

REGULAR MEETING OF NOVEMBER 23, 2004
Milnes School

Deputy Mayor Etlar called the meeting to order at 7:50 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 Etlar and Weinstein and Councilmembers Caan and McCarthy.

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

ABSENT: Mayor Ganz

MANAGERS REPORT:

Manager/Municipal Clerk Kwasniewski reminded everyone about the Thanksgiving Concert at the High School and that on December 1st they will be lighting the Holiday tree at 7 p.m. at Borough Hall.

COUNCIL COMMENTS:

Deputy Mayor Weinstein wished everyone a happy and healthy Thanksgiving and beginning of the holiday season.

Councilmember McCarthy echoed Deputy Mayor Weinstein comments and advised everyone the tickets for the community concert are available at the Community School on Fair Lawn Avenue for the Saturday concert.

Councilmember Caan reminded members of the Volunteer and Veteran Program the new catalog is available and are in the Clerk's office at Borough Hall. He added the Prescription Card Program status was the first three quarters of 2004 people have saved over \$92,000.00 on their prescription. He advised people who did not have one to pick one up at Borough Hall and they were free and all they need to do is fill it out and mail it in.

Deputy Mayor Etlar wished everyone a joyous holiday season.

RESOLUTIONS BY CONSENT #29-2004

Upon motion by Councilmember Caan and a second by Councilmember McCarthy, Consent Agenda 20-2004 containing the following items was unanimously adopted.

- a. Resol. #339-2004 - Approval of Minutes
 - Regular Meeting 9/28/04
 - Work Session 10/5/04
 - Special Meeting 10/5/04
 - Closed Session 10/5/04
- b. Resol. #340-2004 - Transfer of Funds
- c. Resol. #341-2004 - Refund of Overpayment of Taxes
- d. Resol. #342-2004 - Appointment to Rent Leveling Board
- e. Resol. #343-2004 - Amending Bingo License - St. Anne's Church

PUBLIC COMMENT:

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

Richard Schuckman, 14 Bedford Place read the following:

"It is hard to believe that one in three Bush voters in the recent election thought that Iraq had weapons of mass destruction: nuclear, chemical, or biological.

After Saddam Hussein was captured, at that time all American forces should have been withdrawn.

Since then more than 12,000 Americans have died and many thousands have been injured. Many Iraqis have also died or were wounded, including women and children.

Some the so-called terrorists or rebels are good Iraqi citizens.

During our revolutionary war against England, which we finally won, we were also called "terrorists or rebel," but we did not kidnap and murder people.

Billions of our dollars will have to be spent to rehabilitate Iraq and Afghanistan. Their people see us as invaders and occupants. As a result, many people in the Middle East will become terrorists.

Other countries, like France, Germany, Russia and China, see us as undemocratic, brutal and unethical.

Iraq and other Middle East countries will probably not become democratic for a long time, if ever. What are we fighting for?

It is not too late to pull our troops out of Iraq no!"

Mr. Schuckman hoped the Council would endorse getting the troops out now. He felt it was wonderful to salute the flag but keep in mind it is not only American troops will die as a result of this war.

Deputy Mayor Etlar stated they would take it under advisement.

Donald Meyers, 8-22 Mayfair Terrace congratulated the Recycling Department for the professionalism of the people who are picking up the leaves in town. He was impressed with the efficiency and thoroughness of the job they did. Second he addressed that in the Bergen Record a week ago Manager/Municipal Clerk Kwasniewski mentioned to Charles Austin, the reporter, that she was not aware that Reality Appraisal Company was a contributor to Mayor Ganz's campaign. He stated he posted on Fairlawnonline.com a complete breakdown of the campaign contributions to the various members of the Council.

He added it will be posted shortly the contributions to the Bergen County Democratic party and as a public service he would like the Mayor and Council to take advantage of the that so Fair Lawn can lead Bergen County in eliminating the play for pay. He congratulated Deputy Mayor Weinstein for refunding Kusher to \$2,200.

Harvey Rubinstein, 28 Rutgers Terrace thought the work session was here tonight and missed it. He questioned the status of the neighbors on Kipp Street. Deputy Mayor Etlar stated they were not there. Mr. Rubinstein stated in reference to the sidewalk that he felt should be put in between the Rec Center and Cadmus Place. Deputy Mayor Etlar advised him those recommendations have been forwarded to 501C3 to the people running the Community Center. Mr. Rubinstein asked why they would forward to them because when they were before the Planning Board they did not want to touch it. Deputy Mayor Etlar stated it does not mean it will happen but they did forward it. Mr. Rubinstein spoke about someone waiting for a sidewalk for fifteen years to be put in by Commerce Bank by Fair Lawn Avenue. He also advised him that he believed the Borough put it in and not the bank.

Mr. Rubinstein measured the area where the sidewalk should go.

He added in reference to a house of worship that was passed by the Planning Board last week, within the regulation for a house of worship there is a line there that states that a it has to be on a street that has a right of way of 150 feet. He spoke to Joe Smith and he said the intent of that is from the property line to property line. He added it does not say that so if someone picked it up and read it they would think that it was from curb to curb. They believe the Mayor and Council should change that in the ordinance to make it clear.

James Caramanna, 3-48 Owen Avenue asked what the status was on the building on Daly Field and what was the next step in this procedure. Deputy Mayor Etlar explained the Council has passed a consensus that it remain green and open. They are in the process

of hiring two planners one for Topps property and the other one to give them a more detailed report on what to do with Archery and Heyward tracts. Mr. Caramanna asked if they have stopped there. Deputy Mayor Etler stated all three parcels are zone R1 so if the Radburn trustees wanted to come in tomorrow and said they wanted to build R1 which is 10,000 square foot houses in that property they would have to listen to them, the lot is 10,000 feet he corrected himself. Mr. Caramanna asked if the builders want to build their condos they would have to institute suit. Deputy Mayor Etler explained that was not correct but they would have to change the zone.

Michael Roney, 14 Burnham Place asked about the poll or survey that Mayor Ganz had suggested they have taken regarding the use of Daly Field. He asked what would be on the poll. Deputy Mayor Etler stated they had not discussed it or what the question would be, but felt that would probably one of the questions. Mr. Roney asked if it would be a referendum on whether to keep it green or not. Deputy Mayor Weinstein explained they have not gone any further on this. Mr. Roney questioned if it would be put on line and they would get a preview before the poll. Deputy Mayor Etler stated if the poll is done by the Borough all that information would be made public.

Harvey Rubinstein, 28 Rutgers Terrace wished to make them aware of what happened at Radburn Association. He stated there was a vote taken and hundreds of people came out to support the issue of keeping Daly Field and Archery Plaza as green space. They are also supporting the Council's views that it should be a preserved parkland. He stated a petition was delivered to the Planning Board to keep the area green.

Richard Schuckman, 14 Bedford Place understood why the Council would hesitate not to endorse the efforts to stop the war now but the reason he was here was if the Borough of Fair Lawn decides to endorse this it may spread to other communities in Bergen County. He was sure 90% of the people in Fair Lawn are against the war. Deputy Mayor Etler echoed his earlier remark that they would take it under advisement.

Howard Hyde, 13-07 Ellis Avenue stated at the last meeting they spoke about the two police cars the Borough was supposed to get from the County and then having to give them back. Manager/Municipal Clerk Kwasniewski stated they never got the cars from the County so there was nothing to give back. The original thought from the prosecutor's office was they could get two cars from them but since the Borough of Fair Lawn has a established program for replacing police cars there was no justification for the County to give them the cars. They are looking at other equipment that they may be able to give them.

James Caramanna, 348 Owen Avenue stated the latest report he had about Daly Field was that there are pollutants that remain below the proposed construction site. Some contaminants may leak into the water underground. Caustic vapors can rise. Deputy Mayor Etler stated they did not know if that was the case yet and asked who the report was from. Mr. Caramanna stated he received the report through the Radburn Association. Deputy Mayor Etler stated that would be a case study for the EPA. Mr. Caramanna felt as a citizen of the Fair Lawn he has a duty to tell them there could be a potential liability

if someone gets ill on the property. Councilmember McCarthy stated before any development is done the developer would need to get a No Further Action Certificate from the State New Jersey Department of Environmental Protection. Until that is provided there can be no development on any potentially contaminated site anywhere in New Jersey, that is a statewide law. Borough Attorney Lustgarten stated the mere issuance of a permit from the Borough is immunized under the Tort Claims Act so that there would be no claim to the Borough. The only action would be permits. Mr. Caramanna stated it would be a case of malfeasance against the Borough if someone were contract an illness and they had prior notice of the caustic substance underground they would be subject to a suit. They do not have any insurance policy that covers pollution. That applies to directors and officers. Borough Attorney Lustgarten stated under the Torts Claim Act the Borough did not cause the pollution and they are not responsible for it. Mr. Caramanna stated if they had notice of dangerous condition and permit the building on this land and someone becomes ill or claims an ill then he believes they would have the liability. Borough Attorney Lustgarten stated no one can build on the without the NFA letter. The final approval comes from the Zoning, Planning and Construction Department. If they mistakenly issued a permit they are protected under the Tort Claims Act. He agreed they did not have pollution insurance. Mr. Caramanna stated the immunity document he is referring to does not extend to gross negligence, there is an exception in the statue. Borough Attorney Lustgarten stated he has defended the Borough since 1986 and he knows in regard to title 59 he is just not correct on this statement.

Richard Schuckman, 14 Bedford Place stated he was chairman of UNICEF and they collected thousands of dollars with the teachers and PTA helping. UNICEF has done wonderful work and at the last Board of Education he attended they voted against taking part in anyway. They should allow the children to participate in UNICEF and hoped the Council could recommend to the Board of Education to allow them to participate in this program.

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

Closed Session:

Upon motion by Councilmember Caan and seconded by Councilmember McCarthy the following closed session resolution was unanimously adopted at 8:25 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 and or the Mayor and Council within 60 to 90 days; 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.

ADJOURNMENT:

Upon motion by Councilmember McCarthy and second by Councilmember Caan, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

ABSENT
Mayor David L. Ganz

Councilmember Allan Caan

Deputy Mayor Martin Etler

Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein