various water and sewer improvements, some minor improvement to recreational ballfields facilities and the acquisition of a memorial statue of Officer Collura.

Manager/Municipal Clerk Kwasniewski added that the Bergen County Prosecutor will be reimbursing the Borough for the cost of the tactical support vehicle and \$40,000 for the memorial statue.

There being no further discussion, upon motion by Deputy Mayor Weinstein and a second by Councilmember McCarthy , Resolution No. 177-2005 introducing Ordinance No. 2017-2005 was unanimously passed.

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

Ordinance No. 2018-2005

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 125, ENTITLED "LAND DEVELOPMENT", MORE SPECIFICALLY SECTION 125-60.1, ENTITLED "PUBLIC ADVOCATE" OF ARTICLE VI, ENTITLED "ZONING BOARD OF ADJUSTMENT AND PLANNING BOARD"

Mayor Ganz explained this is the public advocate ordinance which has been amended to comply with the Supreme Courts decision not to grant certification to the Appellate Division decision which voided that portion of the ordinance which allowed for some of the cost of the public advocate to be shifted to applicant or developer. He added the cost of the public advocate will be in the budget. They have set aside funds to cover the operating costs for the public advocate for both the Planning and Zoning Boards.

There being no further discussion, upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein , Resolution No. 178-2005 introducing Ordinance No. 2018-2005 was unanimously passed.

ORDINANCE: SECOND READING

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

Ordinance No. 2015-2005

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

Mayor Ganz stated this ordinance sets the salaries in accordance with the negotiated settlement with the PBA and the Superior officers union.

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

Upon motion by Councilmember McCarthy and a second by Councilmember Caan, Resolution No.179-2005 adopting Ordinance No. 2015-2005 was unanimously passed.

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

Ordinance No. 2016-2005

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

Mayor Ganz stated this ordinance is to set the salary for the Assistant Zoning Officer.

Donal Meyer, 8-22 Mayfair Terrace asked if these were new positions. Mayor Ganz believed it was without adding additional personnel. Manager/Municipal Clerk Kwasniewski stated they have always had the Assistant Zoning Officer's title but it has been a combined title. The assistant building inspector has been deleted. She added Technical Assistant Construction Official is a new title but the same person who has a Clerk Typist title will be getting that title and they will not be replacing that Clerk Typist. There is no additional personnel.

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

Upon motion by Councilmember Caan and a second by Councilmember McCarthy, Resolution No.180-2005 adopting Ordinance No. 2016-2005 was unanimously passed.

RESOLUTIONS BY CONSENT #18-2005:

Upon motion by Deputy Mayor Etlar and a second by Councilmember McCarthy, Consent Agenda 18-2005 containing the following items was unanimously adopted.

- a. Resol. #181-2005 - Extension of Bid: Printed Supplies - Recycled Paper
- b. Resol. #182-2005 - Use of Walsh Pool - Rising Stars Dance Academy
- c. Resol. #183-2005 - Refund Overpayment of Taxes
- d. Resol. #184-2005 - Professional Services - Sculptor
- e. Resol. #185-2005 - Award of Bid: Berdan Grove Field Improvements
- f. Resol. #186-2005 - Approval of Minutes:
 - Work Session 3/1/05
 - Closed Session 3/1/05
 - Regular Meeting 3/8/05
 - Work Session 3/15/05
 - Special Meeting 3/15/05
 - Closed Session 3/15/05
- h. Resol. #188-2005 - 2005-2006 Snow Plowing Agreement
- l. Resol. #189-2005 - Appointment to the Youth Advisory Board
- j. Resol. #190-2005 - Request for DOT Approval - Banners on Broadway

Resolution #187-2005 - Creation of Not-For-Profit Corporation - Fair Lawn Economic Development Corp., Inc.

Deputy Mayor Weinstein stated the Business Leadership Committee was formed in February 2002. The committee was determined after serious deliberation what appropriate. The EDC would take care of the smaller districts in town such as Radburn, Maple Avenue, Saddle River Road. They would also be involved in such issues such as working with New Jersey Transit and other governmental agencies in receiving grants for the town. This Council put up \$32,500.00 towards that research and the various diverse group of property owners, business owners, retailers and residents in town funded the research as well and putting a lot of hours in to come to this conclusion. He felt it would be appropriate for the Council to create and fund the EDC.

Deputy Mayor Etlar congratulated Deputy Mayor Weinstein all his hard work and a job well done. In this case this is a business organization and should be funded by business and run by business and he would be more than willing to use government in any way he knows how to streamline any emphasis on business to create and do business anyway in this town. He added, however, he had a philosophical problem with this and felt it should not be funded by public taxes and respectfully he disagreed with this.

Deputy Mayor Weinstein stated the town raised over \$50 million in taxes from the business districts and what they are asking for is a return of \$15,000.00 this year and \$30,000.00 the next two years. He added in essence it is seed money. The true definition of a public private partnership is that the public as well as the private contribute to this entity. This entity would be a not for profit organization and would be able to fund raise for themselves and hopefully would not need governmental dollars in the future. He added at this point they do and he felt it was important they stand behind it and fund it so it is successful.

Councilmember McCarthy agreed with what Deputy Mayor Weinstein. He stated three businesses that have left town, including Marty's Shoe Outlet, the Kodak Property and the Radburn Grand Union. He added all these businesses leaving do have adverse consequences to the Borough. He felt at this time all levels of government should do anything they can to try to entice businesses to stay. He thought the commitment of \$15,000.00 this year along with the \$30,000.00 for the Broadway SID is reasonable in light of what the business entities do and return to the Borough in terms of taxes and employment to residents. They provide a strong benefit to our community. He felt if they choose to ignore the problem they become part of the problem. He felt this would benefit everyone.

Councilmember Caan thought Deputy Mayor Weinstein and Councilmember McCarthy said most of it. This is an investment of the future and something they have seen on River Road. They also initially needed investment dollars from the Council and they are doing the same thing with Broadway. They cannot have Special Improvement District for Radburn and all the other smaller districts so the EDC will be an umbrella for those areas. In the long term it was a small investment for the future of all these business districts in town including Broadway and River Road. They have seen historically how investment dollars in the short term now provide much larger dollars in the future so this is a definitely a step in the right direction.

Deputy Mayor Etler agreed they are all good points except for the business that Councilmember McCarthy talked about moved out because of a business decision. People move to Fair Lawn because they can do business and feel comfortable doing it but they move out for the same reason because they cannot do business. He added they are getting services for their tax dollars. The Borough of Fair Lawn is providing good services for the businesses. He added they all have good points but he has a problem with it.

Deputy Mayor Weinstein stated research has shown the business districts the taxes they pay get a little over 25% back in services. He added a good example that was brought up at a meeting two weeks ago by the new president of the Broadway Improvement District was the Ameri Suites. The former hotel was bringing out \$30,000.00 in taxes and now Ameri Suites is paying \$330,000.00. He believed the government can help and the EDC is the answer to help businesses. Deputy Mayor Etler asked how did the government help that example. Deputy Mayor Weinstein stated the EDC can help match developers with sites. Deputy Mayor Etler stated the Zoning Board helped considerably there also. Deputy Mayor Weinstein stated Ameri Suites had to find the site.

Mayor Ganz felt the point that everyone acknowledges is there is a need to attract business to town. He understands Deputy Mayor Etler's philological position being opposed to governmental involvement or at least paying for their involvement. The alternative is to have it done on a volunteer basis and that is unacceptable because it does not work. He added when Grand Union departed it was a consensus of the Council that they were going to try to get a replacement supermarket there. He took it upon himself to research and contact 24 supermarkets. He spoke to vice presidents at the highest level from national chains to small chains and after dozens of hours of work they all said it was not for them because the site was too small or it just did not work for them. He explained what an EDC brings is structure, employees, dedicated persons who are able to articulate the vision of the town not from the government standpoint but from a business standpoint. He stated he would be pleased to support the EDC.

The consensus was to contribute \$15,000 this year to the EDC with additional support to be considered in the future years with Deputy Mayor Etler dissenting.

MISCELLANEOUS PUBLIC COMMENTS:

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

Harvey Rubinstein, 28 Rutgers Terrace was confused about the public advocate and asked if he would be attending Zoning and Planning Board meetings. Mayor Ganz stated he does not have to but can if he wishes or if someone else needs him there. Mr. Rubinstein stated the public advocate will request a expert such as in engineering or whatever they need. Mayor Ganz stated it is typically a traffic planner or planner or noise engineer. It could be many other things that are requested. Mr. Rubinstein asked if he would request that of the Chair of the Zoning or Planning Boards. Mayor Ganz explained that was correct and then the Chair will make a decision in consultation with his or her board as to whether or not the board wishes to engage that expert. If the board wished to engage that expert,

then the expert will be engaged. If they decline to do so the expert will not be engaged by the Zoning Board. Then the matter will be referred to the Mayor and Council to determine if

the Mayor and Council wish to bear the cost of the expert. Mr. Rubinstein asked if the referral to the Mayor and Council would be by the public advocate. Mayor Ganz stated it would be by the Zoning or Planning Board. Mr. Rubinstein asked if there was a time frame within that ordinance. Mayor Ganz stated there was no time frame.

Mr. Rubinstein asked who the vendor was who stocked the water and sodas in the refrigerator. Manager/Municipal Clerk Kwasniewski stated Building and Grounds goes to Shop Rite.

Stuart Golding, 14 Rutgers Terrace questioned the need for the EDC. Businesses make their own decisions whether or not to come to a town. Borough Attorney Lustgarten explained that the EDC will act as the facilitators to help businesses see the value of coming to Fair Lawn.

Councilmember McCarthy stated it will not make someone come to Fair Lawn out of the blue but if someone is looking at Fair Lawn, Paramus or Fort Lee, is an avenue to entice them to come here because it makes the applications process that much easier.

Mayor Ganz stated the great thing about a EDC is that it has the ability to help attract business and give the businesses the packages and information they need. He has had no fewer than 12 extensive calls from people interested in the Kodak site who want to know everything about the Borough, what kind of Boards they have, activities, etc. He answers their questions but they would be better served by a professional.

Deputy Mayor Weinstein stated people have heard rumors that in the CVS shopping center there will be a dollar store going in. He added although it is a rumor if the EDC could help and bring in a higher type of business that would help the whole community. He stated that the Mayor and Council and Manager can devote only so much time to this but EDC is there to do that. He felt helping the business owner helps the residents of the town including jobs and better business to patronize and so on.

Donal Meyers, 8-22 Mayfair Terrace asked them why they were having the meeting in Room 201 instead of the Court Chambers. Mayor Ganz stated this it is the fifth Tuesday but they scheduled a special meeting for the purpose of passing the bond ordinances and other ordinances so it is a work session meeting.

Mr. Meyers stated a letter from BCIA dated October 2003 which mentioned a 1/10 of 1% maintenance fee to be paid to the BCIA annually with regard to the Fair Lawn Recreation Center bond issue. He asked if that was correct. Mayor Ganz stated he received that question from him already in email form and had advised Mr. Meyers that he would send it to Ed Hynes, the Executive Director of the BCIA. He had not heard back from Mr. Hynes yet. Mr. Meyers stated they did not know if they had to pay this. Mayor Ganz repeated his answer and stated there are approximately 700 pages of documents that the BCIA statement contains and he did not know the answer to that particular question but did refer it to Ed Hynes and is awaiting his response. He added when he gets the answer he will let him know. Mr. Meyers assumed that would be after the election.

Mr. Meyers asked where the \$975,000.00 that the old art center was sold for. Mayor Ganz stated it went into surplus.

Mr. Meyers stated the email they sent him there is a spreadsheet with the differential between County's bond rates and the Fair Lawn bond rates. He reviewed the spreadsheet he noticed the negotiated rate that Fair Lawn actually paid for this private placement is somewhat higher than the County's bond rate. He stated the bonds that come due in 2005, the County's AAA bond's rate was 1.78% yet the negotiated effective rate they are paying is 1.85%. For bonds that come due 2022 rate is 4.11%. He added they were given to understand that the whole reason for financing through BCIA was to get the benefit of the County's AAA bond rating and yet this negotiated rate and this was private placement with MW Capital does not reflect the County's AAA rating. He asked if there was a reason for that. Mayor Ganz disagreed with him and stated it reflects the guarantee of the County and guarantee of the Borough and a lower rating on the Borough probably had got if they went out on the outside market itself when he looks at it overall. Mr. Meyers stated he still did not answer the question and asked again if there is a reason the negotiated rate is higher than the AAA rate that the County would have paid if they had quoted the bond issue on same date. Mayor Ganz stated you have to estimate what that rate will be but as indicated to him previously the entire transaction was done by BCIA with the Borough of Fair Lawn and that is the rate they were quoted and that is the rate that they could have accepted or rejected and they choose to accept the rate.

Mr. Meyers asked if they knew what interest rate the County could expect to receive at the time. Mayor Ganz stated they had an approximate number. It is an approximate number because it is not a transaction that was consummated. That was the best estimate the BCIA experts were able to provide. Mr Meyer asked if it was correct that this was provided in May of 2005. He has not seen anything in any of the OPRA requests that he has made that indicates that this government or Mayor Ganz has made any attempt to compare the County's interest rate against the rate they are actually getting. Mayor Ganz stated the Council is satisfied based on oral inquiries on or around the time of the bond offering that the rate was competitive. Mr. Meyers stated they adopted an ordinance on June 15, 2004 and that ordinance authorized Mayor Ganz to sign any papers. There are no records in any of the minutes that Mayor Ganz consulted the Council after that date. The only way he could see that happening was if they were holding meetings in violation of the Open Meetings Act. Mayor Ganz advised Mr. Meyers that was an outrageous allegation to even hint that this Council would violate the law.

Borough Attorney Lustgarten stated objectors cannot have it both ways. They cannot say that the corporation is an alter ego of the Council and then complain if the Council actually has the corporation at arm's length and that they are not in on all the details after they have turned it over. He explained he and Manager/Municipal Clerk Kwasniewski were on numerous conference calls with underwriters, bond counsel and three or four other people.

They must have had at least four other calls that after the preliminary opinion statement was issued they always discuss timing and the rates. He told them they were going to lose competitive rates if the bond closing was delayed and if there was something he should bring back to the Council. They were told in those conference calls they would not lose those rates. The underwriters were concerned after January 1, 2004 and 2005 that there might have been some change in rates. They advised them the market was static. He

explained of that Mr. Meyers would not have found this in the minutes of the Council meetings because it was administrative. He stated the final statement it goes over everything in terms of all the resolutions, ordinances, approvals, Local Finance Board and everything that was done. Then the bond issue was actually put out for quotes sometime in

December. There was nothing secretive about it. There were no secret meetings. Once this corporation was set up the Council was not involved and he and Manager/Municipal Clerk Kwasniewski were involved administratively. He added basically the Council had to keep their hands off of this or it would have been an alter ego.

Mr. Meyers asked if it was corrected that the Council did not vote on accepting the financing rate. Borough Attorney Lustgarten stated the Council gave general authorization to execute all necessary and appropriate documents by the resolution and ordinance the Council adopted. Mr. Meyers stated they did not take a vote after June 15, 2004 in regard to the interest rate. He added at June 15, 2004 no one knew what the interest rate was going to be. Borough Attorney Lustgarten stated what is was going to be is correct but not knowing the interest rate is not because during their conference calls they were constantly asking them what the rates were. Mr. Meyers stated then they knew what the interest rate was going to be on June 15th, that was the last time there was any kind of vote so either they knew the rate at that time or they did not. Borough Attorney Lustgarten stated checking the interest rate was a continuous process because he and Manager/Municipal Clerk Kwasniewski knew that inflationary factors were fairly stable but from lines of credit on personal basis that interest rates were starting to pick up. He did not know exactly how that affects the bond market but he made inquiries and they were told on all conversations up until maybe the change of year might have a change but not to worry the interest rates were stable. Mr. Meyers stated this is all going on after the Council authorized Mayor Ganz to sign the necessary papers. Borough Attorney Lustgarten stated that was correct both before and after. Mr. Meyers stated then at no point after that resolution did the Council ever get to consider the interest rate and whether it was fair or not. Borough Attorney Lustgarten stated if he was asking if anyone took the interest rate back to the Council the answer is no. There was no reason to bring it back to Council because they had the authority from the initial document to bring this to fruition and they did.

Harvey Rubinstein, 28 Rutgers Terrace asked what the line item was on the Manager's Report for \$46,000.00 to Carter and English, Esqs . Manager/Municipal Clerk Kwasniewski stated off the top of her head she did not know but would be happy to find out and get back to him.

There being no additional comments from the public, upon motion by Councilmember McCarthy and second by Councilmember Caan, the time for public comments was unanimously closed.

ADJOURNMENT TO WORK SESSION

Upon motion by Deputy Mayor Etler and a second by Deputy Mayor Weinstein, the meeting was adjourned at 8:27 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 Etlar

Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein