

WORK SESSION APRIL 13, 2004

Mayor Ganz called the meeting to order at 5:35 p.m.

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

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

Closed Session:

Upon motion by Deputy Mayor Weinstein and seconded by Councilmember McCarthy the following closed session resolution was unanimously adopted at 5:38 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 contract negotiations and personnel; 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 contract negotiations within 180 days except for legal strategy or upon resolution if the matter is resolved and for personnel upon appointment by either the Borough Manager or Mayor and Council; 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.

The meeting was recessed at 8:10 p.m. so the Council could attend the regular meeting at Memorial School.

Mayor Ganz reconvened the Work Session being held at Memorial School at 8:46 p.m.

Cablevision Renewal:

Mayor Ganz stated that this matter was moved to the May 4, 2004 Work Session.

Public Advocate / McDonald=s:

Manager/Municipal Clerk Kwasniewski stated this was a policy decision if the Council determined Ron Mondello was needed to continue as Public Advocate on the McDonald=s litigation. Mayor Ganz stated this position was established years ago for people who need representation. He recommended that the Council fund this position.

Attorney Lustgarten believed that the attorney for the board could represent the Borough. He added that he had reviewed the transcripts from the McDonald=s case and felt no additional input is necessary.

Deputy Mayor Etlar stated this was a wise decision to fund this position since the McDonald=s case is important to the Borough.

There was a unanimous consensus to fund the position of Public Advocate, with the amount not to exceed \$3,500.

Memorandum of Understanding - Bergen County Department of Health Services and Local Hazardous Material Response Team:

Attorney Lustgarten stated he had reviewed the proposed agreement. He wrote to the County Counsel and has not received a response from them. He asked that this matter be deferred for four weeks.

Use of Walsh Pool - Midland Park:

Manager/Municipal Clerk Kwasniewski stated that Midland Park has requested the use of Walsh Pool for their summer camp program. They would use the pool two weeks in July and two days in August.

There was a unanimous consensus to authorize Midland Park to use Walsh Pool.

Request for Overnight Parking at Memorial Park:

Manager/Municipal Clerk Kwasniewski stated she had received an email from a resident on Dewey Place requesting parking by permit at Memorial Park. She asked Engineering, Parks and the Police Department to see if they had a problem with it. The Police felt as long as the residents removed their cars by 8:30 a.m. there should be no problem. They could charge \$20 per years. She thought it would help solve the residents parking problem. Mayor Ganz suggested they give it a try for a couple of months. Deputy Mayor Etler stated he was against it but is now in favor of it. Attorney Lustgarten agreed except in times when the Borough needs the spaces. Mayor Ganz suggested that Attorney Lustgarten draw up the license agreement. Attorney Lustgarten explained that was not necessary for a municipal lot. Councilmember Caan felt it was a good idea to help the residents. Councilmember McCarthy asked what time they would be allowed to park there. Manager/Municipal Clerk Kwasniewski stated it would be between 5:00 p.m. and 8:00 a.m.

Deputy Mayor Weinstein stated he thought they should try to think creatively to help ease the residents problems with overnight parking.

There was a unanimous consensus to authorize overnight parking in Memorial Park.

Well Drive Update:

Manager/Municipal Clerk Kwasniewski stated she was pleased to report that the surveys were done. She will need to make an application to the Planning Board. Attorney Lustgarten advised that he would do it. Mayor Ganz asked that they do it for the May Planning Board meeting.

Request from Environment Commission (Dundee Island):

Manager/Municipal Clerk Kwasniewski advised that the Environmental Commission has proposed to turn an island in the Passaic River into a wildlife preserve. They asked for a letter or resolution from the Council. The commission would like to have the Council=s thoughts on this subject. Councilmember Caan felt they would need to be more specific. Mayor Ganz asked that they find out who owns the island.

Field Lighting Status:

Manager/Municipal Clerk Kwasniewski reported that PSE&G has installed the poles and the wiring has been completed. The final walk through will be next week.

April 19 Meeting Date:

Manager/Municipal Clerk Kwasniewski stated the April 19th Work Session was scheduled on Monday since the School Board Election is on Tuesday, April 20th. Monday is not good for Deputy Mayor Etler since he has a Planning Board meeting. Wednesday is not good for Councilmember Caan since the Freeholder=s hold their meeting then. She had various suggestions to start earlier on Monday or early on Tuesday. Mayor Ganz advised they should start the meeting early on Tuesday and if Manager/Municipal Clerk Kwasniewski runs into an election problem they can adjourn the meeting to a later date.

There was a unanimous consensus to hold the Work Session on Tuesday, April 20th at 5:30 p.m.

RRIC Request to Hold a Car Show:

Manager/Municipal Clerk Kwasniewski reported that she had received a request from River Road Improvement Corporation to hold a classic car show on September 28, 2004. They would need to close River Road. Deputy Mayor Etler felt it was not good to hold the show on a Tuesday because during the week it is tough with traffic. Manager/Municipal Clerk Kwasniewski stated they have already gotten approval from the County. The merchants will remain open. Mayor Ganz felt it was a great idea even if closing River Road may cause some minor inconvenience to the residents.

There was a unanimous consensus to allow River Road Improvement Corporation to hold a classic car show on September 28, 2004.

Mayor Ganz asked about finding out if there is a rain date and to report the date back to the Council.

Miscellaneous Public Comments:

Edward Dunn, 40-13 Kuiken Terrace, expressed his concerns about his neighbors property. They have redone the rooms and made space in the garage and attic to board people. The owner has been fined several times. Mayor Ganz advised him that it had to go through the legal process. Attorney Lustgarten advised that the fines will continue. Mayor Ganz asked Manager/Municipal Clerk Kwasniewski to get status of the property at 40-09 Kuiken Terrace. He also asked that the Building Inspector check the property and do what they have to do.

Alex Kapulsky, 40-05 Kuiken Terrace, stated three families have come to the meeting to express their concerns about this property. Attorney Lustgarten advised him to call the Manager's office to see what is happening with this property.

Jim Funcheon, 49 Albert Avenue, asked if the Council awarded the contract for the addition to Company 2's fire house. Mayor Ganz advised him that at the regular meeting that was just held the resolution awarding the contract was passed by the Mayor and Council.

Closed Session:

Upon motion by Deputy Mayor Etlar and seconded by Deputy Mayor Weinstein the following closed session resolution was unanimously adopted at 9:19 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; and

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

WHEREAS, public disclosure of the results of these discussions shall be made relating to Personnel upon appointment by the Borough Manager or Mayor and Council; 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.

Mayor Ganz reconvened the Work Session at 10:25 p.m.

Adjournment:

Upon motion by Deputy Mayor Etlar and a second by Councilmember Caan, the meeting was adjourned at 10:25 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

REGULAR MEETING APRIL 13, 2004

Mayor Ganz called the meeting to order at 8:20 p.m.

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

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

COUNCIL COMMENTS

Deputy Mayor Etlar gave his monthly activity report:

Penny Nakashian wake
Borough EPA Meeting
Borough Planning Board Meeting
Establishment of another Neighborhood Watch at Memorial School
Lutheran Church Nursery Anniversary
Monthly Fire Board Meeting
Lackland Storage reopening ribbon cutting
Gave a lecture at Bergen Community College
D.O.T. Meeting at City Hall in regards to Midland Avenue
Vets Administration in the County to find out about flags for Memorial Day
Update on CPR at Company #4
St. Patrick=s Day Parade at St. Anne
Bar Association Seminar for land use at the Bergen Community College
Ambulance Corp Meeting
Fair Lawn Historical Committee Meeting
Homeland Security seminar at Monmouth Community College with the OEM Director, it was sponsored by Senator Frank
Laudenberg
Dare Graduation at Memorial School
Preliminary demonstration for Emergency Management with our mutual aid partners, Paramus and Ridgewood at Memorial Park

Deputy Mayor Weinstein stated he attended a number of the same functions. This Saturday is the third Adopt a Park Day, he will be there if anyone is interested in attending please come down to Memorial Park.

Councilmember Caan stated this afternoon he attended a luncheon with the 200 Club to honor police and fire officers and all emergency management people. It was dedicated this year to the Mary Ann Collura. The one year anniversary of that tragedy is coming up and he wanted to remind everyone of the Candlelight Vigil being held Saturday and 6:30 p.m. at Memorial Park.

ORDINANCES: SECOND READING

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

Ordinance No. 1973-2004

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR
LAWN, 2000, BY AMENDING CHAPTER XII, ENTITLED AWATER@, SUB-
SECTION 12-4.2, AWATER RATES@

Borough Attorney Lustgarten explained this Ordinance sets the price of water to \$3.38 per one thousand gallons.

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

Upon Motion by Deputy Mayor Etlar and a second by Councilmember Caan, Resolution No. 140-2004 adopting Ordinance No. 1973-2004 was unanimously passed.

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

Ordinance No. 1974-2004

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN, 2000, BY AMENDING AND SUPPLEMENTING
CHAPTER 94 TO REVISE FEES

Attorney Lustgarten explained that the Council established a program to send information to new residents from local merchants. This ordinance establishes a fee that merchants pay to cover the cost of being in the program.

Upon Motion by Deputy Mayor Weinstein and a second by Deputy Mayor Etlar , Resolution No. 141-2004 adopting Ordinance No. 1974-2004 was unanimously passed.

Resolutions by Consent #9-2004

Upon motion by Deputy Mayor Etler and a second by Deputy Mayor Weinstein Consent Agenda 9-2004 containing the following items was unanimously adopted.

a. Resol.#142-2004 - Approval of Minutes

Work Session 10/21/03

Special Meeting 10/21/03

Closed Session 10/21/03

Regular Meeting 10/28/03

Work Session 11/10/03

Regular Meeting 11/10/03

Closed Session 11/10/03

Regular Meeting 11/24/03

Work Session 11/24/03

b. Resol#143-2004 - Approval of Raffles & Bingos:

HB Milnes School PTA Non-Draw Raffle

c. Resol#144-2004 - Award of Bid: Well Service 2004

d. Resol#145-2005 - Award of Bid: Addition & Alterations to Fire Company No. 2 Fire House

e. Resol#146-2004 - Award of Bid: Bioxide Odor and Corrosion Control Chemical

f. Resol#147-2004 - Award of Bid: Memorial Park Veteran=s Circle Memorial Markers

g. Resol#148-2004 - Award of Bid: Radio Repair and Maintenance

h. Resol#149-2004 - Refund of Overpayment of Taxes

i. Resol#150-2004 - Appointment to the Planning Board

j. Resol#151-2004 - Endorsement of the Recycling Tonnage Grant

k. Resol#152-2004 - National Community Development Block Grant Week

l. Resol#153-2004 - Supporting the Highlands Water Protection and Planning Act

m. Resol#154-2004 - Approving Fire Board Actions

n. Resol#155-2004 - Professional Services: Nursing Services

o. Resol#156-2004 - Defender County Tax Board of Appeals

p. Resol#157-2004 - Rejection of HVAC Bids

MISCELLANEOUS PUBLIC COMMENTS

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

Howard Hyde, 13-07 Ellis Avenue, advised he was in receipt of a letter from the Borough called the New Resident Program and what it is that Councilman Caan sends welcome letters to the residents on Borough letterhead at Borough expense. Councilman Caan requests local business owners and organizations to advertise on the back of his letter. The Fair Lawn Republican Party submitted an advertisement with a check, following all the instructions on the letter, but Councilmember Caan sent the check back and told them they were not allowed to advertise. Mr. Hyde stated that he found it strange that something that was paid for with tax dollars by a local organization was excluded by Councilman Caan. He stated he would like to know why he was excluding the Republican Club from welcoming residents. Mayor Ganz stated he would have Attorney Lustgarten respond. Mr. Hyde stated he would like to have Councilman Caan respond. Mr. Hyde was advised by Mayor Ganz that Attorney Lustgarten would have to respond. Attorney Lustgarten advised Mr. Hyde that Councilman Caan called him when that check was submitted and he advised Councilman Caan that this program was not intended for any political party. It was a letter strictly to advise residents of services in town, organizations like the Lions Club, Chamber of Commerce, things like that which are not politically oriented should be acceptable for this non political mailing.

Mr. Hyde stated he recognized the writing that it came from the Borough Attorney but he was still at a loss for the legality of public funds being used to exclude certain groups. He also noticed on the example sheet that there was a church, and he wondered if churches and synagogues could advertise. Attorney Lustgarten advised as long as it was not on a discriminatory basis. Mr. Hyde intervened by saying he was discriminating by eliminating the Republicans. Attorney Lustgarten stated that any organization that was not commonly known as a group organization, an organized group committee or viewed as a political organizations would be excluded. Service organization in town would be included in the list.

Mr. Hyde stated they were not asking the Borough to endorse the Republicans. He wanted an answer from Councilman Caan. Attorney Lustgarten stated he did not wish to debate the issue, he did not believe a political organization should take advantage of

the program. Mr. Hyde wanted to know if this is a legal thing or is it personal. Attorney Lustgarten said he would not answer that question, he was asked to respond as the Borough Attorney. Mr. Hyde wondered why the Republican Party as well as the Democratic Party can set up a booth at the Fair Lawn Street Fair. Attorney Lustgarten advised that the Fair Lawn Street Fair is not run by the Borough it was run privately. It is the Borough streets, sidewalks, so they have to follow certain guidelines. The Borough leases the use of the streets to an organization who has a management company. The Borough has no control of operation or otherwise with respect to them.

Mr. Hyde asked whether the New Resident Program was written anywhere and whether there are written guidelines. The letter he received was addressed in general to any business owner or any organization. There is nothing in it that says anyone was excluded. He stated he was just curious if there is a written program that said political groups were excluded. Attorney Lustgarten advised that common sense dictated that this was not set up for political parties. Mr. Hyde wanted to know why this letter was not coming from the Manager or why this was actually not a function of the Chamber of Commerce of whom Councilmember Caan is a director. Councilman Caan stated he was not a director on the Chamber of Commerce, he was just a member. He understands that Mr. Hyde received a letter as a member of the Chamber of Commerce, which is fine and if he wishes to advertise his particular business he is welcome. However, political organizations were not invited whether they are Democrats, Republicans or Independents and as far as the Chamber of Commerce not doing it he would have to ask them. This is something he thought would be good for the businesses in town and some organizations in town in order to introduce them to new residents which is something he thought they would appreciate doing. Mr. Hyde responded by saying they also think it is good for Mr. Caan=s re-election to reach out to new voters. Councilman Caan said that may be, however, these letters were going to new residents not new voters. Mr. Hyde asked why this didn=t come from the Manager to keep politics out of it.

Mayor Ganz stated there are no politics involved . Mr. Hyde wanted to know if this program was voted on by the entire Council. He was advised this was not voted on but the Ordinance was just adopted a few moments ago involving the fee of \$50.00. Mr. Hyde asked who is the chair of the Ethics Committee now. Borough Manager/Municipal Clerk Kwasniewski advised that Ms. Violet Etlar was the chair of that committee. Mr. Hyde stated that it was Attorney Lustgarten=s opinion that all political groups should be excluded from this program. Mr. Hyde said it was a legal opinion that Councilman Caan came to Attorney Lustgarten and he gave him as the Borough Attorney, his legal opinion. He asked for written legal opinion from Attorney Lustgarten stating that political groups were excluded from this new resident program and asked him how cite case law to say that this is a legally excludable way to keep a group from advertising through a Borough tax funded program. Attorney Lustgarten felt he stated it tonight and his comments will be included in the official record of this Council. Mr. Hyde stated it takes quite some time for the Council minutes to be approved. Attorney Lustgarten stated it does not take that long. Mr. Hyde reiterated his request for a written response. Attorney Lustgarten stated he was not trying to duck him but he has fifty things he has to do. Mr. Hyde stated it sounded like he was trying to duck him. Attorney Lustgarten stated that was in his opinion because he was focused on one issue. Mr. Hyde asked what makes any of those issues more important than his. As a resident of this town, he has issues. They may not be important to Attorney Lustgarten but it is important to him and other people in his group. Attorney Lustgarten stated he would make a deal with him if the minutes do not get approved before he gets the opinion, he will give him a written legal opinion and stated he will stand by that. He stated he would prioritize his issue with any other issue. Mr. Hyde stated he was making it sound like a single person issue, this is a town issue. Attorney Lustgarten stated he agreed it was a town issue. Mr. Hyde stated he will bring other people with him to the next meeting and they could stand up and take turns talking. Attorney Lustgarten informed Mr. Hyde that he just spent a full day in court for Fair Lawn business, he has Construction Code of Appeals on Thursday night, he has a lot of responsibility to the Borough of Fair Lawn. His comments have been made. They have been recorded and are on television since this meeting has been televised and there will be approved minutes of this body. He cannot do it sooner than this body approves the minutes.

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

ADJOURNMENT

Upon motion by Deputy Mayor Etlar and second by Councilmember Caan, the meeting was recessed to the Work Session at 8:45 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

