

WORK SESSION DECEMBER 3, 2002

Mayor Ganz called the meeting to order at 7:35 p.m.. Assistant Municipal Clerk Bojanowski read the statement of compliance with the Open Public Meetings Act.

PRESENT: Mayor Ganz, Deputy Mayor Etlar and Deputy Mayor Weinstein, Councilmember Amato (late) and Councilmember Caan.

Also present: Acting Manager / Municipal Clerk Kwasniewski, Assistant Municipal Clerk Bojanowski and Attorney Lustgarten.

Closed Session:

Upon motion of Deputy Mayor Etlar and a second by Councilmember Caan, the following closed session resolution was unanimously adopted at 7:32 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 pending litigation - tax appeals; 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 Mayor and Council 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 8:25 p.m.

Upon motion by Deputy Mayor Etlar and a second by Councilmember Caan the meeting was recessed at 8:25 p.m.

Mayor Ganz reconvened the Work Session at 8:30 p.m.

Well Drive Properties:

Acting Manager / Municipal Clerk Kwasniewski stated she had sent them a memo with a map attached indicating the people who responded. She has received correspondence from two homeowners that would like to meet with the Council. There are several she has not heard from. Mayor Ganz stated he would like to discuss this at the work session on December 17. He would like to see the residents present along with Assessor McCullum. Assessor McCullum was present and explained his methodology on how he based the value for the lots. Deputy Mayor Etlar stated that an on-site inspection showed that all of the property looks the same. Mrs. Donahue does not understand why her lot is valued differently because physically they all look the same. Assessor McCullum stated it was a judgement call. Deputy Mayor Etlar wondered why in the past the Borough offered the lots for \$1. Attorney Lustgarten explained that back in 1996 when the Borough offered it for \$1 the lots were not squared off. Assessor McCullum stated there were 72 tons of stones, 21' of PVC piping and 200 hundred cubic yards of topsoil placed there. The DPW removed trees, underbrush and cleaned up the entire area.

Sue Donovan, 16-24 Well Drive, stated she felt there was an error in the calculation of the lot behind her house. Assessor McCullum stated he would meet her at her house to go over his calculations. Ms. Donovan felt if there was going to be a meeting that everyone should be invited. Mayor Ganz advised that all of the residents in that area will be invited to the meeting on December 17, 2002. Attorney Lustgarten explained this Council does not want to penalize those who want to purchase the land. Ms. Donovan stated the figures scared her.

Public Comment:

Rabbi Neubort, 7-04 Plaza Road, I just wanted to, I noticed that the Menorah issue is not on the agenda. I wanted to make sure it was brought up and voted upon while it is still Hanukkah.

Mayor Ganz: It will not be voted on this evening, Rabbi. That's not the way the government works, that's not the way our municipal code works, it is not the way our Administrative Code works. That doesn't happen. But you are perfectly free to make any statement that you wish to the Council.

Rabbi Neubort: I just asked for an explanation as to why it wouldn't be voted upon tonight, it was brought up last week and if it won't be voted on tonight what would be the process.

Mayor Ganz: Borough Attorney can explain the functioning of the Administrative Code.

Attorney Lustgarten: Matters have to be put on the agenda for discussion. This matter has been briefed, discussed and the consensus has been taken in this Council Chambers for the last four or five years.

Rabbi Neubort: The Council is not the same five years ago as it is today.

Attorney Lustgarten: That is true but the concepts are the same. Well, you are going like this. But I don't mean to be disrespectful. You submitted a very cognizant and well written presentation the other night both in writing and verbally, but those issues were not new to the Council. Those issues have been coming to the Council, constituted here or constituted by prior members, for the last four or five years. You had the two opinions I wrote in 1989 and 2000 and there really hasn't been a major change in the law since the 2000 opinion I wrote. This would come up to the Council level for discussion, number 1) if there were to be immediate action under emergency situation, that is under the Administrative Code or in the normal course of putting things on the Agenda for further discussion. Now realistically, Hanukkah is over on Friday night, Saturday night.

Rabbi Neubort: Well it is over for this year, it is not over in concept for the Fair Lawn Jewish people.

Attorney Lustgarten: well, I don't want to characterize, you know, how you are characterizing the issue because you know respectfully I disagree with your opinion on that but I respect your opinion. But, I guess what the Mayor is saying is to get something accomplished during this Hanukkah season is not going to happen. But there is a year before next Hanukkah season where in due course the matter will be put on and further discussed.

Rabbi Neubort: my question is, what is that process? You know, true, Hanukkah is a year from now. But we'd like to see this discussed as soon as possible. If it is the next meeting so it would give us the opportunity to have it voted on at the next meeting and we would know for the rest of the year we don't have to worry about it. Next year there would be a Menorah on the front of Borough Hall property. We were hoping actually that it would be voted on tonight. There are many, many elements to the picture, which contrary to your claim that they were so clear. They were made a lot more clear and as you yourself admitted it was a very, very good presentation. So we think this may have swung one two or perhaps even three members of the Council. If it did in fact swing three members of the Council, or I wouldn't even use the term swing, perhaps one of them didn't even have an opinion or anything so by all means let the Menorah rein. Lets bring it in.

Mayor Ganz: No member of the Council asked that it be placed on the Agenda, Rabbi.

Rabbi Neubort: There was, just during the Closed Session, I was speaking to Councilmember Amato and he actually promised me that he would bring this up tonight as well. He said he would bring it up so I would hope that he actually does.

Attorney Lustgarten: Things get added to the Agenda with consensus of the Council or if they are emergency situations. It is not currently on the list. But let me just say, getting beyond process to substance, um, this question that I think you should think about and perhaps submit in writing to the Council so the Council could consider it. Because there is a question in my mind, other than everything that has been said before and that is what is the compelling necessity to put a religious artifact on that specific area in Fair Lawn as opposed to, to my count, there are four other Menorahs that are fairly, prominently visible on Plaza Road, Fair Lawn Avenue, and Saddle River Road. The reason he raised that is because you minimized this the other night and it really wasn't that kind of forum to have a full debate. One of my concerns as the legal officer is what I touched upon and I am even more concerned when I find out what is going on in other states and other areas. You are probably familiar with the Cincinnati case that keeps going up and down to the high courts. If the Council were to deem that area outside, or any area in town a public forum, you are shaking your head, but you have to hear me out, or there is a place in town that has been deemed historically a public forum. At that point and time every case, starting or going back one hundred years is clear that government cannot regulate speech except for two areas, that he is aware of. One is if the speech creates a clear and present danger, like the tradition that you can't yell fire in a movie theater or two, it is obscene, however you want to define that and however that definition changes by the high courts. But short of those two regulations, any speech, symbolic, pictorial, artistic or verbal can be placed in the public forum or public forums, if there are multiple forums. I am very concerned about people who come in, which I called out of the main stream last Tuesday night, but for better articulation, putting up things that are hateful, odious, are not prohibited because they are not clear

and present danger but clearly fighting words. I had a discussion with someone today and I don't mean to be disrespectful to anybody by these examples. But just for example, supposing that a Council agreed a Menorah could be put on the grassy area outside, and supposing someone else said I want to put a Menorah with a Swastika attached to it, or I want to put a Menorah with a hanging cross with Jesus attached to the cross because my free speech says that I think these ideas are antithetical or I support them or whatever, or the Council allows the creche scene and in the creche scene there is some symbol that's added by somebody else in a separate creche that is odious to the Christian religion. Those are the kinds of speech that clearly could not be prohibited by the Council because in the latest Cincinnati case, which occurred maybe a week ago, the Court was clear that government cannot regulate that kind of speech. And I come back to where I started from, I don't know, and you certainly have a chance to articulate this in whatever form you wish to, the compelling necessity to put a religious artifact on that specific space in Fair Lawn which would then open up, in my view, the ability of people who wish to be hate mongers, who wish to maybe not have great motivation, maybe you have someone that wants to hang a sign that says I support Osama Bin Laden or I believe in killing babies or whatever. Whatever the speech is because that content could not be controlled. You were somewhat dismissive of that argument the other day and I don't mean that in a pejorative sense but I think that is very real and I think that we've had circumstances in this country, in the last several years, where hate groups, however you want to define those, it is like pornography. You can't fully define it but you know it when you see it, have utilized the first amendment not for the free exercise of speech that adds to the culture or the education of the country but it is aimed as hate language, aimed at specific groups. In recent memory, Skokie, Illinois, you know is probably the preeminent case in point and I am very concerned about that because whenever you have an action like that you have multiple reactions and government is responsible to keeping the peace, keeping law and order and balancing the rights of people. And I am a very strong believer of the first amendment, of that, so I come back to the compelling necessity of doing this especially when we have multiple areas in town, albeit private property, where there is no interference for the display of the Menorah or other religious artifacts. If we were a rural community where people did not drive the main roads and would not see the artifacts, you would have another argument to say that there is not an alternative and that is one of the tests also in free speech restriction cases. But here in Fair Lawn it's not even a question of alternatives. There are multiple alternatives, the government doesn't even say, wouldn't even dream of saying you need a permit, we are going to regulate this, we are going to regulate that. You want to put a religious artifact on your private property, go do it, the same thing occurs with residences not just houses of worship. So that's an extension of what I said last Tuesday with the additional question of the compelling necessity for this particular square area in Fair Lawn which is very small compared to the rest of Fair Lawn.

Rabbi Neubort: Well, first and foremost, your entire explanation just now, your in depth explanation, I should add, does not take away from the fact that we submitted a very, very compelling brief. At least in our belief, and in our estimation, and just because you, as the Borough Attorney, didn't perhaps see any justice to any legal issues that were corrected in that doesn't mean that the Council does not and did not see any truth in what was presented there. So therefore what we are asking is for the Council to be permitted to vote and everybody could be, and you know that they were voted in to vote and let them vote as opposed to you voting, you weren't voted in to vote for the Council. The Council was voted in to vote for themselves, that's first and foremost. Second of all, addressing that issue we believed we touched on that very, very carefully that we said we do not want to open it as an open public forum just as the Mayor and Council places the holiday tree on the front lawn and it is still considered a closed forum, quote unquote. So too, we would donate this item, we were very clear about this, we would donate the Menorah to the town. The town, just as it opted to put the holiday tree there, it could put the holiday candelabra, if you will, along side it. Make everybody feel comfortable. It has been said over and over again, very, very significant portion of this community is Jewish. These Christmas trees or holiday trees, although you say they are not religious symbols, we could give the same argument for a Menorah as well. You say what is the compelling need to put a religious object on Borough property, if you are going to call a Menorah a religious object, not necessarily does everybody agree with you, I certainly don't agree with you.

Mayor Ganz: You don't believe the Menorah is a religious object, Rabbi?

Rabbi Neubort: I believe that the Menorah is a religious object when it is observed personally in ones home. There is an interesting law in the code of Jewish law which says that if a person lights the Menorah outdoors, at a public ceremony, they have not fulfilled their obligation for Menorah lighting. They have to go back into their home and light it again. So clearly, as defined in Jewish law, a Menorah that is placed outside the home is not a religious symbol, it doesn't fulfill your requirement. So if I were to come here and make a formal lighting with the blessings and everything, I would still have to go back into my home and do it again for myself. So as defined in Jewish law, that's who is going to define whether it is religious or not, is already establishing that it is not religious.

Mayor Ganz: Are there others that might disagree with that, Rabbi?

Rabbi Neubort: There is no one, I can't say there is no one, the code of Jewish law speaks for Jewish people.

Mayor Ganz: Rabbi you have to answer my question not answer yours. Are there other religious people who disagree with your interpretation?

Rabbi Neubort: I don't think so. I think, I don't think so. I think that, you know, that defining what is going to fulfill your obligation, I

believe there are those that don't necessarily care to follow to abide by the law so strictly. So perhaps if the attended the holiday spirit outside, to a public gathering they would feel that was sufficient for themselves, would they argue that they fulfilled their obligation. I don't think they would argue that they fulfilled their strict religious obligation. Perhaps they are not interested in fulfilling their strict religious obligations. A lot of people know, there are many Jewish laws, they know to be true. They don't care.

Attorney Lustgarten: But Rabbi, isn't what you just said really the issue that you are fulfilling what you feel is a religious obligation by wanting the Menorah on the front of Borough Hall.

Rabbi Neubort: No.

Attorney Lustgarten: Isn't that the logical extension of what you just said.

Rabbi Neubort: No, that is not what I just said. I said when I light the Menorah in my home, with my kids around me, that is fulfilling a religious obligation. When the Menorah goes outside of the home, and is displayed perhaps on my front lawn or the front lawn of the synagogue or on the front lawn of Borough property, it is just as secular as the Christmas tree.

Attorney Lustgarten: That is not what Justice O'Connor says, by the way.

Rabbi Neubort: If you want to go, Justice O'Connor is a single opinion.

Attorney Lustgarten: Justice O'Connor was the plurality opinion of the Supreme Court in *Cincinnati versus ACLU*, and if you want to talk about controlling law, you are talking about the code of Jewish law, we are talking about the secular law of the United States. I as a Legal Officer, you are right by what you said before, I am not voted in except by the Council, I give my opinions, they vote. But as the Legal Officer I have to apply the legal standards as I understand them. Now, let me ask you a questions since we may be moving places. If the Council, and I am saying if, I am not saying this is the will of the Council, if the Council didn't light the tree that is outside what would your position be about placing a Menorah next to it.

Rabbi Neubort: My position has always been and always would be to place the Menorah on Borough property, being that I am a representative of the Labovitch Rebbe and the Labovitch Rebbe has asked that Menorah's be placed in the most prominent of places. There are no more prominent place in Fair Lawn than on the Borough lawn.

Attorney Lustgarten: Why do they want that place?

Rabbi Neubort: Why do they want that place, because it brings prominence to the Menorah. The White House has a Menorah, the Kremlin has a Menorah.

Attorney Lustgarten: I mean why.

Rabbi Neubort: Why? The Menorah symbolizes when a person sees the Menorah and knows the history of the Menorah. I don't think they look at the religious aspects of a Menorah. Just like you would argue about the holiday tree. They called it tonight a Christmas tree when they were introducing it, but whatever you want to call it, it is obvious and it has been mentioned many times that the position of the Council is that so said so on the radio program, that it is a holiday tree it is not directing one's attention to the religious aspects of Christmas, towards Jesus and so on and so forth. And when a person looks at a Menorah and they know, if they don't know anything, so there is nothing to talk about, they are uneducated, I don't, what do you want. If they had some sort of education about what Hanukkah's about they know it's a symbol of Liberty, it's a symbol of good over evil, it's not a religious symbol. The Menorah in the Holy Temple, just by the way, was not the main service, it was a side point.

Attorney Lustgarten: Do you believe the average non-Jew would view a Menorah as a religious artifact or a non-religious artifact?

Rabbi Neubort: You are asking me a question, do I believe what the average people, say - repeat the question - I want to make sure.

Attorney Lustgarten: Do you have an opinion as to whether or not the average non-Jewish person would view a Menorah as a religious artifact or non religious artifact.

Rabbi Neubort: I believe that the non Jew who observes, who perceives that a holiday tree is a Christmas tree and that it is a religious object. I believe that same gentile would perceive the Menorah to be a religious object. I believe that the gentile that sees absolutely nothing religious about the Christmas tree would perceive nothing religious about the Menorah.

Attorney Lustgarten: Do you believe that a creche would be an appropriate artifact to put on public property?

Rabbi Neubort: I think that is up to the Council to establish.

Attorney Lustgarten: No, I am asking your opinion not what the Council believes.

Rabbi Neubort: Put it this way, if you are asking if it would bother me, it would.

Attorney Lustgarten: No, I am not asking if it would bother you. I am asking you whether you feel that would be an appropriate artifact.

Rabbi Neubort: I feel if it was part of a greater display that it wasn't just the creche but there was a creche and then there was a Menorah and then there was - I don't know the other symbols to be quite honest with you.

Attorney Lustgarten: Do you believe?

Rabbi Neubort: But like they have in Wyckoff, I don't think that bothers me.

Attorney Lustgarten: Do you believe the Star of David is an appropriate artifact to put on public property?

Rabbi Neubort: The Star of David is a political star, it is not a religious star. There is no religious aspect, in fact, there is no real origin of the Star of David that points anywhere to any part of the religion whatsoever. So if you could find something that would be a first because I've been.

Attorney Lustgarten: I'm just asking a question now because I am trying to understand because I go back to what I said.

Rabbi Neubort: I am glad that you are trying to understand because I think the process of getting the Menorah in front of Borough Hall is a process of understanding. I think there is not enough information. At least one of the Councilmembers has admitted to me that they didn't read the brief which I sent them which was the point of it was to educate, and if you know, you don't have to trust me on all the information. We are in an era of computers, Internet, Library, you can go look it up.

Attorney Lustgarten: With all due respect, the only thing in answer to my question directly and the question goes back to what is the compelling necessity. From what I have heard you say is because the Labovitch movement, in general, wants to prominently display a Menorah in a public place.

Rabbi Neubort: That is not the compelling necessity. The compelling necessity in this specific case, that's in general why I want a Menorah. The specifics here is that this scene which the spectacle which has taken place tonight here in front of Borough Hall, which I parked my car across, and I wanted to see because I have never seen it before and I wanted to actually see it. I have heard a lot of talk about it. This does not cater to a Jewish family. You know, if you are going to take me, this Jew and that Jew and the third Jew, these three Jews it caters to, that's not the Jewish population. Go around, go to the Synagogues, the reformed, the conservatives, the orthodox, ask them is that what you want to take your kids to. It is not.

Attorney Lustgarten: One last question, if I may. If the Council did not put lights up on that tree and did not have the songs, etc., what's your position about placing a Menorah where you want to place it.

Rabbi Neubort: Again, I always would want to have a Menorah there and I would always request to have a Menorah there. I think our argument would be less, I think we wouldn't have such a backbone to stand on, perhaps.

Attorney Lustgarten: Forget the legalisms for a second. I don't understand what you said before in that answer being consistent because it seemed to me putting aside the general Labovitch movement wanting that, you said for this specific area, the general scene is that you've got the tree, you've got the other stuff, therefore I want the Menorah but.

Rabbi Neubort: No, no, therefore, I think I have a case that is why I can come to you and say.

Attorney Lustgarten: Forget the legalisms for a second. What I am trying to say, my impression of what you have argued in the brief and tonight and last Tuesday night was basically that's there so I want the Menorah there. My question is if you take the that, the songs and this tree not being lit, what's your position?

Rabbi Neubort: My position is that I want the Menorah there because I want the Menorah there. I believe that, you know if, let me hypothesize for a moment, let's say the Rebbe was to tell us that instead of having the Menorah in front of Borough Hall, we should have it on the Judge's desk. Let's say he requested such a thing so it is my obligation to follow. Now the Judge, it is very

difficult for me to come to the Judge, I could always go and say Judge would you like to put this on your desk. Were he to say no, there was not much I could say, I can't say you have a Christmas tree on yours because he doesn't have it. It is not the case, I did what I could, I requested it, I don't have much position because he doesn't want it, if you want to keep the entire lawn clear that is your prerogative. I still would want it. I probably would send a letter requesting it every year but I don't think I would have as much backbone in the eyes of the Council because the fact of the matter is that these decorations here, religious not religious, these cater to a certain part of the community and not to another part of the community.

Attorney Lustgarten: Last point Mayor and then I'll stop. You are aware that in years past when this has come up other representatives of non Labovitch but other segments of the Jewish community in Fair Lawn has requested that the Menorah not be placed in Borough Hall.

Rabbi Neubort: The fact that there are those Jews who oppose the Menorah on Borough property, I am not even surprised by such thing. There are Jews for Jesus. Now that sounds, how could there be Jews for Jesus, that doesn't make sense but there are. And the fact that there are Jews who are against the Menorah doesn't shake any ground. Most Jews in town, if you go around town, as I did, first and foremost, just to preface, I've been around the block, just like politician go, knock on doors, I have done that day in and day out for an entire summer. I went, I collected petitions in the synagogues, I collected petitions here from Jews and non Jews on Borough property. I have gotten a good idea of what the balance is. I am not going to say there was nobody that voiced an objection, I would say, in my estimation, it was perhaps for every 20 people that I asked and signed, I think there was one person who voiced an objection and I didn't say "Oh if you are objecting I don't want to talk to you". In fact the people who objected were the first people who I looked to speak with and hear them out in entirety. So as far as there is a Community Council, just by the way for the record, is not a democratically elected body. There is a person who did a informal survey and he asked around the town, Jewish people, from different synagogues, he asked them, could you name one person who sits on the Fair Lawn Jewish Community Council, and out of 107 or 109 people, okay, only 12 people could say they knew at least one person on the board.

Mayor Ganz: It is about the same percentage, Rabbi, that knows who the Councilmembers are.

Rabbi Neubort: Councilmembers? That is not true, I argue.

Attorney Lustgarten: Did you survey all the Rabbis in town to find out what their consensus is.

Rabbi Neubort: In the, all the Rabbis? As an appendix to our brief we put in a letter from a number of very prominent rabbis including Rabbi Houghton.

Attorney Lustgarten: Respectfully, I read the attached.

Mayor Ganz: The attachment that you are referring to is dated 1988 or 1989.

Rabbi Neubort: That's correct.

Mayor Ganz: That is fourteen years, anything more recent than that?

Rabbi Neubort: Well, if it was the Council's position, that if I were to get every single rabbi in town or the majority of the rabbis in town, I would go through that bother.

At this time Side A of the tape ended.

Rabbi Neubort: The property where they light that Menorah. The fact that the Council attended that Menorah lighting, I think they should, I think they should attend a lighting

Mayor Ganz: If you went to one at Bris Avrohom.

Rabbi Neubort: I thought you should go to that one, you should go to the other one as well as Christmas tree lightings around town. I believe the Council should be present, should be vocal, should be seen. But that has nothing to do with whether or not there is a Menorah in front of Borough Hall. There are Christmas trees all over town, I am sure. Just go around you will see Christmas trees all around town. I don't see that the argument is well if you have Christmas trees all around town why is there a compelling need and necessity to spend taxpayers dollars to decorate Borough Hall the way that it is.

Attorney Lustgarten: One of your arguments before was that what was put out on the Borough property is not reflective and would not, I forget the exact word that you used, but for the Jewish family they wouldn't feel comfortable with what was out there. But there is a second prong to that. If you have a Menorah at Bris Avroham, you have it at the Jewish War Vets, you have it at Beth

Shalom and I forget the name of the fourth place, where those same Jewish families could go for a lighting, aren't you fulfilling the same spiritual need there. Be careful before you answer because the third prong of this is if you say it is not the same then effectively where you are leading us in this discussion is a governmental endorsement of religion on public property. Because if the fulfillment can't be obtained in the private sector at these other institutions but can only be fulfilled by these families and these kids coming to Borough Hall, doesn't that fall right into the trap of an endorsement by government which we know by all the cases is prohibited.

Rabbi Neubort: The argument that I am going to say is that if you were to put the Menorah there that would perhaps balance things out. The way it is now in an imbalance, it is not balanced for the entire community which is 40 or 50 percent Jewish, it's an imbalance. The fact that there is a Menorah by the, first and foremost, just to let you know, that Menorah there prominently displayed by the Jewish War Veterans and even mine, that's not Borough Hall, that's not the center of town where

Mayor Ganz: Actually the Jewish War Veterans is the precise center of town.

Deputy Mayor Etlar: And Mayor most noticeable.

Rabbi Neubort: I don't mean the center of town as that. Do you think, what do you think is more noticeable, the holiday tree here or the Menorah there at the Jewish War Veterans? You don't have to answer that question.

Mayor Ganz: The Jewish War Veterans is much more noticeable.

Attorney Lustgarten: You know Rabbi, it depends on what you are looking for.

Rabbi Neubort: Ah come on. It depends on what you're looking for. That's silly, I don't mean any disrespect.

Deputy Mayor Weinstein: I am going to speak not as an Attorney and not as a Rabbi but my true feelings. And I have been speaking to a number of people since I met with you and spoke personally and I have a very good friend who also is Labovitch and my understanding from him and we talked about this last year as well, and we talk about it on and on, he is trying to make me Labovitch.

Rabbi Neubort: I don't know that his position is the same as mine but alright.

Deputy Mayor Weinstein: Well, it is similar but he said the goal of the Labovitch movement is to educate others as to the Jewish religion. And his feeling too was that as long as a Menorah is prominently placed in town, that people could see it, that is sufficient for him and the people he prays with, etc. So I think that goal has been reached in the Borough of Fair Lawn.

Rabbi Neubort: His goal.

Deputy Mayor Weinstein: I also feel that the fact the Council decides whether they want to go or not to these various candle lightings I think that is an important fact and should not be minimized. Plus, the fact that we would put a Menorah here and light the candle versus lighting a Menorah in the Jewish War Veterans building last night. I had a lot of emotion in lighting those four Menorahs in the Jewish War Veterans building, there is a lot of emotion. When we do it here, and this is my true feeling and you can call that a holiday tree or a Christmas tree and everybody can call it whatever they want but my feeling tonight in singing all songs and having Santa Clause come off the fire truck and lighting all the lights, was one of the holiday season, not any religious meaning to me at all. And I think that what the Borough or Borough Hall should continue to do is just celebrate the fact that this is an American holiday season. We talked about the commercialism of it and all that.

Rabbi Neubort: But we say holiday, which holiday?

Attorney Lustgarten: All of them.

Deputy Mayor Weinstein: Holiday season is the end of the year. The year could be fourteen months, it could be fifteen months. It happens that it is twelve months. I know in the Jewish religion we have an extra couple of months this year.

Rabbi Neubort: Yeah, one month.

Deputy Mayor Weinstein: The point is, is that we are celebrating the end of the year, the fulfillment of the year, we all made it through another year. A difficult year at that. And I think we all should celebrate that and that is what I do when I stand on those front steps. We also talked about parva and I asked you what the definition was and it is being neutral. I think we both agreed that we have to be neutral. It is just that your way of being neutral and the way I feel it should be neutral that's where we differ. But I

think everything is coming together by the way I think the consensus of this Council is, and how we think about the Borough, how we personally feel about religion but how we are expressing it and we're celebrating an American holiday season.

Rabbi Neubort: As I said then, just as one can look at the Christmas tree as commercialism that it has become a national holiday, an American holiday and when you say the holiday season the holiday season also includes Hanukkah. In that commercialism, in that Americanism, every argument that you are going to make, every single neutral, every argument that you are going to make about the tree, that defining it as neutral, is equally applied to the Menorah.

Attorney Lustgarten: What is the deprecation of celebrating Hanukkah if you don't have the Menorah on public property. Where is the deprecation?

Rabbi Neubort: Where is the deprecation of celebrating Christmas without the holiday tree.

Attorney Lustgarten: So what it really comes down to is because you think they have theirs you want yours.

Rabbi Neubort: No, I already stated that I want mine regardless of whether or not they want theirs. How many times we are going in circles. I believe I have backbone to stand on.

Deputy Mayor Etler: Rabbi, you mean to say that if the whole Borough Hall was bereft of lights or ornamentation, and there is no sign of the holiday season, you would still want the Menorah?

Rabbi Neubort: I would still place a request, I probably would, if I was denied, I would probably go home a lot quicker. Laughter. The fact is that there is this whole thing here so I feel that Fair Lawn should be fair to approximately 40 to 50 percent of the population. I mean, if you were listening to the radio today and yesterday and starting with our Mayor this morning, I mean, I want to say, and I don't mean this in any disrespectful way, I felt bad he gave you a beating. He was unfair, he was supposed to be impartial. That is what the press are supposed to do. But I have a tape of it, he really didn't even let him talk.

Mayor Ganz: They actually cut me off. It was on WOR.

Rabbi Neubort: They starting screaming and before he started he said I think the Rabbi is right. Now, I am being very honest, the point I am bringing out is not that our dear Mayor took a beating by phone from this disc jockey. The point is the people that called afterwards, I think, it is just not me who thinks this way but there was this disc jockey, there were these guys and the people who called up afterward, if you were listening to WABC later on you heard streams and streams of people. This is just not two, three, four people, this is at least, I would think it is more, but you know, that is what you think, at least 50-50. Just like pro-abortion and people who are against abortion. Those who are for and those that are against. It is not a simple issue that everybody thinks it is. There are a lot of people that think the way I do. In fact, in a few hours I got 350 signatures, myself, I should add, 350 signatures in a few hours. If anybody had witnessed this there were times I had seven, eight people waiting to come and sign my petition. That's a lot of people interested. It would be one thing to say I hijacked one guy and I made him sign, 350 people in a few hours, there were people standing around me, Rabbi can I sign your petition. The point is there is a lot of people who feel the way I do.

Attorney Lustgarten: Rabbi, no one is questioning the integrity of the petition or your passion for the issue.

Rabbi Neubort: Not my passion but the public's passion.

Attorney Lustgarten: But also the one thing I will say is passion is defined not necessarily by what side of the argument you hear and I am not sure that when people were signing petitions they may have not heard the other side which I have been articulating.

Rabbi Neubort: Okay.

Attorney Lustgarten: Which I reiterate are real concerns. Look, the bottom line is this.

Rabbi Neubort: I haven't seen a petition against a Menorah.

Attorney Lustgarten: Nobody has gone out to get one and if you are talking about the 50-50 split, my guess if people went out to say do you want religious artifacts on Borough lawn.

Rabbi Neubort: You are calling it religious perhaps they won't call it religious.

Attorney Lustgarten: Do you want to open up the Borough Hall front lawn?

Rabbi Neubort: You're saying it is going to open it up as a public forum. This hasn't opened it up, the tree here hasn't opened it as a public forum and many towns the reason why they request

Attorney Lustgarten: And it hasn't been requested.

Mayor Ganz: Councilmember Caan has been waiting patiently.

Councilmember Caan: To me this is governmental strictly only and very simply. If we add anything to the lawn, if we bring something in, we are creating a public forum. The tree is not the same, the tree exists all year around, it is not brought in for the holiday season, it happens to be there so we decorate it. If it was brought in specifically for the holiday season like most people do with Christmas trees, you go out and buy one, you cut one down, you bring it home, you decorate it, after the season is over it is gone. This is a tree that lives and breathes in front of Borough Hall twelve months a year. It just happens to be there and decorated. Whether it is decorated or not frankly with lights isn't even the issue. If we bring something in and put it on the lawn at a particular time of year we are creating a public forum whether we want to think so or not. Once we create a public forum the door is now open. Once the door is open anybody can come in and put anything they liked to on the grounds of the front of the building here. And we can't say no and this has already been proven in the case that our Attorney mentioned in Cincinnati. Actually I have relatives that live in Cincinnati and they have been going through this since 1990 when they first opened it up and the purpose was to put a Menorah on a public spot. By doing that the KKK came in, they put up their symbols, and frankly it had nothing to do with Cincinnati they came from Illinois to put in into Cincinnati. And they have been trying to get it out since. Recently, in fact, it has been torn down a couple of times and it was replaced and then the Police had to guard it so it wouldn't get torn down again and it wound up costing the taxpayers over \$17,000 to protect their symbol which is ridiculous in itself. At this point in time, this year what they tried to do and I talked to my relatives and I actually found an article in the paper this Saturday, they try to say between the middle of November and the end of December it is not going to be a public forum it is going to be for governmental use only. They went to court and challenged that and the court said well no, it is a public forum now you can't take it away. Because now it has already been established as a public forum and that is my problem. We can say we'd only like to have a Menorah if we could but frankly by saying a Menorah we don't know whatever else we are going to get and if we don't know what we are going to get I think its reasonable for us to not to allow it to begin and then see where it goes later because once it starts you can't stop it. And that's the problem.

Rabbi Neubort: The idea that you say the Menorah would be brought in where the Christmas tree is there all year round the lights on the Christmas tree are not there all year round neither is the Santa Claus, St. Nicholas which is also brought in prominently on a fire truck. These are also all things that are brought in and if you want to get technical that it is going to open it up as a public forum so then I should really then go to court hey they created a public forum because they brought in lights and they brought in a Santa Clause and so on and so forth. Santa Clause, St. Nicholas, I don't need to say more. Now

Mayor Ganz: It is always your prerogative, Rabbi.

Councilmember Caan: Let me just say this, I think you are going to have

Rabbi Neubort: The other thing is if you had this tree just the tree, no one argues that the tree is not creating, you know, the tree is not the problem here the issue here is that there's lights there on the tree and it is decorated in a Christmas manner. And that is brought in, it is not there all year round. The taxpayers dollars are spent for people to go string it up every single year and to decorate the entire town

Attorney Lustgarten: That's the issue for you, Rabbi, that's not the issue for the elected officials who have to look for the greater good for this community. And again, I have to say with all due respect, from everything you have said tonight you have one goal in mind which is to put the Menorah in there and as Councilmember Caan just said there are consequences that are not just imagined they are real, other communities have experienced them.

Rabbi Neubort: Are there any in New Jersey?

Attorney Lustgarten: It doesn't matter whether they are in California, the fact of the matter is that in the United States these things have happened and they are negative, they don't build community spirit, they are divisive and worst than divisive they are hateful. I mean to bring Nazi swastika

Rabbi Neubort: Maybe the White House, maybe the Menorah at the White House has brought dissension or hatred.

Attorney Lustgarten: That is a public forum. There is a lady every Easter in front of the White House and in front of Congress who

plays Easter music. It is a public forum, it goes back to 1784 or maybe later. Any event, the point is you have a point of view which I respect, I said that Tuesday night and I still respect it, but you're looking at it from a very narrow viewpoint and I don't mean narrow in narrowminded I mean narrow in terms of object and goal. The Council has responsibility to look at the issue at a much broader stroke consistent with law but also with policy judgement. I think what Allan was trying to say is that it is like Pandora's box once it's open you can't go back in and the potential consequences of whether you disagree its a public forum, I'm right, you're right, I'm wrong, you're wrong, if a court declares based on activities outside that it is a public forum, the genie is out of the bottle, to use that euphuism, and once it's out, the next go around of discussion is going to be on this Council is how do we stop that hateful stuff going on out there and I am going to have to tell them you can't. And frankly, I don't want to be in that position because I don't think that's good, not because its a personal view but I don't think that's good for everybody in Fair Lawn, Jewish, Christian or people of other faith. That to me is not a positive step, either in a civilized community or any other way you want to describe Fair Lawn as a progressive community. We don't prohibit religious symbols on private property. People have the right to free exercise. There are many houses of worship in Fair Lawn. They are not imposed upon, we don't have phony intrusive regulations about parking and too many people. We are not the kind of town that goes after houses of worship under artificial rationales. We have had none of that dissension in Fair Lawn and I have lived in Fair Lawn since 1976 and frankly I appreciate that. We have had open minded Councils who say live and let live but within the confines of the law but there are greater issues than just particular issue that any individual comes before the Council with and as elected officials and as the fiduciaries of the public trust and this is what we discuss all the time whether it be sewers or the issues that are much more weightier that you present. That's what the Council's responsibility is and sometimes a specific narrow issue cannot be satisfied because the greater issues have to be satisfied and in my view that's exactly what this issue is.

Councilmember Amato: I have had conversations not only just before with Rabbi but also before tonight. And he knows how I feel about this which is that I don't believe that the Christmas tree is really a Christmas symbol. But I will say this as a Catholic, I know more would support a Nativity set on the front lawn then I would a Menorah. I think that both, I have to tell you that a Nativity set would be a religious symbol and I told you before I see this as being commercialism.

Mayor Ganz: We have exhausted the time limit set that we have set aside for public comment, it has gone on for 45 minutes and I am going to bring this to a close and I am going to take consensus right now by saying that if any Councilmember wishes to put this on the Council's Agenda they are free to do so and if at that point in time that happens we'll have a discussion, if not, not. Thank you Rabbi.

Steve Rickett, 14-13 Berdan Avenue, stated he knew the Council would be discussing the Orchard Street parking restriction so he wanted them to know since this enforcement has taken place the cigarette butts and trash has gone done. He felt there was a 100% improvement.

Matt Greenfield, 14 Franciscan Way, agrees that the conditions have improved. He does not understand why it is an issue now that the core of the problem is gone.

Orchard Street Parking Ordinance Sunset 12/31/02:

Attorney Lustgarten advised that the sunset provision is set to expire in December. Some residents have said they would like the restriction lifted. He felt the Council should take away the sunset period and a future meeting address the issues with the residents. Mayor Ganz stated he would like to invite the high school students and the local residents to a meeting in January. Deputy Mayor Etler felt it had been successful. Mayor Ganz stated if the school board referendum passes they will need additional parking spaces.

The consensus was to introduce the ordinance tonight striking the sunset clause and to have the residents and students come to a meeting in January.

Request for Permit Parking in Front of Residents' Home:

Acting Manager / Municipal Clerk Kwasniewski stated the resident has come before the Council at a previous public meeting regarding parking in front of her house. Attorney Lustgarten thought the Council felt this was an inconvenience issue and that the person should just juggle the cars around.

The consensus was that the Council was disinclined to offer ordinance relief.

Request for Advisory Opinion - Board of Ethics:

Attorney Lustgarten advised that a member of the RRIC has put in a request to the Board of Ethics. The Chairman has asked for legal counsel. Attorney Lustgarten stated he would like to recuse himself from the matter. Mayor Ganz advised Attorney Lustgarten

to hire Counsel from out of the County. Attorney Lustgarten stated subject to the Borough rates.

Bricks from Radburn Plaza Building;

Acting Manager / Municipal Clerk Kwasniewski stated she had been contacted by the property owner that they would like to give the Borough bricks from the building. If the Borough is interested they could sell them as fund-raisers or use them for the 9-11 memorial. They have set aside three hundred bricks. Mayor Ganz felt the Borough could use them and wondered if they could be stored at the DPW complex.

The consensus was to take the three hundred bricks from the Radburn Plaza Building.

Half Day Christmas Eve/New Year's Eve:

Acting Manager / Municipal Clerk Kwasniewski stated that in the past previous Councils allowed a half day for Christmas Eve and a half day for New Year's Eve with the departments working out the coverage so the offices were not closed. Mayor Ganz stated he did not want to establish a precedent and if the employee was called back to work for some reason they would be paid the regular rate and the Police Department manned as it should be.

The consensus was to allow half day Christmas Eve or half day New Year's Eve as indicated by Mayor Ganz.

Government on the Road:

Acting Manager / Municipal Clerk Kwasniewski stated she was gearing up for next year and wondered about the government on the road meetings. Mayor Ganz felt they were very successful and wanted to continue it.

The consensus was to continue the government on the road meetings.

Deputy Mayor Weinstein thought it would be a good idea to invite the student councils and have a governmental day. Mayor Ganz advised there is a program in the high school like that and they should get details about that. Acting Manager / Municipal Clerk Kwasniewski is to speak to the principal about the program. Attorney Lustgarten felt that older kids get better use of it. Deputy Mayor Etlar stated he met with a third grade class that had a lot of questions. Attorney Lustgarten suggested when they hold a meeting at a school to invite the classes to the meetings. Mayor Ganz stated they could draw up their lesson plans around this. He asked Attorney Lustgarten to check with Mrs. Lustgarten who is a teacher in Radburn School.

Update on the Search for Borough Manager:

Councilmember Caan stated they were down to the semi-final count of eight. Interviews are being set up. They will narrow it down to the final count. Mayor Ganz stated if anyone wanted to participate coordinate it so that no feels excluded. Deputy Mayor Etlar stated that he had put his own marks on the resumes he received. Councilmember Amato wondered when they get to the next round will there be a reason why they didn't make it. Councilmember Caan stated he will tell them why they didn't make it. He asked Deputy Mayor Etlar to give him a list of who he wanted included.

Veterans & Volunteer Coalition Update:

Councilmember Caan stated when the coalition was created a sunset date of January 22, 2003 was included and he would like to see it eliminated. Mayor Ganz stated they will look at it when they work on committee appointments.

Mid-Block Crosswalk Update:

Councilmember Caan asked for an update since he has not had one since June. Deputy Mayor Etlar felt the traffic calming devices should be more reflective. Acting Manager / Municipal Clerk Kwasniewski will get updates.

Slogans and Signs Placement Around Town:

Deputy Mayor Weinstein stated they were waiting for funds to make the slogans and signs into permanent type fixtures in the parks. He wondered if they should be put everywhere or just in the parks.

The consensus was to place them all over the Borough.

Police Tips for Businesses Meeting:

Deputy Mayor Weinstein stated he wanted to thank everyone involved for putting this meeting together. Many businesses are concerned about staying open late during the holiday season. He would like it to be videotaped for Channel 66.

Freeholders Use of Mayor's Office:

Mayor Ganz stated that one of the new freeholders would like to use the Mayor's office once or twice a month as a satellite office.

The consensus was to allow the freeholder to use the Mayor's office.

Garbage Collection at Apartment Complexes:

Mayor Ganz stated that as of January 1 the Borough is required to pick up garbage at all apartment complexes and at no charge to the property owners. The tipping fees are substantial. The cost to the Borough is 1.6 million dollars. He would like the Council to consider giving back to the taxpayer by privatizing the collection of garbage. This would allow two or more companies to come in at a rate to be agreed upon by the Council. The fees could be calculated by the amount of waste generated. He felt this would be beneficial to the Senior Citizens. Deputy Mayor Etler felt he would like to see this on paper.

The consensus was to have Acting Manager / Municipal Clerk Kwasniewski prepare a report and to contact the current garbage collection company to see if they would be interested.

Special Meeting:

Upon motion by Deputy Mayor Weinstein and a second by Deputy Mayor Etler, the meeting was adjourned to a Special Meeting at 10:30 p.m.

Mayor Ganz reconvened to the meeting at 10:32 p.m.

Closed Session:

Upon motion of Deputy Mayor Etler and a second by Councilmember Caan, the following closed session resolution was unanimously adopted at 10:35 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 Labor Negotiations; 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 execution of a labor agreement with the Blue and White Union of the Borough of Fair Lawn no specific time, the estimated time within the next six months, by the Mayor and Council 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 11:10 p.m.

Advances:

Deputy Mayor Weinstein wondered if there was a Borough policy to give advances to employees. Attorney Lustgarten advised that under the Local Fiscal Affairs Law the Borough is unable to give money that has not been earned so effectively loans cannot be advanced. Mayor Ganz stated there is a policy that allows an employee that is going on a trip to draw an advance to give the employee the ability to pay for certain expenses. Attorney Lustgarten stated that may be a reimbursement situation not a straight salary. The only other exception to that would be if the Council knew an agreement had been reached for a certain percentage, past Council's have authorized that payment even though it had not been settled fully. Attorney Lustgarten stated that they cannot pay someone for not working. Deputy Mayor Weinstein thought if this contract reached a settlement the Borough could advance the workers some money. Attorney Lustgarten stated if the Borough had the money to pay the 1% or 2% of it they could introduce the ordinance, get it approved and make that payment. Several years ago the Council made a good faith gesture similar to that

when the Police union settled.

Adjournment:

Upon motion by Deputy Mayor Etlar and a second by Councilmember Amato, the meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC

Assistant Municipal Clerk

SPECIAL MEETING OF DECEMBER 3, 2002

Mayor Ganz called the meeting to order at 10:30 p.m.

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

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

ORDINANCES FIRST READING:

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

Ordinance No. 1932-2002

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN, 2000, SPECIFICALLY CHAPTER 232 ENTITLED "VEHICLES AND TRAFFIC", MORE SPECIFICALLY SUBSECTION 232-11 ENTITLED "PARKING PROHIBITED DURING CERTAIN HOURS ON CERTAIN STREETS" AND SUBSECTION 232-13 ENTITLED "PARKING TIME LIMITED ON CERTAIN STREETS" AND ORDINANCE 1903-2002

Upon motion by Deputy Mayor Etlar and a second by Deputy Mayor Weinstein, Resolution No. 353-2002 introducing Ordinance No. 1932-2002 was discussed.

Mayor Ganz stated this ordinance eliminates the sunset provision. He stated that although it was not in the ordinance it is the Council's intention that this will be discussed by the next Council in January.

There being no further discussion, Resolution No. 353-2002 introducing Ordinance No. 1932-2002 was unanimously passed.

RESOLUTIONS BY CONSENT #26-2002

Upon motion by Deputy Mayor Weinstein and a second by Deputy Mayor Etlar Consent Agenda #26-2002 containing the following items was unanimously adopted.

- a. Resol. No. 354-2002 - Change Order - Deaf Center Fair Lawn Avenue
- b. Resol. No. 355-2002 - Change Order - Radburn Pathways Contract 2
- c. Resol. No. 356-2002 - Approval of Raffles & Bingos:
Temple Beth Sholom off-premise merchandise
Knights of Pythias off-premise 50/50
Temple Avoda off-premise 50/50
Congregation Bnai Israel off-premise 50/50
- d. Resol. No. 357-2002 - Rejection of Bid: Uniforms: Police, Auxiliary Police, School Guard
- e. Resol. No. 358-2002 - Refund of Overpayment of Taxes

ADJOURNMENT TO WORK SESSION

Upon motion by Deputy Mayor Etlar and a second by Councilmember Caan, the meeting was adjourned to the Work Session at 10:35 p.m.

Respectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk