

SPECIAL MEETING OF MARCH 20, 2001

Mayor Ganz called the meeting to order at 6:10 p.m. Municipal Clerk Kwasniewski read the statement of compliance with the Open Public Meetings Act.

PRESENT: Mayor Ganz, Deputy Mayor Adler, Councilmembers Amato (late), Dobrow and Etlar.

Also present: Manager Sacks, Municipal Clerk Kwasniewski, Attorney Lustgarten and CFO Eccelston

Operating Budget

Health & Human Services - Health Officer Denise DePalma-Farr was present.

Salaries - CFO Eccelston explained that one promotion and one person in steps caused the salary line to be a little higher.

Overtime - Overtime consists of animal control officer's services.

Department Supplies - The majority of this line item is spent on the flu vaccine. The rest is for the things needed to run the clinics.

Adm. Pub. Assist/Social Services Salaries - This item went down because one position was eliminated.

Mental Health Program - Mayor Ganz asked for an update of Fair Lawn residents using the service.

Celebration of Public Events - CFO Eccelston advised that the line item Special Events will be increased for a concert in conjunction with the fireworks for the 4th of July.

Parks and Playgrounds - Superintendent Frey was present.

Overtime - Superintendent Frey explained that increase in overtime spent compared to what was budgeted last year was a result of the pool being opened earlier and closed later and more hours for snow removal. He noted that Memorial Pool will open on Memorial Day and Walsh Pool will open on June 22. The pool will close around September 20. The aquatic permit is good until September 30. Manager Sacks advised that she is putting together numbers based on the cost to remain open in September, but if it is a cold early fall, it does not make sense to stay open. The water is expensive.

Contractual Services - This line item is for sprinkler repairs and the cost to test the water weekly.

Recreation - All Sports has not made a request for an increase. The Senior Citizen's Center will continue to be open seven days a week.

Overtime - Life guards account for most of the overtime.

Councilmember Amato arrived at 6:45 p.m.

Special Expenses - This line item reimburses the water utility for a portion of the water used by the pool. Mayor Ganz suggested that next year this amount not be included.

The consensus was not to include any amount for water reimbursement next year.

Mayor Ganz asked Superintendent Frey if he was satisfied with the performance of the Department for snow removal or are additional funds needed to provide for additional employees to assist them. Superintendent Frey replied that they have to do a great deal of hand shoveling. If there were employees from other departments to do that, it would be helpful. Mayor Ganz suggested that he and Manager Sacks discuss the matter.

Office of Emergency Management - Director Metzler was present.

Salary - CFO Eccelston explained that Director Metzler did not have permanent status during 2000 so he was carried in this department until he was transferred into the Manager's department.

New Department Equipment - Director Metzler explained that if all the volunteers qualified for a full clothing allowance there would not be sufficient funds in the budget. He does not purchase equipment until after the clothing allowances are paid. This year some funds were left, but they were transferred to other departments.

Ambulance Corps. - President Gail Cebular was present.

Mayor Ganz noted that the Ambulance Corps. has requested that the Borough turn over to them for \$1 some property so that they can expand their building. President Cebular explained that the parcels are in the back of the building. The lots go up the embankment to Route 208. Those parcels are needed for parking as required by BOCA. They thought they already owned those parcels. The Ambulance Corps. will borrow funds to expand the building. The expansion is expected to cost \$250,000 and they anticipate needing a \$150,000 mortgage. They hope to break ground sometime this year. They have to resolve the land issue first and secure financing before soliciting bids. They expect to repay the loan from funds they have set aside and fund drives. It may also be possible to use additional revenue from the cell tower.

Mayor Ganz wondered if the Borough could handle the financing with an assignment of the cell tower revenue to repay the loan. CFO Eccelston advised that the Borough would not be able to float bonds and put on addition to a building not owned by the municipality. Attorney Lustgarten thought perhaps the Borough could finance the expansion, take title to it and then lease it back to the Ambulance Corps. President Cebular stated that while she was always in favor of saving money that could then be used for training, equipment or supplies, the entire membership would have to make that type of decision. The committee could discuss it and advise the Council if they are going to take the proposal to the entire membership.

Attorney Lustgarten asked President Cebular to have the Corps.' attorney finish the agreement on the cell tower revenue for the ambulance purchase. He wanted that agreement executed by all parties before the budget is adopted.

Manager Sacks presented several changes to the overall budget. They received a revised pension bill from the State. Legislation is to be signed to reduce the amount of the pension bill that will save the Borough \$295,000. Cuts of \$41,000 have been made in various categories. The market for recyclables has improved so the recycling fund had increases. She recommended that \$168,000 be used from the fund toward recycling salaries. They could increase the amount to be used from surplus and still not use as much as last year. Some items have been added; i.e., land use books for the Zoning and Planning Boards, the concert, so costs have increased. The State has eliminated the Verizon Business Personal Property Depreciation aid for all but the hardest hit municipalities so the Borough will lose about \$127,000. The net result is a \$458,000 decrease in the budget she submitted.

Mayor Ganz asked about the self insurance fund which has a balance of \$138,348.11. He wondered if it could be reduced by \$35,000. Attorney Lustgarten advised that he reviewed the cases that have potential value and he was comfortable with the reduction provided the Council understands that if an award has to be made, they would have to approve an emergency appropriation.

The consensus was to reduce it by \$35,000.

CFO Eccleston advised that he has to wait until the bill is signed for the pension reduction to include that amount in the resolution to amend the budget.

ADJOURNMENT - Upon motion of Deputy Mayor Adler and a second by Councilmember Amato the meeting was adjourned at 7:25 p.m.

Respectfully submitted,

Joanne M. Kwasniewski, RMC/CMC/AE
Municipal Clerk

WORK SESSION OF MARCH 20, 2001

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

PRESENT: Mayor Ganz, Deputy Mayor Adler, Councilmembers Amato, Dobrow and Deputy Mayor Etlar.

Also present: Manager Sacks, Municipal Clerk Kwasniewski and Attorney Lustgarten.

Review of Tentative Agenda - Attorney Lustgarten distributed the revised draft of the cooperative parking plan and the site plan

relating to B4/B5 districts. He felt the ordinances could be introduced at the next meeting. He recommended sending the ordinances to the RRIC, Chamber of Commerce, Zoning and Planning Boards. Manager Sacks noted that it will take these organizations two to three weeks to review the ordinances. She asked if the Council wanted to wait for their comments.

The consensus was to introduce both ordinances at the next Council meeting.

Walsh Pool Use by Rising Stars Day Camp - Although located in Saddle Brook, 99% of the children live in Fair Lawn. The Council needs to set a fee for their use. The Community School is being charged \$2,000 for approximately the same use.

The consensus was to allow the Camp to use Walsh Pool for a fee of \$2,000.

Walsh Pool Use by Elmwood Park - Elmwood Park would like to offer the use of Walsh Pool to its residents again this year.

The consensus was to allow residents of Elmwood Park to use Walsh Pool under the same arrangements as last year.

Memorial Pool Use by Glen Rock Board of Education - They are concerned that the new pool will not be open for the 5th graders annual pool party. They would like to use Memorial Pool for three school days in June from 11:30 a.m. to 2:30 p.m. They would pay the costs for the lifeguards or they would bring their own.

The consensus was to allow them to use the Walsh Pool provided they submit documentation of insurance and indemnification of the Borough.

Borough's Role in Garbage Collection - It was the consensus to defer this item for the time being.

Request from State League of Municipalities for Telecommunications Contact Person - It was agreed that Manager Sacks would continue to be the contact person. She will so advise the League.

PMI Information and Imaging System Demonstration - Dawn Hanson demonstrated a system that would allow the Police Department to change from a paper system to an electronic system for the storage and archival of documents. The Union Police Department is currently using this system. She will send literature and a demo disc.

Public Comments on Items on the Agenda - Sam Gordon, 36-07 Northern Drive had his car towed from the CVS lot. He objected to the cost of the tow and the fact that he had to pay for two days storage. He believes that he was overcharged. Attorney Lustgarten advised that while the Borough regulates towing from municipal property or public streets, they do not regulate towing from private property. He suggested that Mr. Gordon seek redress in Small Claims Court. Mayor Ganz asked Attorney Lustgarten to see if the Borough can regulate towing from private property.

Philip Zimmerman, 5-22 Brennan Court, presented the statute which allows municipalities to regulate towing from private property.

Attorney Lustgarten will research this matter. He and Manager Sacks will make a recommendation to the Council following his research.

Illegal Signs on Telephone Poles - Deputy Mayor Etler was concerned about the signs Grand Union plastered all over on Fair Lawn Avenue. He felt it was a gross violation of the sign ordinance. Attorney Lustgarten pointed out that the telephone poles are owned by the utilities who can prohibit signs being posted. They have to enforce it. Under the nuisance ordinance the Borough could probably cite the Grand Union and then try to prove the case in court. Manager Sacks noted that if the signs were posted during the week any of the Code Enforcement Officers would have enforced the ordinance. Since it was a Saturday, it was up to the police.

Requests for Temporary Wireless Telecommunications Facility at DPW - Michael Breen, Esq. was present representing Sprint Spectrum. Attorney Lustgarten noted that a recommendation is needed from the Engineer and the Manager. Sprint wants to locate a temporary facility until they get permission for the permanent structure from DEP. Manager Sacks advised that it will not be a problem since there is sufficient room.

Mr. Breen explained that it is a trailer with an 88-foot tower. Deputy Mayor Etler expressed concern about the stability of the tower but Mr. Breen assured him that it is as safe as the monopole.

Attorney Lustgarten pointed out that the proposed amendment to the lease has an indefinite term. He preferred a set term since once it goes in, the Borough will not get it removed regardless of how long it takes to get DEP approval. Also, if the Council grants permission for one, they will have to grant permission for others. He did not want Sprint Spectrum to delay getting approval for the

permanent structure because they had the temporary structure in place. Mr. Breen pointed that they have a signed lease to locate on the monopole. Sprint is paying rent but they have no antenna.

The consensus was to allow the temporary cell on wheels and execute the amendment to the lease agreement provided that Attorney Lustgarten is satisfied with the language concerning waivers and the non-imposition of the affirmative defenses.

Mayor Ganz disclosed that he owned shares in Verizon and possibly Sprint. The number of shares he owns relative to his net worth and the income he derives therefrom is insufficient to create a conflict or the appearance of a conflict. Attorney Lustgarten did not believe there was any reason for Mayor Ganz to recuse himself from this matter. Deputy Mayor Etlar made the same disclosure.

Monitoring E-Mail and Internet Access and Use - Councilmember Amato stated that two weeks ago he reported that he had contacted CWN about monitoring e-mail and internet access. CWN told him that the number of times the employees log on and the length of time each logs on was available. The Manager had said that information was always available as a log. In March 2000 he had asked Manager Sacks how the users were monitored. He got no response. He asked again in May and he was told that the Manager was working on the budget and could not address his questions. He asked again in November and the Manager reported that the web master contacted CWN to find out if any information was available. He read the response from the web master. He did not understand why he could not get that answer and the information over a year ago. He received a memo from Manager Sacks telling him that it was impossible for her to get the data summarized and it would take a full time person 40 hours and possibly 250 hours to summarize the raw data. He wanted the raw data directly from CWN.

Manager Sacks advised that she contacted the vendor but she does not have an answer. She reiterated that Councilmember Amato asked for it by user which is not available. It was only very recently that he asked for the log on/log off records. She was asked about the web sites visited and how she would know if employees were using the internet and e-mail for their personal use. What was requested was not available and what is available is not what was requested. What is available is not monitoring.

Mayor Ganz asked if Manager Sacks she was aware of any abuse by the employees. Manager Sacks indicated that she did not see any abuse. She has limited the number of people using it to the main department heads. When she visits the departments she sees people on line with various agencies or downloading statistics. She has no probable cause to suspect abuse. Mayor Ganz then asked Municipal Clerk Kwasniewski if she saw any abuses. Municipal Clerk Kwasniewski replied that she has not seen any.

Councilmember Amato reiterated what he asked for and stated that the Manager could have told him that raw data was available. He wanted the raw statistics. He could call CWN and get it.

Manager Sacks asked for a directive from the Council to provide any further information of this type because she is concerned about 4th amendment right to privacy. She felt because there was no probable cause, they were actually snooping. She is not comfortable with the type of information being released. If the Council feels that this is necessary information to be exchanged, she wanted them to give her a directive.

Councilmember Amato did not feel that asking to find out how long people were logged onto a server invaded anyone's privacy. He was simply trying to protect the Borough.

Attorney Lustgarten noted that the Council is discussing Borough owned and Borough paid for e-mail and internet access uses. Presumably they are only used for legitimate government purposes. The Council has oversight responsibility. He felt it was incorrect to state that an inquiry into a log on/log off data base has anything to do with an invasion of privacy, snooping or 4th amendment rights. It is inappropriate to bring the debate to this level.

Manager Sacks indicated that she was not just speaking of internet use. She was speaking of the phone logs or application forms filed with the Recreation Department for pool passes. She expressed concern that the phone logs contain confidential calls made by the Police. Also there may be information in the raw data that will allow hacking into other computers.

Councilmember Amato reiterated that all he wants is the telephone number, the time logged on and the duration. Manager Sacks felt that looking at the log on/log off records will not tell them anything. She explained that they discovered that the Legal Department was logging on in the morning and staying logged on causing an inordinate number of message units to be used. They do not do that any more, but that was not an abuse simply a practice that she does not want used in the Borough.

Attorney Lustgarten pointed out that the issue is what data is any Councilmember entitled to provided that are not in violation of the Faulkner Act or privacy and constitutional issues. Prior Councils have taken into consideration whether a request is going to unreasonably intrude on the Manager's ability to run the Borough, the cost factor and the invasion of privacy issues. The premise

has been that the greater the flow of information the better.

Councilmember Amato noted that he never said he suspected anyone or anything. He is concerned with productivity. If he saw something glaring, he would ask why. If there is a reason that is fine. If the Council feels that he is going beyond his authority, then he has done as much as he can and he will not ask for them again.

Manager Sacks suggested using Attorney Lustgarten's criteria to evaluate these requests. These requests have had a horrible effect on morale. Many employees are concerned that someone is looking over their shoulder. It is demoralizing for the employees. All these requests have had an enormous cost in terms of personnel devoting inordinate amounts of time pulling information together. Employees feel that their privacy is being invaded. Councilmember Amato did not believe that his requests have had any cost.

Mayor Ganz summarized that Councilmember Amato wants the information. Manager Sacks has taken the position that she will provide it if the Council directs it. She believes that the requests have had intangible costs of time. Councilmember Amato feels it is essential to have oversight responsibility of internet use, telephone use and gasoline use. Councilmember Amato added that he wants the information directly from the vendor. Manager Sacks pointed out that the vendor is authorized to deal with her in this form of government. He should not be dealing directly with the vendors. She has received complaints from the vendors.

The consensus was that the Manager would request the raw data be sent to Councilmember Amato directly from CWN with Deputy Mayors Adler and Etlar dissenting.

Public Comments on Items on the Agenda Continued - Ron Mondello, the public advocate asked for a waiver so that he would be allowed to bring food and drinks into the Council Chambers for members of the Zoning Board. Manager Sacks pointed out that it has been a consistent rule that there would be no food. There have been several infestations of bugs. It is also extra for the staff to clean up because it becomes a mess. She felt food should be confined to Room 201. Deputy Mayor Etlar did not think food should be in the Council Chambers. Deputy Mayor Adler had no objection. Councilmember Amato had no objection to coffee.

The consensus was that coffee and beverages would be permitted in the Council Chambers.

The consensus was that the Manager would check with the janitorial staff if there is an objection to donuts.

Mr. Mondello asked if it were possible for a part time employee to give up their salary or stipend in order to obtain health benefits. Mayor Ganz pointed out that there would be some savings on FICA and possibly the pension. Attorney Lustgarten thought this issue came up some time ago and CFO Eccelston said that part timers do not meet the criteria. Manager Sacks thought there may be a way that this can be done. She will inquire and report to the Council.

Closed Session Resolution - Upon motion by Deputy Mayor Adler and a second by Councilmember Amato the following closed session resolution was unanimously adopted at 9:45 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; and

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

WHEREAS, public disclosure of the results of these discussions shall be made within 90 days or the end of the application before the administrative agency, whichever is later except for litigation strategy;

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 meeting at 10:00 p.m.

Sidewalk Sales - Attorney Lustgarten advised that no general prohibition against sidewalk sales exists except for the nuisance ordinance. The ordinance establishes a sidewalk sale day. The issues before the Council are if they want to have a general prohibition and do they want to have exceptions which he does not recommend. The ordinance as it is drafted is sufficient for a sidewalk sale day. It is not sufficient to deal with the issue of no merchandise or produce on the sidewalk on other days and can

there be exceptions. He suggested adopting the ordinance so they can have the sidewalk sale day.

Deputy Mayor Adler did not understand why they would need an ordinance for a sidewalk sale day when no prohibition against it exists. Attorney Lustgarten explained that the Council wanted to have specific days for sidewalk sales to attract customers to Fair Lawn. He thought it needed to be regulated. Manager Sacks added that currently anyone can put anything they want as long as it does not block five feet of sidewalk. They could just promote a sidewalk sale day without an ordinance. Attorney Lustgarten noted the ordinance establishes the regulations that need to be followed on a sidewalk sale day.

Deputy Mayor Adler had no problem with that concept but wanted to address the issue of merchants displaying their goods outside the store on a regular basis. Attorney Lustgarten thought that the larger issue may not need to be resolved right now. Certain merchants put merchandise out now and that has not been a problem. Most businesses do not abuse it. Manager Sacks thought if the ordinance is adopted as drafted everyone is prohibited from putting goods outside the store because it redefines sidewalk. Attorney Lustgarten disagreed because this ordinance only applies to sidewalk sale days.

The consensus was to adopt the ordinance as introduced at the next meeting and to take no further action on any other display of merchandise until after further study by the Council.

Parking Problems Fair Lawn Avenue Between George Street and River Road - Deputy Mayor Adler noted that after the road widening project on Fair Lawn Avenue was completed, the signs for the two-hour parking limit were not put back up.

The consensus was to install the signs where the two-hour parking limit is lawful and in effect.

Deputy Mayor Adler also stated that the no parking sign is incorrectly located.

The consensus was to have the Manager install the appropriate signage on Fair Lawn Avenue.

Deputy Mayor Adler also thought they should stripe the curb to show that it is a no parking zone. Manager Sacks will take care of the matter.

Telephone Management Report - Councilmember Amato stated that Manager Sacks said it would be a problem to give him information on the power bill because confidential numbers appear on it. Manager Sacks stated that a good deal of information is on that bill including numbers of informants. Councilmember Amato thought it was an expense analysis. Manager Sacks advised that it is the bill. She has given him a copy of the CD. Councilmember Amato stated that if that is the case, he does not want it. He still wants some way of doing an analysis. Mayor Ganz asked if there was some other analysis that shows usage by phone or dollar volume by phone. Manager Sacks will ask George Brouca. Attorney Lustgarten suggested asking Verizon to redact the Police Department from the bill.

By April 10 Manager Sacks will tell them if they can do the cost by telephone report.

Councilmember Amato asked if a Councilmember can call vendors and ask questions. Attorney Lustgarten advised that a Councilmember has the same rights as a citizen to ask for information. A Councilmember cannot use the office to exceed what a private citizen can obtain. Councilmembers have to abide by the Faulkner Act and go through the Manger. If a Councilmember decides he wants to get information directly and the Council decides to censure him, that resolution would be nonbinding and ultimately if he disagreed with the majority of the Council, he would probably have to pursue legal action. Attorney Lustgarten would not be able to represent a single Councilmember since he represents the Council collectively.

Borough Vehicles & Gasoline Usage - Manager Sacks explained the process she had to use to get the information he requested. She does not do a regular analysis by vehicle. That information could be obtained but it must be done manually so it is a chore. A program change would be required but she did not know what it would cost.

ADJOURNMENT - Upon motion of Deputy Mayor Adler and a second by Councilmember Amato the meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Joanne M. Kwasniewski, RMC/CMC/AE
Municipal Clerk