

## WORK SESSION MAY 4, 2004

Deputy Mayor Etler called the meeting to order at 7:30 P.M.

PRESENT: Deputy Mayor Etler, Councilmembers Caan and McCarthy. Deputy Mayor Weinstein arrived at 7:35 P.M.

ABSENT: Mayor Ganz

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

Review of Tentative Agenda 5/11/04

Manager/Municipal Clerk Kwasniewski stated that there are no additions to the agenda at this time.

### Cablevision Renewal

Gary Shaw of Cablevision was present and explained that he was attempting to move franchise renewal process forward. He met with the Cable Committee in May 2003 to discuss the survey and whether or not it would make more sense to forego the survey and put that money into public access equipment for the Borough. The Committee followed up with a letter in August 2003, stating that they would recommend that funds be put into public access equipment that Cablevision would furnish to the Borough as part of the renewal. The recommendation was passed on to the Council. Mr. Shaw stated that discussions on the renewal agreement need to commence.

Deputy Mayor Etler asked why individuals can't pay for the channels they want to select. Mr. Shaw recognized that this is a common complaint and stated that there are two reasons why this can't be done. The first is because this would mean that the entire system would have to be addressable. It would also be necessary for every cable customer to have a converter box on each television. The other obstacle is that the subscriber ship to certain channels such as ESPN or CNN would fall and in turn, these channels would not be able to charge as much as they are able to now, for advertising space. Mr. Shaw added that the model of the cable industry was redefined in 1992 when Congress implemented itemization of the bills and separation of a broadcast basic package and an expanded basic package. Mr. Shaw stated that the a la carte channel selection that Deputy Mayor Etler is referring to may happen at some time in the future, however, today the economic impact to the programmers is the biggest obstacle to making it happen.

Councilman McCarthy questioned the possibility of a discounted cable rate for senior citizens. Mr. Shaw stated that there is currently a \$2.10 discounted rate off the price of the Family Level of service in effect in Fair Lawn. This discount is available to all seniors who meet the eligibility requirements which are set by state law and tied to the Pharmaceutical Act for the Aged and Disabled (PAAD). Mr. Shaw stated that the income level requirements are \$24,000 for a married couple over 62, and \$20,000 or less for a single individual over 62. Councilman McCarthy asked Mr. Shaw to get exact information for the Council so that they can make senior citizens in Fair Lawn aware that they should take advantage of the discount if it pertains to them.

Councilmember Caan asked about the arrangement that Cablevision has with senior citizens in Mahwah. Mr. Shaw stated that they are presently in negotiations for a renewal agreement in Mahwah and they have offered less of a discount to the senior citizens there.

Cablevision is currently offering a 25% discount for family and broadcast basic for senior citizens because they are operating on an inherited agreement with TKR.

Attorney Lustgarten questioned the number of subscribers and annual gross revenues for Cablevision in Fair Lawn. Mr. Shaw replied that there are 9005 Cablevision subscribers, however, he did not know about gross revenues. He will get this information. He stated that the average bill per household is about \$42 or \$43. Upon further questioning by Attorney Lustgarten, Mr. Shaw estimated the cost of the survey to be approximately \$8,000 with a guaranteed response rate of 200. Attorney Lustgarten stated that the franchise ordinance agreement with Cablevision requires that they cover the cost of the survey. He stated that Section 9 of the agreements refers to equipment that Cablevision would supply and he told Mr. Shaw that he will be going through all of these items to make sure that each one was supplied by Cablevision to the Borough.

Mr. Shaw stated that Cablevision has offered three options to the Committee. Cablevision would implement the survey drafted by the Committee. Cablevision took exception to the questions of whether or not a customer had a satellite dish and whether customers should pay for the YES network. Cablevision had hired a company to prepare a survey which the Committee felt was too comprehensive and the survey was reduced somewhat. Mr. Shaw stated that before the survey goes out he knows what the results will be and therefore he feels that this is a waste of \$8,000 of Borough funds.

Attorney Lustgarten reminded Mr. Shaw that Cablevision is required to proceed with the survey as required by the ordinance. He added that Cablevision has not conducted a survey over the past five years which means Cablevision has saved the cost of five years worth of surveys at \$8,000 per year. Therefore, Cablevision owes the Borough between \$35,000 and \$40,000 as per the 1998 agreement. This money was never spent on Fair Lawn for surveys or equipment and he would anticipate that the \$35,000 is owed to the Borough and would be the starting point for any negotiations. Mr. Shaw stated that the language of the agreement refers to a Ajoint creation of both the Board for Fair Lawn and the Committee@, however, Attorney Lustgarten stated that Cablevision had the obligation to distribute a survey.

Attorney Lustgarten referred to Section 9 of the ordinance indicating that the company should install, at no cost to the Borough, a cable drop line to all municipal buildings. Mr. Shaw stated all municipal buildings have free cable service. Regarding cable in the schools, Mr. Shaw stated that this is done on an Aas requested@ basis. Mr. Shaw stated that input capacity has been taken care of from the Municipal Building but he was not sure if this return line has been at the Board of Education.

Attorney Lustgarten concluded stating that in his view, Cablevision owes the Borough between \$35,000 and \$40,000. He asked how much new equipment Cablevision is willing to provide the Borough of Fair Lawn over and above the amount already owed. Mr. Shaw stated that Cablevision=s position would be to agree to disagree adding that survey option is a joint option between the Borough and the Cablevision and neither party communicated on the survey until 2002.

Deputy Mayor Weinstein stated the Cable Committee is made up of volunteers and it should be Cablevision=s job to initiate the survey when required by the ordinance. He agreed with Attorney Lustgarten that Cablevision owes the Borough \$35,000 and that an accurate survey would need at least a thousand responses to be valid. He pointed out that Councilmembers and Borough Officials are constantly receiving complaints about Cablevision and it is time for Cablevision to take responsibility. Mr. Shaw said that they are prepared to address the needs of the Borough.

Attorney Lustgarten stated that he had asked Manager/Municipal Clerk Kwasniewski to determine technical upgrades needed by the Borough. Manager/Municipal Clerk Kwasniewski stated that Static IP is needed at six locations; high speed optimum on-line for the municipal building and six locations off site including the Recreation Center and the Recycling Center. Attorney Lustgarten stated that if Cablevision were willing to do

this, he would require a cost analysis of labor and materials. If this cost is less than \$35,000, the Council would ask for additional offers from Cablevision for additional upgrades that would be beneficial to the citizens. Mr. Shaw stated that he would come up with a figure for the cost of providing services to all of the locations recited by Manager/Municipal Clerk Kwasniewski on a monthly and annual basis.

Regarding the survey, Councilmember Caan noted again that the ordinance states that Cablevision will do a survey on a yearly basis and does not mention the request of the Borough. Attorney Lustgarten stated that Mr. Shaw has pointed out that the development of the survey is a joint process. He added that the company is still responsible to do the survey because, under federal regulations, the point of the survey is to determine the level of customer service. Even though there may not be a joint development with the Borough, Cablevision is still obligated to do the survey. Mr. Shaw stated that the Borough's arguments are valid, however, Cablevision's position is that the survey should be a joint effort.

Deputy Mayor Etler stated that there are members of the Cable Committee present. Barry Winston, 19-11 Greenwood Drive, stated that the joint survey had been prepared a year ago and was a market research tool for Cablevision. The Cable Committee also formulated a survey, however, they were told that it needed to go to the corporate level for review. He added that the Committee had come up with a wonderful questionnaire, however, they have been Ayessed@ to death and two years had gone by. He stated that they have learned that there is very little that can be done on the local level and there is virtually no local control. After doing some research, it was learned that Cablevision could provide funds for various cable related items and equipment and he felt this is probably what should be done. Mr. Shaw stated that he is hoping to move forward to set a date for another meeting. He added that a letter was sent to the Committee on July 18, 2003, regarding options for the survey. The only response he received was that the Committee was in favor of the equipment over the survey and was recommending this to the Council.

Violet Etler, 15-12 Elmary Place, Chairperson of the Fair Lawn Cable Television Committee of Fair Lawn, stated that the decision to go with the equipment, rather than a survey, was a Council decision. Ms. Etler stated that she would have preferred the survey and the survey was worded to include the opinions of the residents. Mr. Shaw noted that Cablevision is interested in the needs going forward not just compliance with the existing agreement. Ms. Etler stated that she has heard from teachers that the cable in the schools is in poor condition and needs to be upgraded.

Attorney Lustgarten stated that there is a check list of items that were not completed by Cablevision that must be complied with, such as annual meetings. This also includes requirements of the old ordinance that must be complied with. He stated that Cablevision should have requested appearances before the Council.

Robert Weiner, 33-28 Halsey Road, asked if Mr. Shaw was able to make any decisions because he was afraid this process would go on indefinitely. Mr. Shaw stated that his decisions have to be approved at the corporate level. Mr. Weiner asked who had jurisdiction over feed for a stereo station. Mr. Shaw stated that if the originator is sending out a stereo signal it is received that way and passed through to the cable system. He will ask the engineers to look into this further.

Councilman Caan again questioned the senior discount and stated that it should be approximately \$4 per month, however Mr. Shaw stated the \$2.10 discount is for basic cable service. He added that anyone interested has to contact Cablevision and they will send a form to be completed and notarized. Mr. Shaw will get further information that can be posted at the Senior's Center. Attorney Lustgarten stated that cable service in simple terms is a monopoly and customer service representatives are not overly helpful which is irritating. Manager/Municipal Clerk Kwasniewski reminded everyone that the discount they are all referring to is need based.

Violet Etler asked that Mr. Shaw respond to the questionnaire in writing because there are items that will

affect the new franchise. Councilman Caan stated that a discount for both basic and family should be looked into.

Attorney Lustgarten asked Mr. Shaw to communicate to the corporate officials that Fair Lawn would like to have a Most favored nation clause in their agreement for any discount or any other service offered to any other Bergen County community. Mr. Shaw stated that their legal department will not do this because there are communities larger than Fair Lawn where they have done more. Attorney Lustgarten countered asking for a favored nation status within 10%. Mr. Shaw stated that this came up in Ridgewood and was rejected by the Office of Administrative Law. Attorney Lustgarten stated that it should be the policy makers who set the policy not the corporate attorneys. Mr. Shaw stated that it might be possible to tie a Most favored nation clause to the Bergen system. Councilman McCarthy pointed out that Fair Lawn is the largest town in the Bergen system and Attorney Lustgarten indicated that since Fair Lawn is the largest community, Cablevision should want to provide upgrades for the customer base. Mr. Shaw stated that the problem is compliance and Attorney Lustgarten stated that there could be some flexibility with the Most favored nation clause. Councilman McCarthy stated that Fair Lawn doesn't want to be left behind in the area of benefits when entering a five year agreement.

Councilman Caan requested a copy of the senior citizen discounts. Mr. Shaw stated that the senior discount in Fair Lawn is very generous. The only other two towns that are more generous, with a 25% discount, are Montvale and Mahwah because they are former customers of TKR.

Deputy Mayor Weinstein stated that Cablevision should not be waiting to hear complaints from the Board of Education. Upgrades should be ongoing. Mr. Shaw stated that Cablevision's commitment is to provide one drop to each school building, free of charge, and to maintain the drop. In many cases, janitors split the drop twenty times and it is not the cable company's responsibility. It was mentioned that there is a problem at the Radburn School and Ms. Etler will confirm with the principal.

Attorney Lustgarten stated that \$8,000 over 7 years (from 1998) is \$56,000 and he asked Mr. Shaw to bring that number to the corporate officers. He stated Mr. Shaw needs to get back to the Council with all of the information requested tonight. Mr. Shaw stated that he can get back to them within a week. He will communicate the survey issue and identify the needs outlined by Manager/Municipal Clerk Kwasniewski. When an agreement is reached and a Certificate of Approval is issued by the State, these upgrades could be done within two weeks, if the installations are standard. He will quote the prices on standard installation prices, at the ten locations referred to earlier, and these costs can be calculated within a week.

Attorney Lustgarten recommended that this be discussed further during the next work session of May 18th. Mr. Shaw stated the he does not expect to have an answer on the survey issue by May 18th.

#### Budget Hearing Status:

Attorney Lustgarten stated there is a public hearing on the budget scheduled for May 11th. He noted that they have not had a response regarding State Aid. He recommended postponing the public hearings on the SID and regular budget. Deputy Mayor Etler asked if the SID budget could be adopted separately and Manager/Municipal Clerk Kwasniewski stated that they are tied together. Deputy Mayor Etler confirmed that the Borough does not contribute to the SID budget. The Borough collects taxes in the normal way and SID taxes themselves 5% to 6% over that amount and that part is contributed back to the SID. Attorney Lustgarten recommended that both items be adjourned to avoid confusion.

There was a discussion of the date of the new hearing. Manager/Municipal Clerk Kwasniewski stated that the DCA has no formal rules for postponement. Attorney Lustgarten stated that notices regarding the postponement should go out via Channel 77 and on the website. The notice must clearly state that the

Council will set the new date at the meeting on Tuesday May 11th.

There was a unanimous consensus to postpone the hearing on the budget and to set a new hearing date at the meeting of May 11th. The required notice will be filed.

Review of Tentative Agenda:

Councilman Caan questioned the salary ordinance specifically the Coordinator=s salary in the Office of Emergency Management. He asked if there was agreement on the wording and Attorney Lustgarten stated it has been reviewed.

Deputy Mayor Etlar asked if there were any additions to tonight=s work session. Manager/Municipal Clerk Kwasniewski stated that Fair Lawn Commons refund of maintenance guarantee and a closed session on personnel need to be added.

Recommended Ordinance Change

Manager/Municipal Clerk Kwasniewski stated that she had received a memo from the Director of Health & Human Services regarding proposed amendments to Health Department Ordinances. Attorney Lustgarten clarified that the \$5 cost for the removal of small animals will remain.

Councilmember Caan asked whether or not non-profit groups would be charged a fee for the inspection of kitchen facilities. Attorney Lustgarten stated that it was his understanding that there was a consensus not to charge a fee for non-profit groups. Manager/Municipal Clerk Kwasniewski disagreed stating that these inspections take a lot of time and non-profit groups should have to pay for this required service.

There was a unanimous consensus to introduce the ordinance at the next meeting.

Use of Walsh Pool B Rising Stars Dance Academy

Manager/Municipal Clerk Kwasniewski stated that Rising Stars wanted to use Memorial Pool, however, they had been informed they could only use Walsh Pool. She has also contacted the Superintendent of Recreation and has learned that every year there seems to be some sort of incident involving Rising Stars Dance Academy. Councilmember Caan stated that Rising Stars must be warned that if there are any further incidents they risk losing use of the pool for next summer.

There was a unanimous consensus to authorize the use of Walsh Pool by members of the Rising Stars Dance Academy.

Status of Field Lighting

Manager/Municipal Clerk Kwasniewski reported that the materials are on site. The holes are being bored for the poles this week. Upon questioning by Deputy Mayor Etlar, Manager/Municipal Clerk Kwasniewski stated that the project is 60% complete. Councilmember Caan stated that he has been informed that at Center Rec, there is a pole being installed close to the foul line. Manager/Municipal Clerk Kwasniewski stated she was aware of this and the pole has been relocated and it will be wrapped with protective padding. The light spill has to be in the correct location in order to do the job and she will get details on the exact location. She noted that more than likely it will still be in foul territory and Councilmember Caan stated that the further it is in foul territory, the better.

Attorney Lustgarten suggested a different pole be obtained if the coaches agree that this is a problem. Manager/Municipal Clerk Kwasniewski pointed out that this was part of a specific bid and they would have to go back out to bid to get one pole. Attorney Lustgarten recommended that the Superintendent of Recreation certify to the Manager each year that the appropriate padding has been put on the pole. He added that it is important to take reasonable precautions.

#### Miscellaneous Public Comments

Don Oliver, 8-32 Mitchell Place, stated that he hasn't seen padding on any poles in the soccer fields and he thought it would be a good idea to have soccer poles padded.

He questioned the constant digging on Fair Lawn Avenue in front of the diner. Deputy Mayor Etlar stated it was fiber optic work being done by Verizon. Mr. Oliver has received several phone calls asking why the large, new police car is the vehicle that is parked there most of the day with lights flashing and running; rather than one of the old cars. Manager/Municipal Clerk Kwasniewski will look into this and she stated that the police are being paid to be there.

#### Fair Lawn Commons Maintenance Guarantee

Manager/Municipal Clerk Kwasniewski stated that she received a memo from the Borough Engineer requesting the return of a maintenance guarantee for Fair Lawn Commons. The work was completed over two years ago and the maintenance guarantee posted was in the amount of \$26,922. Attorney Lustgarten stated that according to the Municipal Land Use Law, the Council must approve the return of the maintenance guarantee after two years. There was a unanimous consensus to authorize the return of the maintenance guarantee.

#### Special Meeting

Upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein, the Work Session was unanimously adjourned to a Special Meeting at 9:01 p.m.

Deputy Mayor Etlar reconvened the Work Session at 9:05 p.m.

#### Closed Session

Upon motion by Councilmember Caan and seconded by Deputy Mayor Weinstein, the following closed session resolution was unanimously adopted at 9:05 p.m.

WHEREAS, the Open Public Meeting 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 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 discussion.

## Adjournment

Upon motion by Deputy mayor Etler and a second by Councilmember McCarthy, the meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC  
Assistant Municipal Clerk

## SPECIAL MEETING OF MAY 4, 2004

Deputy Mayor Etler reconvened the meeting at 9:01 p.m.

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

ABSENT: Mayor Ganz

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

Ordinance First Reading:

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

Ordinance No. 1976-2004

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, BY AMENDING CHAPTER 2, ENTITLED AADMINISTRATION, DEPARTMENTS AND BUDGET AND FISCAL PROCEDURES@, ARTICLE II ENTITLED ATHE COUNCIL@, SPECIFICALLY SECTION 2-13 MEETINGS

Attorney Lustgarten explained that this ordinance was a housekeeping ordinance. When the code was codified the authority to have the Regular Meetings outside of the Municipal Building was left out.

Upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein, Resolution No. 168-2004 introducing Ordinance No. 1976-2004 was unanimously passed.

Adjournment to Work Session:

Upon motion by Deputy Mayor Etler and a second by Councilmember McCarthy, the meeting was adjourned to Work Session at 9:04 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC

## Assistant Municipal Clerk