

January 4, 2000 Council Work Session

Mayor Ganz called the meeting to order at 7:30 p.m. Municipal Clerk Kwasniewski read the statement of compliance with the Open Public Meetings Act.

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

ABSENT: Councilmember Dobrow.

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

Mayor Ganz announced that the meetings start at 7:30 p.m. with a five-minute grace period. He asked that if someone is going to be late to please let Municipal Clerk Kwasniewski know. The rules of the Council are that anyone can add anything to the agenda for discussion, review and consideration 48 hours before the meeting. Sooner than that requires consent from the Council. The Manager can put something on the agenda at any time. The Council has historically met until they finish the business. However, he suggested that they adopt a policy of ending the meetings at 11:00 p.m. Any items not reached will be carried over. The Council concurred.

Councilmember Etlar asked for permission to add a five-minute discussion on rerouting the traffic on Ellington Road. There was no objection from the Council.

Review of 1/11/00 Agenda - Municipal Clerk Kwasniewski advised that CFO Eccelston would like two ordinances to be added concerning Transportation Trust Fund Aid and Columbia Terrace Bike Path Grant. These ordinances provide the mechanism to receive and spend these funds.

Review of Tabasco's Liquor License (Conditions of renewal) - Mayor Ganz explained that when Tabasco's liquor license was reviewed the Council required additional security to make sure that some incidents did not occur again. The Council agreed that it would reevaluate this condition in six months. A report from Chief Marshall indicated that there were no incidents relating to the liquor license.

The consensus was to remove the requirement for added security. A resolution will be on the next Council agenda.

Assistant Public Defender - Mayor Ganz advised that sometimes there are mutual defendants that require the services of the Public Defender. Prosecutor Karas has indicated that there is a need for this position. The person would be used only when there is a conflict or if the public defender is not available and would work with the public defender. The salary will be \$3200 for a one-year term. A salary ordinance is required once the position has been created.

The consensus was to establish the position.

Assistant Prosecutor - Prosecutor Karas does not think there is a need to establish this position.

Public Advocate - Mayor Ganz proposed creating the position of Public Advocate for the Planning Board and the Zoning Board of Adjustment. The Public Advocate would represent the members of the public who are not represented. The Public Advocate would make a full and complete record through witnesses and engaging experts. He drafted an ordinance that Attorney Lustgarten has reviewed and made changes. He explained the triggers that would be used. The Public Advocate would have the responsible to examine, evaluate and review the application and determine whether or not it is something that he should follow. The Public Advocate would then attend the meetings and make a final determination that the record has been prepared properly and that the decision is proper. The Public Advocate has the ability to put something on the record so that either a proponent or an objector can bring a suit. The Public Advocate can also bring a suit if he feels the Board's action is egregious. He did not think it would impact 85% of the matters that come before the Boards. Councilmember Etlar thought it was important that all the members of the Boards understand how this ordinance should work. Mayor Ganz was willing to draft a training session.

Attorney Lustgarten expressed concern that the Council requesting the Public Advocate would be an intrusion on the Boards' authority. Mayor Ganz noted that he wanted to be sure that the Public Advocate could be triggered if the applicant has somehow managed to craft an application so as not to trigger the Public Advocate. Attorney Lustgarten wanted to add a partial invalidity clause so the entire ordinance is not thrown out if any part of it is declared invalid.

Statute on Official Newspapers - The consensus was to adopt a resolution urging the legislators to clarify the statute on official newspapers so that papers such as The Shopper News and the like could qualify as an official newspaper. The use of The Shopper News would save the Borough around \$30,000 a year and that amount would be multiplied throughout the State.

Petition Restricting Parking Hillside Terrace and Jerome Place - Manager Sacks advised that the Police have not found the commuters on Hillside Terrace. She proposed speaking to the residents who signed the petition to determine if this is still a problem. Officer Franco suggested that perhaps the residents talked to the commuters and asked them not to park there.

The consensus was to have Manager Sacks contact those residents who signed the petition to see if it is still a problem and if it is, then the Council will respond.

Food Handler's License Ordinance - A suggestion was received from the Health Officer that the term of the license be changed to five years. Attorney Lustgarten suggested that instead of adopting the change at this point, it could be included in the recodification.

The Council concurred.

Request to Purchase Borough Owned Property (Chester Street) - Manager Sacks indicated that Mr. and Mrs. Devaney would like to purchase this piece of property. The Borough does not need this lot which is a buildable lot. The Tax Assessor will have to obtain an appraisal. The minimum sale price will include the cost of moving some water pipes. Attorney Lustgarten asked for specific language from the Borough Engineer. Municipal Clerk Kwasniewski was asked to send a memo to the Borough Engineer asking that he certify that after reviewing the property in question and considering the facts, it is his opinion that this property is not needed for public purposes.

Councilmember Etler noted that this area is connected to the well field of the pumping station. It looks like it is in a swale. It looks buildable, but there is a paper street. He wanted to be sure that it is not going to interfere with the pumping station before they sell the property. Attorney Lustgarten asked that the Tax Assessor certify whether or not this is a buildable lot.

This matter will be on the January 18, 2000 agenda.

Renewal Proposals Loss Control and Safety Training Services - Manager Sacks advised that Reinhart & Associates would be a continuation from last year. Their fee is slightly more than last year. Their fee is broken down to \$1976 for professional loss control consulting services; \$624 for monthly safety meetings; \$628 for Right to Know Training; \$1400 for eight bloodborne pathogen classes and \$2100 for right to know inventory.

The consensus was to renew the contract with Reinhart & Associates.

Renewal Proposal Claims Management - Manager Sacks advised that last year the fee for Sedgewick James of New Jersey Inc. was \$25,242. This year they have requested \$26,000. Attorney Lustgarten advised that the Borough had a contract through 1998. At that point there were corporate changes and the Borough did not sign a contract with them although they performed the services. He is satisfied that the corporate changes have not affected their ability to provide the required services. They are very responsive and have done a good job. Manager Sacks advised that they have asked to extend the contract from January 1, 1999 to December 31, 2000 at the fee of \$26,000 for each year. Attorney Lustgarten recommended that the Council not increase the rate for 1999 and that the contract only run for the year 2000 at the rate of \$26,000.

The council concurred.

Computer Equipment Recycling - Manager Sacks advised that the State will probably ban computers from the landfills. There is a company willing to recycle the computers. There is no cost to the municipality. The company is willing to do a one year trial program. At the end of the year, they will assess if they are getting enough computers to make it worth their while. Mayor Ganz suggested trying the program until the end of 2000.

Attorney Lustgarten reviewed the agreement presented by Summit Metals Recovery Corporation and noted that the drop-off locations need to be filled in. The Responsibility of Municipality includes security so that the computers are not stolen. He wondered if the Borough was taking on an additional liability for providing additional security. Manager Sacks will check the level of security required. Attorney Lustgarten noted that the insurance clause needs to be revised. He also pointed out the inequity of the termination clause with Summit Metals being able to terminate the contract on 30 days notice but the Borough must give 90 days. Attorney Lustgarten will draft a memo with his concerns.

The consensus was to approve this program.

Correspondence within the Administration - Manager Sacks advised that this issue deals with the circulation of correspondence which are actually work products within the administration that end up going to the Council. Some Department Heads do not want

to put things in writing any more since things have been shared outside of the administrative agencies. However, that hampers Many times staff just drops a note but that has been deemed shareable outside the administrative agencies. This information should stay within the administrative agency. She often filters the information so that there is nothing that is embarrassing if things are shared that should not be going beyond the agency.

Mayor Ganz explained that at a meeting in December a resident read from memos from the Police Chief and the Borough Attorney that had not been distributed to the public. Mayor Ganz noted that the Chief has indicated to him that he will not commit himself in writing to anything that would be circulated to the general public.

Attorney Lustgarten expressed misgivings about blanket policies on this matter. It is was inappropriate for those documents to be disseminated. He had been giving legal opinions besides information. They were working papers. It is his firm belief that the Council has to have access to the free flow of information. If the information is filtered to the Council, it diminishes the Council's ability to make decisions. He expressed concern that the department heads would say they are not committing things in writing. There has to be a paper trail so the public can understand what government is doing and so the Council knows what it is doing. If the flow of information is filtered the Council will not be able to do their job effectively. No staff should be afraid to put something in writing or should be embarrassed for taking a position. There was no question that those documents were trying to reach solutions and they were not meant to be disseminated. It was a violation of the good will and collegiality of the Council and the protocol of the Borough.

Mayor Ganz wanted to know if the general public had the right to access to those documents. Attorney Lustgarten advised that they were not documents that would have been considered public documents under the Right to Know Law or common law. They were not documents required to be kept by law. They were working documents that would not have been available for public dissemination.

Mayor Ganz asked Manager Sacks to circulate his reply to Chief Marshall.

Manager Sacks advised that three other department heads have said they will not put things in writing. Things were not shared with the Council in the past. It is having a negative effect. They are working documents that should not be shared. There is information that only goes to the Manager.

Deputy Mayor Adler stated that staff should understand that the new Council should be treated fairly and with respect. The Council is new and what happened in the past is the past. Staff does not make policy. A paper trail is necessary and they should continue to work in that manner.

Manager Sacks stressed that she is talking about work products that are not for anyone except herself. The Council will continue to receive all that information that is needed or is generated in response to a Council request. There are many things that deal with interaction between departments and her that are now open to Council scrutiny which means that they could be shared with the public.

Deputy Mayor Adler stressed that it is important that the staff write things down and she did not want to start with the staff feeling that this Council is untrustworthy. She would be seriously concerned if she was not given a chance.

Attorney Lustgarten did not want to create a blanket prohibition because there was a bad incident that should not have happened. The only way the Council can be fully informed is by reading the documents. The paper trail must be kept. Councilmember Amato concurred that documentation must be kept and the Department Heads must report things to the Manager. He thought the Council can get a picture from the Manager. He did not think they need sensitive documents. Manager Sacks advised that all the things that need to be kept in writing are being kept in writing but there is a great deal of correspondence that make it easier to follow up on items.

Attorney Lustgarten pointed out that the issue is not whether the Council should get every document. That was never the issue or the protocol. The issue was if there is an incident can the Council get all the information in the file. The Council does not need every document that goes through the departments. His position is that when an issue becomes sufficient to come to the Council level for whatever reason they are entitled to the full documentation relating to that issue. It should be available to the Council.

Deputy Mayor Adler did not think information should be filtered. Councilmember Amato felt if there were sensitive documents, the Council should get them the night of the meeting.

Mayor Ganz asked Manager Sacks for the protocol she wanted to be in effect. Manager Sacks advised things that need to be put in writing, things that need to have a record made of them and things that are recorded should be shared with the Council no

matter how sensitive. The Council concurred. Manager Sacks continued that the area in question are those things that are only put in writing to facilitate communication between her and the departments. These are things that are work products. Manager Sacks noted sometimes those items need to be shared with the Council. The Council concurred. Manager Sacks continued that interdepartmental work papers should not be shared. Often they are just ideas.

Attorney Lustgarten felt that in order to have a check and balance the Council needs the complete information. Mayor Ganz pointed out that the Manager is the CEO who is supposed to be running the Borough. She makes the decision regardless of the department heads opinion. He felt they cannot use paper to do what they cannot do under the Faulkner Act.

Attorney Lustgarten noted that this issue came up because one Councilmember asked for a particular memo on a particular subject. Attorney Lustgarten had given the opinion that the Council was entitled to that memo. Councilmember Etlar stated that the Council has to trust that the Manager will send the Council information. The trust will flow from the Council to the Manager to the staff.

Attorney Lustgarten reiterated that the Council should not make rules because there is one egregious violation. The Manager has the right to disseminate information as she deems relevant to an issue so the Council can make a reasoned decision. In the event the Council wants the background material on the issue, the Council has the right to that information.

Councilmember Etlar felt the Council should put their trust in the Manager that she will send the information to them and encourage her to tell Department Heads that there should be a free flow of information and the Council needs the information to make the decision.

The consensus was that the Council adopt the first two policies the Council agreed on and that they adopt the policy that the Borough employees trust them and that the Department Heads be encouraged to put things in writing with the firm promise of the Council that it will stay with the Council.

Flexible Spending Account - Manager Sacks advised that she found a provider. The problem will be how to cover the cost of the payroll deduction. It will cost \$10,000 to change the program. She thought for that amount she could probably hire someone to do the checks manually. Councilmember Amato indicated that was not acceptable. He wanted to learn more about the system and wondered if the problem was in the operation system or the program.

Mayor Ganz explained that the program is a flexible spending account which allows any Borough employee to take up to \$5,000 of income and make it nontaxable and apply it for medical, eyeglasses and child care expenses. There is no cost to the employee or the Borough. The Borough saves because it would not have to pay the FICA on the contribution. Councilmember Amato felt the benefit was good the employees and for the Borough. He does not accept spending \$10,000 or doing it manually. Manager Sacks pointed out that another alternative is to contract out the payroll.

The consensus was to introduce the ordinance at the next meeting with Manager Sacks to come up with an alternative to implement the program.

Mayor Ganz asked that the financial reports that the Council received last year be circulated to the new Councilmembers. It was agreed that CFO Eccelston would be invited to attend the January 18 meeting to discuss the financial reports.

After a short discussion, the consensus was to put the introduced budget on the web site.

Ground Space Leases - Mayor Ganz noted that he thought an auction was supposed to be held for the ground spaces leases not a sealed bid. Mayor Ganz wanted to be sure that the Council can reject the bids if they are not acceptable. Attorney Lustgarten advised that he thought Omnipoint was done at an auction but actually it was done by sealed bids. Therefore, the Engineer drafted the specifications and advertised for sealed bids.

Senior Citizen Center - Manager Sacks advised that there is an organization that wishes to use the facility one night in January. When she told them that the fee was \$100.00 the person in charged advised her that he belonged to the Knights of Pythias who use the facility. He would open and close the facility and straighten it up. Mayor Ganz indicated that as long as the policy is applied evenly he had no problem with waiving the fee. Deputy Mayor Adler wanted to make sure that the facility was cleaned if this is the way things are going to be done. Manager Sacks noted that this is an unusual situation. Attorney Lustgarten raised the issue of insurance, indemnification and a written agreement. Mayor Ganz did not think they would be able to supply the insurance nor sign an agreement since this is not an organization. Attorney Lustgarten suggested using the Council Chambers instead. Manager Sacks could control the set up better at the Municipal Building.

The consensus to waive the fee for the Senior Center did not pass.

The consensus was to use the Councilmember Chambers with any fee to be waived.

Auction of Borough Owned Property - This matter was deferred to January 18.

Ellington Road Traffic Issues - Councilmember Etlar noted that he received the suggestion about reversing the traffic. He would like to talk with the Police Chief. Mayor Ganz advised that this plan requires the State approval. He has sent it to the Commissioner of DOT asking for his comments. This plan would just move the problem to Dorchester or Cambridge.

Attorney Lustgarten reminded the Council that they must go through the Manager and follow the protocols of the Faulkner Act. They are entitled to know everything in the Borough but the protocol is through the Manager. Councilmember Etlar indicated that he would meet with Manager Sacks. Mayor Ganz added that if Councilmember Etlar felt a staff member should also be present, he could ask the Manager and if she thought it was appropriate she could include that person.

Mayor Ganz asked about a one way sign on Ellington Road for certain hours of the day to stop the trucks during that particular time. He noted that it works in Washington DC. Councilmember Amato suggested banning trucks from the street. Attorney Lustgarten advised that these are public streets. The Council can prevent over four ton vehicles but they cannot ban trucks.

The consensus was to have the Manager send a memo to the Police Department asking for three practical solutions, each of which is capable of working. The Council can then make a decision.

This matter will be on the January 18 agenda.

Closed Session Resolution - Upon motion by Deputy Mayor Adler and a second by Councilmember Dobrow the following closed session resolution was unanimously adopted at 10:50 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, anticipated litigation and personnel; and

WHEREAS, this matter permits the exclusion of the public from such discussion; and

WHEREAS, public disclosure of the results of this discussion may be made by the governing body of the Borough of Fair Lawn concerning pending litigation and anticipated litigation within 90 to 120 days unless it relates to legal strategy and concerning personnel within 90 days or the adoption of a salary ordinance whichever is sooner.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Lawn that the public be excluded since the matter set forth is one which permits the exclusion of the public.

ADJOURNMENT - Upon motion of Councilmember Amato and a second by Deputy Mayor Adler the meeting was adjourned at 11:30 p.m.

Respectfully submitted,

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