

REGULAR MEETING OF NOVEMBER 9, 2004

Deputy Mayor Etler called the meeting to order at 7:30 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" issue of December 19, 2003. Notices were also posted on the Bulletin Board located on the First Floor of the Municipal Building and at the Maurice Pine Free Public Library, copies mailed to The North Jersey Herald and News. The Annual Notice identified the meeting location and the time of the Council Meetings and Work Sessions.

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

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

ABSENT: Mayor Ganz

COUNCIL COMMENTS:

Councilmember Caan announced the new issue of the Volunteer and Veteran catalog is available in town at the Municipal Clerk's office. He added if anyone was eligible and not a member they should contact Emergency Management Director Tom Metzler. He reminded everyone this is a free service.

Councilmember McCarthy expressed his condolences to Mayor Ganz and his family on the passing of his father. He met with Deputy Mayor Weinstein and three planners to deal with the Daly Field situation and tried to maximize keeping it as green as possible. They will be meeting with two additional planners on Monday. This is a group process where they will seek views and contributions from various sections of the community. He offered all residents a Happy Thanksgiving and best wishes for a healthy and happy holiday weekend.

Deputy Mayor Weinstein expressed his condolences to the Mayor and his family.

Deputy Mayor Etler expressed his condolences as well.

ORDINANCES: SECOND READING

Upon motion by Deputy Mayor Weinstein and 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. 1994-2004

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 13, ENTITLED "FIRE DEPARTMENT", AND MORE SPECIFICALLY ESTABLISHING THE POSITION AND PROGRAM OF JUNIOR FIREFIGHTER, BY CREATING ARTICLE XVIII, ENTITLED "ESTABLISHMENT OF JUNIOR PROGRAM"

Deputy Mayor Etler stated the purpose of this is to establish the Junior Firefighter Program which is to induct trainees at the age 16.

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

Upon motion by Councilmember Caan and a second by Councilmember McCarthy, Resolution No.328-2004 adopting Ordinance No.1994-2004 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. 1998-2004

**AN ORDINANCE AUTHORIZING AN EMERGENCY APPROPRIATION
N.J.S.A. 40A: 4-53 FOR COMPLETE REVALUATION PROGRAM**

Deputy Mayor Etler explained the purpose of this ordinance is to have an emergency appropriation for revaluation that has to be done next year. Proposals were received. They made a choice and about \$700,000 is being appropriated.

Donal Meyers, 8 -22 Mayfair Terrace asked if anyone is going to take the resolution for hiring the revaluation firm off the consent agenda so the public can have some debate on it. Borough Attorney Lustgarten stated his comment is for later, this discussion is only on the ordinance.

Mr. Meyers expressed his condolences to Mayor Ganz and his family on their loss.

Mr. Meyers questioned the emergency appropriation. He felt emergency appropriations were supposed to be for items which were not budgeted or not allowed for at the time the original budget was done. He wanted to know when the Council found out that the revaluation had to take place. Deputy Mayor Etler replied they had found out about six to eight months ago. Mr. Meyers brought a certified letter from the Bergen County Board of Taxation dated March 20, 2003 addressed to the Municipal Clerk in Fair Lawn informing them that this reassessment had to take place. He stated March of 2003 was well before the current budgeting process and yet it was not included in the budget and is now being presented as an emergency appropriation. He submitted to them that is a lie, this is not an emergency, it should have been budgeted. Deputy Mayor Etler stated this is a form of the government and how it moves and works. He explained there were no lies and this is just the way it works.

Mr. Meyers stated the contract is going to one of Mayor Ganz's campaign contributors. The Mayor's campaign report that was filed this past month indicates the Reality Appraisal Company, the company that is getting this contract contributed \$1500.00 to the Mayor's freeholder's re-election campaign. He questioned the ethics of awarding a contract to a campaign contributors and asked did Mayor Ganz take this matter to the Ethics Committee.

Deputy Mayor Weinstein stated he did not receive a contribution and whether he did or not they interviewed two other highly qualified companies. This firm has done work for Fair Lawn before and did a very good job with the residents. Based on the interviews they decided to select them. He explained one thing had nothing to do with the other. Councilmember McCarthy added this company has done the last two revaluations in Fair Lawn and they are familiar with Fair Lawn. He stated Mr. Rubinstein who is the principal of the firm is the assessor in Glen Rock and is familiar with the area and worked with the Borough Attorney and the Tax Assessor in other revaluation. They recommended this individual and they rely on the recommendations of their professionals. He has worked with Mr. Rubinstein before and felt he was extremely qualified.

Mr. Meyers asked if this was the same Borough Attorney that wrote up a leaf removal contract as a professional services contract. Borough Attorney Lustgarten explained to the public since Mr. Meyers does not understand the process that he is incorrect in two areas. First getting back to the emergency appropriation the purpose of having an emergency appropriation for the revaluation is to spread the cost out over five years. He stated it is deemed a special emergency appropriation under local budget law. It is called that because the statute allows it to be spread out over five years. If it was not done that way the taxpayers would be hit with this amount all in one year. He explained that in regard to the Rubinstein Firm, he did deal with them in 1986 for the tax year 1987 and the Borough was very satisfied with their services and had a minimal amount of tax appeals. The second time they represented the Borough was 1995-1996 and again the Borough was very satisfied with them.

Borough Attorney Lustgarten suggested to Mr. Meyers when he throws words around like ethics he should have his facts straight because there are four other members of the Council who have no contributive relationship to this individual. They have represented the town in the past very well, they come highly recommended by him who defended the tax appeals for the town in those revaluations. They come highly recommended by their Tax Assessor. They awarded this contract to this firm based on the qualifications and merits of the firm. He stated so the public is not misled, the professional services of the revaluation firms are done after obtaining three proposals. The Council interviewed the three firms and decided that the Rubinstein Firm was the most qualified to do Fair Lawn. He explained to Mr. Meyers that he could draw whatever conclusion that he wanted but felt he was besmirching not only Mayor Ganz but this firm. He advised Mr. Meyers he would address the subject of leaf removal under Public Comments later if he wished to pursue it, but he was wrong on that as well.

Mr. Meyers wished to have it on record that yesterday in the Bergen Record the people in Hoboken by a nine to one vote passed a no play for pay ordinance which would have outlawed the very contract that this board is seeking to put in tonight. He wished to point out that this resolution discusses that the State of New Jersey certifies firms to prepare assessment revaluations. He questioned that they interviewed three firms and asked how many firms New Jersey certified. He asked why was it that they only interviewed only three firms and why didn't they put it out to public bid so they could possibly get a better price. He agreed with them about spreading the cost out over the five years but that was not the issue. They have contracts going to campaign contributors and this is not the only contract. He added last week Ron Mondello who is a regular contributor to the various campaigns of the Council received a no bid contract and the list goes on including Birdsall

Engineering. He submits that this contract is unethical and not a proper way of awarding contracts in this town. Councilmember Caan stated the Council has gone through this from the start. They asked the Manager to come up with proposals. She brought members of various firms in and they were interviewed individually and the firm they chose was the one that had the best experience with the best price for Fair Lawn. He explained revaluation is important and both of the prior times were done by this firm with excellent results. If the firm is not qualified but the price is low, they are just setting themselves up for a disaster. Borough Attorney Lustgarten challenged Mr. Meyers if he felt the award of this contract was corrupt he should take it to the John Molinelli at Prosecutor's Office with his paperwork and make his case. He stated he had a lot of nerve to throw around terms such as unethical and corrupt and if he disagrees with the contract because he did not like the firm that is his prerogative as a citizen. He stated he had a tendency to throw around very volatile adjectives to people who hold professional licenses, elective positions and challenged him if he had facts that prove that this is a corrupt contract then he should take it to the Prosecutor's Office or retract it. If he does not retract it he would assume that he has malicious intent against these public officials and a public figure like himself. He could not think of any other reason why Mr. Meyers would make that kind of attack. He has the right as a citizen, resident and taxpayer to disagree with everything that was being said, but he challenged him to follow through on them and if he does not then the public in Fair Lawn can decide on their own what his motivation is. Mr. Meyers stated he had taken his information to the New Jersey Government Ethics Board and they are in the process of considering it. Borough Attorney Lustgarten echoed he meant to the Prosecutor's Office because he used terms such a corruption which mean criminal malfeasance. Mr. Meyers stated he would take him up on his challenge. When he sees that the town planners, Schoor DePalma is a regular contributor to the various campaigns and they always get the contract with no bid as do Ron Mondello and Reality Appraisal Company. Deputy Mayor Weinstein stated Mr. Meyers knew about all these contributors because they have been properly reported which is done the right way. He felt Mr. Meyers was a very angry individual but he would stay patient. He felt Mr. Meyers was discrediting his integrity and he takes offense at that and he better retract those remarks.

There being no 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 Deputy Mayor Weinstein and a second by Councilmember McCarthy, Resolution No.329-2004 adopting Ordinance No. 1998-2004 was unanimously passed.

RESOLUTIONS BY CONSENT #28-2004

Upon motion by Councilmember Caan and a second by Councilmember McCarthy, Consent Agenda 28-2004 containing the following items was unanimously adopted.

- a. Resol. #330-2004 - Approval of Minutes
Closed Session 9/21/04
Work Session 9/21/04
Closed Session 9/21/04

- b. Resol. #331-2004 - Transfer of Funds
- c. Resol. #332-2004 - Refund of Overpayment of Taxes
- d. Resol. #333-2004 - Professional Services - Revaluation Firm
- e. Resol. #334-2004 - Change Order - Roadway Improvements 2002
- f. Resol. #335-2004 - Safe Streets to Schools Program Grant - Extension of Time
- g. Resol. #336-2004 - Refund of Overpayment of Taxes - Veteran Tax Deduction

RESOLUTION NO. 337-2004 - Transfer of Liquor License M & M Bar and Liquor, Inc. to Crossroads Bar & Liquor, Inc.

There being no comments by the public, upon motion by Councilmember McCarthy and a second by Deputy Mayor Weinstein, it was unanimously agreed to close the time for public comments on the transfer of the liquor license.

Borough Attorney Lustgarten stated this is a resolution to transfer liquor license from M & M Bar and Liquor, Inc. to Crossroads Bar & Liquor, Inc. When they are finished with their presentation there would be time for any member of the public who may have questions or comments.

Jay Lazarowitz, Esq., 55 Harristown, Glen Rock stated he represents the applicant and brought with him the principles of Crossroads Bar & Liquor transfer. He stated the address of the premises is 17-65 River Road adjacent to the Shop Rite on River Road. Borough Attorney Lustgarten asked if there were any charges against the premises Manager/Municipal Clerk Kwasniewski stated there were no charges. Borough Attorney Lustgarten asked if they had appropriately filled out and filed with her office the transfer of license forms. Manager/Municipal Clerk Kwasniewski replied they had done so. Borough Attorney Lustgarten asked if she had received any objections in writing from any source objecting to this transfer. Manager/Municipal Clerk Kwasniewski stated she had not.

No one wished to be heard.

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

Upon motion by Councilmember Caan and a second by Deputy Mayor Weinstein, Resolution No.337-2004 was unanimously passed.

RESOLUTION NO. 338-2004 - Refund of Overpayment of Taxes

Upon motion by Deputy Mayor Weinstein and a second by Councilmember Caan , Resolution No. 338-2004 was unanimously passed.

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.

Don Oliver, 8-32 Mitchell Place stated his family, associates and himself wished to extend their condolences to Mayor Ganz and his family. Mr. Oliver stated he had read in the paper that Bergen County was purchasing two police cars for Fair Lawn. The budget included six cars. He wondered if they plan to drop the two cars. Manager/Municipal Clerk Kwasniewski stated the County will not be able to buy those cars. Fair Lawn has an established program of replacement of vehicles and there are other towns that do not. She explained that it was their intention to cut those two cars out of the budget and now the Police Chief has been advised to put those two cars back in the budget.

Mr. Oliver thanked everyone who came out and voted no to the one cent per hundred tax. He felt this is the new political way of taxing the public. He felt part of the fault with Daly Field is the Council because several years ago before this Council the leadership of the Radburn Association came forward with the chicken little story about the sky is falling of a car detailing place was going to be built on the Heyward tract. He was confused at that time of who owned what and where. He could not understand why the Council would have acted so abruptly to change the zoning to residential for someone who did not own the property in the first place. He asked if anyone on the Council knew what they could build per acre. He keeps hearing all different numbers. Deputy Mayor Etlar stated there are three tracts which are zoned R-1-1. Borough Attorney Lustgarten stated since there are 44,000 square feet in an acre and they have to have a minimum of 10,000 square feet in a R-1-1 zone so four residential units are allowed per acre.

Mr. Oliver asked if it would have to be rezoned for condos or townhouses. Borough Attorney Lustgarten stated if someone wanted to build townhouses, they would have to be rezoned or they would have to seek a variance. Mr. Oliver stated he grew up in this town and moved here in 1949 and was still in the same house. Many times the kids from his neighborhood would be thrown out of the parks because they did not live there, including Daly Field. He agrees that Daly Field should be kept as a park, used again as baseball and soccer fields. He even discussed with the Mayor Fair Lawn maintaining Daly Field and asked him to check with the Radburn Administration if they could use that field. He did not know if they ever got back to the Mayor and this was just a few years ago. Deputy Mayor Etlar stated it was the feeling of this Council that Daly Field stay open and green. Mr. Oliver agreed with that but it still needed to go before zoning and planning to know if it should stay green. He felt if they put 170 units there it would be a traffic nightmare.

Mr. Oliver wished to address Deputy Mayor Weinstein on the campaign funding all being reported properly. He stated the issue is pay to play. He wanted the Council to adopt a pay to play ordinance that prevents any and all contributors who donate more than \$100.00 to get a contract. He asked them to seriously consider the pay to play ordinance so their reputations are not tarnished.

Harvey Rubinstein, 28 Rutgers Terrace stated that preserving land is not any less valid today than it was before. He asked what was driving the size of the Rec Center. Deputy Mayor Etlar stated they had a dilapidated Arts Center. The original intent was to put the theater and art center in conjunction with the existing Youth Center. The Engineers advised them they could not do that and they would have to bring it down and build new. Mr. Rubinstein asked if the old building held 150 seats. Deputy Mayor Etlar replied it held a little bit less. Mr. Rubinstein stated a lot of questions came up regarding traffic which he believes were not answered adequately.

Mr. Rubinstein felt a sidewalk should be installed. Deputy Mayor Etler explained there is traffic and parking now for ball games, adults, etc. and he does not recall any accident from that. Deputy Mayor Etler replied they have 78 spaces on the property to park and people will try to park there first before they go to the street. He stated Fair Lawn has adequate snow removal services. Mr. Rubinstein felt this is something they should consider for safety. Deputy Mayor Weinstein stated the traffic flow and parking will be much more improved but they will speak to the 501(3)(c) Corporation about this issue. Mr. Rubinstein suggested the chain link fence be corrosion resistant, they do not need a rusty fence such as is there now. Councilmember McCarthy explained the fence belongs to the Board of Education.

Jane Diepeveen, 14 Ryder Road stated she believes in freedom of speech but did not believe that swear words and other obscene language should be permitted at a Council meeting. She felt the chair should have the right to stop someone who speaks that way. She was sure the Radburn Association was very unhappy about the Council wanting to keep Daly Field green because they want to build on it. She stated that the last Manager's Report mentioned that some ball fields had been changed to soccer and football fields. She asked if this was temporary, does this happen every year or is it permanent. Manager/Municipal Clerk Kwasniewski stated they always rotate their fields. They are all multipurpose fields so at this time of year they change from baseball to soccer and football and then they are changed back to baseball.

Mrs. Diepeveen had also heard reports that they were having separate planners for three separate areas in Radburn and a different planner for Topps. The reason given was the Schoor DePalma was hired for Topps only and they are familiar with the other three tracts she did not see the logic. Deputy Mayor Etler stated they felt a fresh approach was needed. Deputy Mayor Weinstein explained that all they asked of Schoor Depalma was to look at the Topps property. He and Councilmember McCarthy are interviewing five independent planners who have not been involved at all to get their view on what could be done in that whole area including the Topps property but keeping Daly Field green. Mrs. Diepeveen asked if the phrase transfer of development rights meant that if they kept Daly Field green there will be greater density on the other tracts. Councilmember McCarthy replied the transfer of development rights is a legal doctrine and was not mentioned during the work session. It has been the consensus of the Council to keep their eyes open to as many possibilities as possible.

Arlene Rubinstein, 28 Rutgers Terrace stated she was at the Planning Board meeting last night and when she asked why it was necessary to have a huge sign, the Engineer could not answer the question and would deferred it to the architect but the attorney refused to call the architect back. She stated she had never seen such arrogance presented by an attorney. The building is beautiful but she would not expect anything less of the Ives Group. She questioned the lack of proper parking and felt the Planning Board did a disservice to the residents living in that area. The Planning Board is supposed to watch out for the residents. They don't need a public advocate because the Planning Board is their advocate. She was very disappointed in the actions of the Planning Board because they did not take the best interest of the residents in that area into consideration when they approved this plan. She stated she was bothered by the Council meeting of October 26th on television which was cut by the first hour. Since when is editing done on Council meetings on television. Borough Attorney Lustgarten explained if it was done it was

inadvertent. The Mayor and Council never wanted edited of Council meeting, they wanted the reservation of rights to delete obscene statements. He asked Manager/Municipal Clerk Kwasniewski to check with Fair Lawn TV.

Gary Keller, 18-11 Kipp Street stated they about the safety and health of those people should an emergency occur and one of the emergency vehicle cannot get down the street to attend to that emergency. The residents of Kipp Street as well as 81 other people who signed the petition felt that they need no parking signs on the north side by the homeowner's side. Deputy Mayor Etler stated they looked at that and turned it over to the Traffic Division. Manager/Municipal Clerk Kwasniewski gave the Council a report from the Fire Department and Police Department and they have not talked about that yet. Deputy Mayor Etler believed he was correct in having this concern and there would be parking on the south side and would see what they could do about the north side, either no parking or timed parking. Councilmember McCarthy felt they should let Mr. Keller know when they are talking about this so he could advise others.

Anca Nitesdu, 19-11 Kipp Street stated she was at the Planning Board meeting and is getting worried about the big building getting built and all the activities that will be there. There will be ten times the amount of people. There will be a lot of kids hanging out at the Youth Center smoking and putting trash on their property. She expressed her concern about this and felt the Council did not take into consideration the residents. They did not listen about their concerns. Deputy Mayor Etler stated all the residents were made aware of the meeting and notified. Ms. Nitesdu stated she wasn't notified and the residents of Kipp Street that she spoke to were not notified. She added she was concerned about the parking, noise, lights and the car lights facing the houses. Deputy Mayor Etler stated in the resolution it states the lights should be subdued. They are talking about putting planting and barriers to block the light. Ms. Nitesdu stated she was also signing the petition for no parking on one side of the street. Councilmember Caan stated when this is on the agenda for the work session she should attend and listen to what the professionals say and make any comments she may have.

Harvey Rubinstein, 28 Rutgers Terrace stated at the last Council meeting he submitted a picture of a sign at Commerce Bank. Manager/Municipal Clerk Kwasniewski stated it was taken down the next day because it was in violation of the sign ordinance. Mr. Rubinstein asked them to explain to the people who do not understand what a resolution is and how it goes into effect. Deputy Mayor Etler stated a resolution is a the sense of the Council which has no real force, an ordinance has the force of law. Borough Attorney Lustgarten stated when the Zoning or Planning Board adopt a resolution as the end result of a hearing on an application for development then that resolution sets forth the terms and conditions in it's own terms because it incorporates the application as a document.

Ron Lotterman, President of Fair Lawn TV stated they do not edit the meetings. He explained when the meeting run over one and half hours they have to change the tapes. He was very surprised this came to the Council and no one called him but he would pull the raw footage from the meeting and check to see what happened.

Upon motion by Councilmember McCarthy and seconded by Councilmember Caan the time for public comments was unanimously closed.

Closed Session:

Upon motion by Councilmember McCarthy and seconded by Councilmember Caan the following closed session resolution was unanimously adopted at 9:04 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 formal action by the Borough Manager and or the Mayor and Council within 60 to 90 days except for legal strategy; 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 regular meeting at 9:24 p.m.

ADJOURNMENT:

Upon motion by Councilmember McCarthy and second by Councilmember Caan, the meeting was recessed to the Work Session at 9:24 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