

WORK SESSION OF MAY 1, 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 Etler.

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

Review of Tentative Agenda - Attorney Lustgarten advised that he drafted the ordinance to restore restaurants as a permitted use in the B1, B2 and B3 districts. He wanted the Planning Board to concur with the use of his definition of a restaurant. The ordinance may not be ready for introduction Tuesday, if he does not hear from the Planning Board.

PMI Demonstration Imaging System - This matter will be rescheduled.

Request to Move Bus Stop at 40-02 Morlot Avenue - Officer Franco was present. He explained that he tried to place the bus stops away from houses along the new route. In this particular instance there is no other place to put it because the far side of the intersection is the preferred side of the intersection because of the view obstruction. The resident has complained. He has checked with NJ Transit to see if the stop could be moved to the near side between the corner house and the house next to the corner across from John Street. He spoke to the two homeowners. One resident had some concern about the liability involved with having a bus stop in front of his house. Officer Franco explained that he would have no additional liability. The resident has no problem moving it to the new location that will be east of John Street. He was not able to eliminate the stop because the distances from Dorothy Street and Saddle River Road which are the two closet stops exceed the recommended distance by NJ Transit.

Deputy Mayor Etler suggested moving the bus stop so it would be in front of Columbia Savings Bank's driveway. Officer Franco indicated that he did look at that spot because the stop would not be in front of any houses. He explained that the bus probably cannot get into the left lane to make the left turn because of the traffic. It is against State law to make left turns from the right lane.

Mayor Ganz felt that since the homeowners are agreeable to having the bus stop by their homes, the Council should move it.

The consensus was to move the bus stop as recommended by Officer Franco.

Campbell Road Property - This matter was deferred until the first work session in June.

Monitoring E-Mail and Internet Access and Use - Councilmember Amato wanted to know when he will receive next month's data. Manager Sacks will find out and send him a memo.

Telephone Management Report - Councilmember Amato wants the same CD-rom that the Borough gets to analyze the Borough's telephone expenses. The Borough Manager had said that was impossible because of the confidential calls from the Police Department. He wanted to know who looks at the bill. Manager Sacks replied that CFO Eccelston, Assistant Engineer Brouca and herself. She asked the telephone company if they could segregate the financial data, but they will not. Councilmember Amato did not see the problem with a Councilmember looking at the bill. Manager Sacks explained that two of the employees are confidential employees. Councilmember Amato asked Manager Sacks to define confidential employees. Manager Sacks explained that they are privy to certain information that others are not. Councilmember Amato then asked for a legal definition of a confidential employee. Attorney Lustgarten explained that under civil service there are confidential secretaries. They use that term to take someone out of the classified status.

Councilmember Amato thought withholding this type of expense information from a Councilmember is wrong. Deputy Mayor Adler asked why he wanted the records. Councilmember Amato explained that he wanted to analyze \$100,000 of phone expenses, but he is not certain how he will do that yet. He feels that every Councilmember should be able to get the information even though no Councilmember before has wanted it or asked for it. Attorney Lustgarten suggested having Councilmembers sign a confidentiality agreement that they would only accept the records for analysis purposes. Mayor Ganz wondered how many confidential numbers are in a typical data base for a month. Manager Sacks thought it would vary depending on the cases on which they are working. Deputy Mayor Adler was concerned about the records leaving the building. Attorney Lustgarten pointed out that if they are public records, it makes no difference whether they stay here or go home. He thought it was a public record, except the confidential numbers, since public money was spent. Attorney Lustgarten suggested deleting the Police Department's numbers but Councilmember Amato advised that the vendor will not do that and he does not want the information on paper. He wants the CD-rom.

Councilmember Amato believes that Manager Sacks is implying that they can trust the Assistant Engineer and the Chief Financial Officer with the information, but not a Councilmember. He refused to accept that premise. Deputy Mayor Adler stated that their employment binds those employees so they could be held accountability. She did not know how they would hold a Councilmember accountable.

Manager Sacks stated that a confidential employee is an employee who deals with personnel records and confidential records that is how civil service makes the distinction. She continued that the information was offered except the Police Department in hard copy that she can provide. The issue is the information regarding the Police Department that cannot be separated on the CD-rom. Mayor Ganz felt the issue the Manager raised concerning the confidential telephone numbers is a valid one and they are not public records but the other documents are. He proposed that they direct the Manager to have the paper record go to Councilmember Amato with everything but the confidential numbers. Once he has the paper record he can devise how he wants to have the information sorted. The Council can then consider the financial costs to have it created and put on a separate disc so he can analyze it.

The consensus was to implement Mayor Ganz's proposal with Councilmember Amato dissenting.

Mayor Ganz suggested that once he has the information on paper, he should decide how he wants it on a CD-rom. The Manager will give the Council a proposal to recompile the information.

Gasoline Usage by Borough Vehicles - Councilmember Amato stated that the report was an expense report of gasoline used and was not what he wanted to see. He wanted to analyze the gasoline expense per vehicle. Manager Sacks stated that she had that print out several months ago. Mayor Ganz asked her to send a copy of that report to Councilmember Amato.

Fair Lawn High School Marathon - The consensus was to allow the Marathon on June 1-3 under the same conditions as usual. A resolution will be passed at the next meeting.

Status Report on Room 201 Improvement - Manager Sacks explained that they are going to make an opening in the wall between Room 201 and Purchasing. They will build a false wall in Purchasing that will leave some dead space between the two rooms. They will put the kitchen items, the audio visual equipment and the coat racks in that dead space that will give additional space around the periphery of the room. The work will be done in-house hopefully this summer. They will have an oval table. She will make window treatments and add carpeting.

Law Enforcement Awards - The awards will be presented at the Council Meeting on May 8.

Request to Change Date for Dedication of Prefabs at Memorial Pool - Deputy Mayor Etler asked that the date be changed. It was agreed to change the dedication to May 13 at 9:00 a.m. Manager Sacks advised that Superintendent Frey was not able to be present but she did not think that would be a problem.

Public Comments on Items on the Agenda - Myrna Thompson, 40-02 Morlot Avenue thanked the Council for agreeing to move the bus stop.

Carolyn Boyle, 15-40 Parmelee Avenue did not like the idea of a parking lot behind her house. She stated that years ago they were given permission to use the Borough's property. The Borough does not take care of the Campbell Road section. She felt that other areas were available for the seniors to use for parking. It will be noisy and they will get the fumes from the buses and the cars. They have beautified the neighborhood.

Deputy Mayor Etler disagreed. He did not think it was that beautiful. The property belongs to the Borough and if the decision is made to expand the parking lot then that is what will happen.

Ms. Boyle noted that five or six years ago there was a proposal to give the residents the land. She suggested that the Council do that now. She asked that they consider people like her who have lived here for years. She pointed out that the residents who do not want a parking lot behind their homes signed a petition.

Deputy Mayor Etler pointed out that parking for the Municipal Building is critical that is why the Council is considering this plan. Councilmember Amato stated that the idea of expanding the parking lot was not an arbitrary decision. More parking space is needed. Attorney Lustgarten thought that years ago when the issue of encroachments arose, they allowed them to remain with the understanding that if the Borough needed the property, the people would have to remove the encroachments. When Bert Kendall was the Manager, a survey was done and the open space was divided to match the dimensions of the properties. They sent that survey to the homeowners asking if they wanted to purchase the property from the Borough. There was virtually no consensus from the homeowners to do that. It is a little disingenuous to say that the people have taken care of the property as if it is their property.

It has been with the clear understanding for the last fifteen years that the people were using it with the acquiescence of the Council but they knew that they might have to remove the encroachments.

Deputy Mayor Etler added that the Council intends to create a five-foot buffer. The Borough property will be 15 feet from the parking lot curb so ten feet of common area will be behind the arborvitae buffer. The homeowners can put flowers and grass in the common area. People can put fences on their own property but not on the Borough property. Deputy Mayor Adler suggested that buses park in the front of the lot to reduce the noise and fumes. She felt that the parking lot would be used during the day not at night.

Luis Vidal, 5-06 Boyd Avenue, suggested that the Council prohibit running of the buses in the lot while loading and unloading. Attorney Lustgarten advised that an ordinance already exists prohibiting idling. Deputy Mayor Etler thought the buses did not even have to go into the lot. Manager Sacks stated that they can tell the buses not to go into the lot and not idle.

Barbara Martin of Franklin Lakes spoke for a relative on Parmelee stating that she thought it was dangerous for the children running into the parking lot from the back yards of the houses. Mayor Ganz suggested that they deal with that problem the same way everyone else does by putting in a fence to keep the children in their own yards. Ms. Martin concluded that while she understood that it was Borough property she did not think that putting a parking lot behind their homes was safe.

Activity Report for River Clean Up by Memorial Pool - Deputy Mayor Etler advised that he attended a watershed meeting where he met Bob DeVita who does river clean up. They will do some clean up in Fair Lawn. The Passaic Valley Water Commission funds them. They will bring in their own equipment. He spoke to Joe Maslo and Ron Lotterman.

Manager Sacks thought they should get something in writing from them stating when they will be in Fair Lawn and what they will be doing. Attorney Lustgarten added that the Borough will need to give them a right-of-entry permit for a specific period. They must give the Borough an indemnification agreement. Mayor Ganz suggested that the Manger investigate and report to the Council.

Clarification on Need for Legal Opinion on Publisher's Agreement/Fair Lawn Photographs - Attorney Lustgarten thought the project was being turned over to the Cadmus House. Mayor Ganz thought they were being asked for the Borough's tax exempt number and the release of photographs. Deputy Mayor Etler explained that Elaine Winshell stated that because of the impediments she was going to withdraw the project from the Council and do it through the Cadmus House. Mayor Ganz wanted something in writing from Dr. Winshell because no one else was aware of the change in this project. Attorney Lustgarten thought there were major problems in that agreement. Mayor Ganz added that he was concerned about the copyright issues relating to the photographs. He was uncomfortable without legal guidance. Mayor Ganz asked Deputy Mayor Etler to have Dr. Winshell send them a letter. Upon the receipt of that letter the Municipal Clerk can send her a letter wishing her well and telling her that the archives are available to her as they are to all citizens.

Additional Cellular Towers - Attorney Lustgarten had submitted a proposed ordinance to change the ordinance based on the consultant's recommendations. He included the purpose of the telecommunications act as a preamble to the ordinance. He indicated that the construction or modification of the tower must be consistent with the Federal Act and the health, safety and welfare of the residents of the Borough. A series of cases has come down where local Boards have been up held because the applicants have not met the negative criteria. He felt the new language would comply with the Federal act. It eliminates the total number of carriers and antennas. This ordinance is ready to be introduced at the next meeting.

He received the specifications from the Manager and he will review them and respond to her within the next two or three days. She and the Engineer met on the specifications today. The Engineer said that he was not sure that the DEP will approve anything in the flood zone at Memorial Park. He suggested placing the tower behind the ball field instead. It will be somewhat visible but it will be fenced and shrubbed. The site they were initially considering was in an area of the Park not used but it is in the flood zone. Mayor Ganz wondered if requiring the ironworks to have leaf like structures was possible. Attorney Lustgarten wondered if moving the tower would make it closer to homes. Manager Sacks stated that it would be closer but she did not know the distance. She will get that information from the Engineer. Mayor Ganz wanted to know whether it is just that building in the flood zone is more expensive or that they cannot build in it at all. He asked for a written opinion on this issue. If the Engineer does not know, then the Council should just leave the original location.

Discussion of Recommendations by RRIC re Cooperative Parking Plan and Site Plan Ordinance - Attorney Lustgarten stated that the Council received a letter dated April 13 in which RRIC made certain recommendations for changes to the ordinance. Mayor Ganz had sent the Council his thoughts on those recommendations. Attorney Lustgarten suggested that they send the letter to the Planning Board asking for their ideas before the Council discuss the recommendations.

Mayor Ganz thought the Council should consider at some length whether they want to allow mixed use on second and third stories and under the building above ground parking. Deputy Mayor Adler recalled that a great deal of discussion took place about the use

of three stories. Mayor Ganz stated that what RRIC is saying is that no one would build a three-story building on River Road, but they will build two stories. Having the second floor as residential would solve the Mt. Laurel issue that exists for the entire community and would add housing stock. Although both those things are true, Mayor Ganz thought that getting the Planning Board's input was appropriate.

It was agreed to send the recommendations to the Planning Board and ask for their comments on each recommendation at their earliest opportunity. This matter will be scheduled when the Council receives a response from the Planning Board.

Airing Council Meetings - Manager Sacks advised that Creative Cable does not want to provide volunteers. Candace Vivino needs two volunteers to do it, one to watch the audio and one to watch the video. If that is the case and Fair Lawn Creative Cable will not provide the volunteers, Manager Sacks was not sure they could do it. She has advertised for paid students. Mayor Ganz wanted to know if having a quality tape were possible and run it on Channel 66. Manager Sacks said she asked Ms. Vivino if they could do it that way using a camcorder. The video would be on the sign language interpreter. Ms. Vivino said they never replaced that piece of equipment after the flood although the money is available.

Mayor Ganz expressed his dismay that the Council has directed a paid employee whose job is to televise the meetings of the Council and while she has not refused to do it, she has not accomplished anything. He is not prepared to continue the funding of Fair Lawn Creative Cable if they are not able to put the meetings on the air. He has been trying for three and half years to get this done.

Attorney Lustgarten reminded the Council that it was the decision of a prior council to have a black out period from September to November for the political season. The Council has a summer schedule in July and August so they are not talking about very many meetings.

Manager Sacks pointed out that if they do not use the signer by June they will lose the federal grant. She has hired a signer for the meeting.

The consensus was to make it happen and if that means bypassing Fair Lawn Creative Cable, Manager Sacks was to do it, with Councilmember Amato dissenting.

Councilmember Amato explained that he disagreed because the Council is saying that Creative Cable does not have to do it. He thought that was wrong. Creative Cable should be doing it. If it is not Creative Cable the way it is now, then it should be Creative Cable the way it will be in the future. He would change his vote to yes if the Council agrees that Fair Lawn Creative Cable will do it eventually. Manager Sacks stated they will not do it because they are volunteers. They are a separate entity that uses the Borough's equipment. Attorney Lustgarten suggested that the High School may have students who can use the equipment. Manager Sacks advised that she solicited the High School and colleges but she has not had any success. Mayor Ganz thought they needed an audio track, a video camera on the sign language interpreter, a backdrop and then someone to turn it on and off. Manager Sacks advised that it is not all hooked up. Councilmember Amato felt that this was a volunteer organization was running Creative Cable the way they wanted to run it instead of the way the Council wants it to be run. He would change his vote as long as the Council addresses the problem later. With the consent of the Council Councilmember Amato's vote was changed from a no to a yes.

Mayor Ganz felt the Council should direct the Borough Manager to find the funds to hire a professional to do this and get it up on the air by the end of the month. Deputy Mayor Etler did not like the idea of not addressing the problem. Councilmember Amato thought that perhaps Ken Bailey of the Cable Television Committee could help. Mayor Ganz thought it was too late for volunteers.

The consensus was for the Manager to get this done.

Guidelines for Airing Council Meetings - Mayor Ganz suggested the following as guidelines.

1. When there is a local election the last broadcast will be no later than August 31 in any given year. Broadcasts will resume at the next Council meeting following the November General Election.
2. Review of the tape of the Council meeting and the authority to remove any scandalous, inflammatory matters stated by any member of the public or by the Council itself with respect to any nonmember of the Council limited to the Borough Manager and Borough Attorney acting in coordination with the Municipal Clerk. The Council shall have no right to direct or otherwise order that the tape be altered in any way. If there is a defamatory remark made about a Councilmember it will remain.
3. Visually on the screen the Council will not appear individually although the Manager can decide that a collective view of the Council as a body in slide form can appear together with other scenes of the Borough of Fair Lawn behind the sign language interpreter during the meeting.

4. The Municipal Clerk shall be charged with maintaining the final edited tape as a public record in accordance with the statutes.

5. The Manager shall then cause this tape to run on Channel 66 on the day following the Council meeting and as many times thereafter as appropriate.

Deputy Mayor Adler wanted to know why they were not televising the meeting the same way they televise the debates. Mayor Ganz explained that an incumbent has a significant advantage. The only person that will be visible is the person signing. The voices of the council will be heard. Councilmember Amato expressed doubts that anyone would want to watch that type of program. He did not think people would watch a screen of someone doing sign language and hearing the Council. Deputy Mayor Etlar agreed. Attorney Lustgarten pointed out that the Mayor is trying to be sensitive to the political undertones since this is the first time it is being done. The Mayor is trying to avoid the charge of politicizing the Council meetings. Deputy Mayor Adler indicated that she understood the Mayor's reasoning but she disagreed. Councilmember Amato indicated he would go along with it if it is for a short time. He did not want the people to think the Council is afraid to be televised. He wanted something telling the people this is for a short time only.

Closed Session Resolution - Upon motion by Deputy Mayor Adler and a second by Deputy Mayor Etlar the following closed session resolution was unanimously adopted at 9:30 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 contractual negotiations; 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 relating to personnel by appointing resolution within 60 to 90 days and relating to contractual negotiations except strategy within 120 days either by resolution, ordinance or administrative action by the Borough Manager;

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 10:50 p.m.

Airing Council Meetings Continued - Mayor Ganz wondered if they should create some general guidelines on editing the tape of the Council meetings. The Council should not be the censor or the viewer or anything else associated with the process. It should be in the purview of the Manager or her delegate. While he did not think the Borough Attorney should review each tape and render a separate legal opinion on it, he should be available for consultation on any issues. The copyright laws and the patent and trademark laws should be observed. If obtaining rights is necessary, the Borough should obtain them. If releases are required, they should be obtained. They should encourage governmental, educational and public activities including functions of the Board of Education. Manager Sacks is authorized to acquire sufficient portable cameras to allow this to occur. Manager Sacks is to report to the Council on quarterly basis on how many hours of programable activities result.

The consensus was to accept the guidelines.

The Chamber of Commerce would like to film the Street Fair and broadcast it. The Council felt that as long as it was not commercialized it would be appropriate.

The consensus was to authorize Deputy Mayor Adler to invite the Chamber of Commerce to create something to offer for consideration.

ADJOURNMENT - Upon motion of Deputy Mayor Etlar and a second by Councilmember Amato the meeting was adjourned at 10:55 p.m.

Respectfully submitted,

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