

## Work Session - February 2, 1999

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 Ahearn, Councilmembers Dobrow, Tedeschi and Trawinski.

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

**Review of Tentative Agenda** - There were no changes to the tentative agenda at this point.

**Leaf Composting Update** - Manager Sacks had submitted a memorandum explaining various options. She indicated that she and the Recycling staff feel the odor was from the tub grinding. This matter will be discussed at the regular meeting. The Recycling Department has ordered the top liming.

Councilmember Tedeschi noted that everything that goes to the Council should pass through the Municipal Clerk's office for distribution, filing and retention. Manager Sacks replied that anything that is for the record and is archival should go through the Municipal Clerk's office but there are certain things that do not, such as personnel matters. Attorney Lustgarten added that there are a few items that he does not want to be public record which go straight to the Council.

Councilmember Ahearn felt that the Council should end composting and get rid of the smell. Obviously there will be a cost involved. He wondered if it was necessary to wait until next week to make a decision. Councilmember Trawinski was not prepared to make a decision yet. He wanted to hear from Attorney Lustgarten first. He also thought the Manager has done a good job laying out the option but he thought the Council asked for recommendations. Manager Sacks noted that this is a policy call. Mayor Ganz noted that the issue is whether or not the Council eliminates the leaves and incurs an \$80,000 expense on an annual basis or takes a middle road alternative or does nothing. He wanted to hear what the Borough Attorney has to say in Closed Session and what the public has to say at next week's meeting before making a decision. It seems to him that the odor is coming from the leaves.

Councilmember Tedeschi asked for the communications in November and December and the actions taken. The Council was not advised that this was going on until January. Manager Sacks pointed out that Mrs. Levin and Mrs. Gittelman have been complaining for the last two years. Councilmember Tedeschi noted that the complaint curve went down to practically zero when they were not using the tub grinder. He asked for complaints and correspondence concerning leaf composting for the last six years.

Manager Sacks indicated that if the Council would like a recommendation she would give them one. Mayor Ganz indicated that he will be asking for a recommendation from Manager next week.

**Professional Services Contracts** - Engineer Garrison requested that the contract with Riggs Associates be renewed. Councilmember Ahearn wanted to be sure that the rights to any data belong to the Borough. Attorney Lustgarten noted that Engineer Garrison had not indicated if Riggs Associate's fees are the same as last year. The consensus was to approve the renewal of this contract but the Council wanted the information on the fees.

Superintendent Davidson had requested a Community Forestry Plan Development contract. Manager Sacks advised that they received a grant last year which allowed the inventory to be accomplished. The Borough would receive a \$2,000 grant to hire someone to develop a forestry plan. Councilmember Trawinski asked that the proposal be considered by the Environmental Commission. Manager Sacks noted that there is a deadline for submitting the application. The State developed the guidelines and this proposal mirrors those guidelines.

Manager Sacks was asked to find out why it took so long for the proposal to be submitted to the Mayor and Council.

The consensus was to have the proposal reviewed by the Environmental Commission with their comments to be received by Tuesday and if their comments were favorable, a professional services resolution would be on the next agenda.

Manager Sacks advised that the proposal from Burton Agency was at the same rate as last. She explained that the rates are established by the JIF and all communities pay the same thing. She added that Burton Agency provides more than just what the contract calls for.

The consensus was to renew the contract with Burton Agency.

**Creative Cable** - Candace Vivino was present. Manager Sacks asked her to present some ideas on other sources of revenue.

Ms. Vivino advised that they have grown from 10 members to 30 with another 10-15 who contribute when they have the time. She listed the programs they have and noted that they plan to tape the March 11 open house and many of the 75<sup>th</sup> Anniversary events. They have instituted a teacher's training program and a student training program. She asked that the Council allow their meetings to be televised.

She continued that they have had some problems in the past with the 24-hour channel that is mentioned in the franchise agreement.

Councilmember Trawinski recused himself from any portion of the discussion relating to Cablevision.

They also receive complaints about Cablevision from residents. Cablevision does not respond to their complaint. The emergency override system is in place, but Cablevision has not cooperated in putting the information on. Attorney Lustgarten advised her to document that they can fill the channel and he will send them a letter that the Council will move to revoke their franchise before the Office of Cable Television. He noted that in the past Cablevision has responded when he has written to them. Ms. Vivino was asked to memorialize the complaints in the future so that the Council can show the number of complaints.

The consensus was to have Attorney Lustgarten send a letter to Cablevision, with Councilmember Trawinski recused.

Ms. Vivino noted that other communities use other ways to fund public access such as giving the money they collect from the cable company to the public access organization. Right now the customers are being charged \$.66 per month for the access fee but she did not know where that money goes. This fee is different from the franchise fee. Attorney Lustgarten noted that unless there is something in the franchise agreement, he did not know what the Council could do.

Councilmember Trawinski reminded Ms. Vivino that the Council had asked for quarterly reports which they have not received. He supported broadcasting the Council meetings. He thought they had already asked that the Manager to report to the Council on the cost for broadcasting the Council meetings. He expressed concern that there was no disclaimer from the League of Women Voters on the debate and the misinformation by the two announcers for Creative Cable. He had some concern about the training of the individuals and the information they are given. If the election results are going to be broadcasted, then all candidates should be contacted. It should not be political. There needs to be a blackout similar to Teaneck and Ridgewood during campaign times so that the meetings do not become a political forum. He commended the job that Ms. Vivino has done.

Mayor Ganz asked Manager Sacks to inquire of neighboring communities that air their meetings and report to the Council.

Ms. Vivino noted that she cannot control the commentator. Councilmember Trawinski felt if that was the case, then there was a problem because they may be violating the FCC's fair comment and fair broadcasting time rules. Mayor Ganz noted that those issues will have to be reviewed and discussed.

**Certificate of Continued Occupancy Ordinance** - Attorney Lustgarten advised that he received comments from the Mayor who wanted to add some review of the construction official's denial so that the review would be by the Borough Manager. Normally appeals would go to the Construction Board of Appeals. He noted that the Mayor is trying to build in discretion when objectivity was the basis for putting the ordinance in place. The real issue is whether to include sidewalks.

Mayor Ganz noted that it was not his intention to have the comments distributed to the Council but rather for Attorney Lustgarten's comments. He felt there should be a provision that the Mayor and Council have the right to give relief when there are extraordinary circumstances and that the Manager has the right to review what the Construction Official does. He would require the Construction Official to estimate the cost to bring it up to Code and if it exceeds 10% of the sale then the resident, the Construction Officer and the Manager will meet and discuss a means to handle the upgrade without the strict enforcement of this ordinance provided there is no hazard to the healthy, safety and welfare of the community. He is concerned that someone who lives in it for some time and finds that they have no equity in the house and in order to bring it up to code to sell it they will have to spend thousands of dollars or not sell it. The Construction Official has to do his job but it may cost a resident a great deal of money. There needs to be some type of discretion. He felt that any homeowner can appeal to the Mayor and Council.

Councilmember Trawinski noted that the Council discussed the issue of discretion when they did BOCA. Perhaps the solution could be similar. Councilmember Tedeschi agreed with the intent but was concerned that the abnormal would become the normal. Councilmember Ahearn agreed in concept but wanted to know if two same sex partners are on the deed if that is exempt. The Council had no problem adding that provision.

Attorney Lustgarten recommended not putting the Mayor and Council in the appeals procedure. He thought under the BOCA there was a three-member panel. Mayor Ganz noted that as long as the Construction Official does not have the final say he will be satisfied.

The question of fees was discussed. Mayor Ganz wanted to know what it will cost to make the inspections and then wanted an administrative fee to be added to that cost. Manager Sacks will report back to the Council.

Attorney Lustgarten will try to have a final draft of the ordinance in two weeks.

**Municipal Court Ordinances** - Attorney Lustgarten advised that he sent a memo to Acting Chief Marshall concerning Judge LaHiff's comments on the handicap parking spaces. Attorney Lustgarten did not think that it would be possible to do what the Judge asked because the statute does not permit it. Manager Sacks noted that

Acting Chief Marshall did not like using the paint because it will get slippery although he does not find anything that would preclude its use. Deputy Mayor Ahearn noted that the federal guidelines for space marking provide more accessibility and preempt any State or local regulations. Mayor Ganz suggested referring this issue to the ADA Committee for their comments. Attorney Lustgarten did not recommend the blue painting. If the blue marking is there but the sign is not, the Borough is not in compliance with the statute. Councilmember Trawinski noted that the blue marking is so common that it must come from somewhere. He suggested asking other municipalities what provisions they use. Councilmember Ahearn advised that currently the New Jersey statutes and Administrative Code have been submitted to the Department of Justice and they will come back in April. The State regulations are going to be changed to be consistent with the Federal regulations. He thought the Council should look at the Federal standards and model something after them.

There are two bills in the legislature, one would double fines on certain residential streets and the other would allow some type of amnesty program. Judge LaHiff asked if the Council would support these bills. The consensus was to support the bills but the Council would reserve judgement as to whether to adopt the provisions if they are enacted.

**Credit Cards for Municipal Court** - Attorney Lustgarten advised that he spoke to the Administrative Office of Courts who indicated that he could not give him an opinion if it was a biddable item or an extraordinary and unspecified service. Woodbridge and Lacy Township have been working on this so he is contacting them. Manager Sacks spoke to the Division of Local Government Services who advised that once the bidding threshold is passed this item must be bid. Mayor Ganz did not see why it would have to be bid. Councilmember Trawinski spoke to Assemblyman Felice who is willing to do a legislative fix so that the credit card service is not biddable. Some of the bank institutions who are trying to get the municipal court account might provide this service as an accommodation in return. CFO Eccleston is exploring the legalities of that idea. Manager Sacks pointed out that the municipality is supposed to be acting in the public's best interest and negotiating the best terms for the residents. Attorney Lustgarten compared it to the towing contracts which must be bid. Councilmember Tedeschi noted that the vendor pays the fee, that vendor is the Borough. In order to get past the bidding threshold, the Borough would have to collect about \$600,000. Attorney Lustgarten thought there should be legislative remedy. There are mechanisms that need to be explored but he recommended putting the resolution back on the agenda.

The resolution will be on the next Council meeting agenda and this item will be revisited in four weeks.

**Truck Routes** - Attorney Lustgarten prepared a draft of the ordinance which he believes is ready to be introduced. Councilmember Trawinski wanted to be sure that if the garbage company is not making a delivery on a street such as Ellington they are prohibited from using that street. Attorney Lustgarten assured the Council that the proposed ordinance does that because they are not making a pick up or delivery. There are alternate streets they can use.

**Recreation Fees** - Manager Sacks advised that it was Superintendent Frey's recommendation that the pool fees not be raised but the camp fees are very low and could be increased slightly perhaps by \$5. Councilmember Tedeschi wanted to know what the camp cost to run. Mayor Ganz asked Manager Sacks to obtain that information as well as the financial information for the pool.

**1999 Fireworks Display** - Manager Sacks advised that the vendor the Borough has used before can provide the display on July 1 with a rain date of July 3 for \$12,000. A resolution is needed to enter into a contract with the vendor. The consensus was to add a resolution on the next Council meeting agenda.

**Budget Dates** - Manager Sacks asked for dates to begin to the budget process. Mayor Ganz felt that five meetings should be sufficient to complete the process. Councilmember Trawinski noted that some of the departments on the Manager's list were used as fillers because the Department Head did not have to be present. Mayor Ganz noted that the Manager intends to have all Department Heads present. The following dates were chosen: Tuesday, February 9 immediately following the Regular Council Meeting, Saturday, February 20 and Saturday, February 27 from 9:00 a.m. to noon and March 9 immediately following the Regular Council Meeting. Manager Sacks will schedule the departments.

**Knights of Pythias - Circus and Hand of Friendship Day** - The Knights of Pythias have asked for permission to use the Memorial Pool Parking Lot for the Circus on September 26, 1999 and to use Memorial Pool for their Hand of Friendship Day on June 13, 1999. The consensus was to allow both events. A resolution will be on the next Council meeting agenda.

**SID Amendment** - Municipal Clerk Kwasniewski advised that there is one change in classification of the properties in the SID. There is a property that was exempt that is now a ratable. An ordinance is needed to amend the SID. She asked that the ordinance be introduced at the next meeting but that it not be adopted for one month to allow time for the required notification to all

property owners in the SID. Councilmember Trawinski suggested that the Board of Downtown New Jersey be contacted because he felt that the statutes did not contemplate giving notice to all property owners in the SID under these circumstances. Mayor Ganz asked Manager Sacks to follow up on this suggestion.

Manager Sacks noted that RRIC is meeting this week and they will be asking to meet with the Council concerning their budget. Councilmember Tedeschi indicated that it was his recollection that the Borough's contribution to the SID's budget was to diminish over time.

**Recodification of Borough Ordinances** - Municipal Clerk reported that she had distributed the copies of the manual to the Mayor and Council as requested. She was able to obtain a 90-day extension. She has received the Department Heads critiques and comments which she is reviewing. She, Attorney Lustgarten and Manager Sacks will then meet before presenting it to the Mayor and Council.

**Complying with Y2K Issues Status Report** - Manager Sacks advised that orders were placed in the Finance Office, Tax Collector's and Municipal Clerk's offices so those offices will be compliant. Engineering is using the new SCADA system which is compliant.

Mayor Ganz raised the September 9, 1999 issues. Manager Sacks will alert the Departments. Councilmember Ahearn noted that he was more concerned with the computer systems of the sewers because they are dealing with imbedded chips.

**Police Director Search Status Report** - Councilmember Tedeschi asked if the Council could have a written description of the search process and wondered how Manager Sacks was doing. Manager Sacks advised that the Council can have a description in writing although she was not sure it was appropriate since it is an administrative process not legislative. Councilmember Tedeschi responded that this is part of the oversight responsibility to understand the process. Attorney Lustgarten advised that the process is something the Council is entitled to. Manager Sacks indicated she would provide the information within two weeks. She also welcomed suggestions for other sources to explore.

**Saddle Brook Pornographic Suit** - Mayor Ganz advised that there was a Supreme Court decision on January 28, 1999 that Attorney Lustgarten is monitoring. Attorney Lustgarten noted that he will advise if there is an appropriate time to intervene.

**Schedule a Grievance** - Grievance 99-01 will be heard in closed session following the regular Council meeting.

**"Fair Lawn Project 100"** - Deputy Mayor Ahearn noted that the Borough is required to update the master plan every six years but that can be inadequate. He proposed creating a citizens advisory committee to the Planning Board to devise a method of getting input as to where the Borough should be at its 100<sup>th</sup> Anniversary. There are many people who have seen numerous changes that could be instrumental in providing guidance.

Councilmember Dobrow thought they need to concentrate on now. It will take a great deal of time and may be meaningless. She wanted then to talk about right now. Councilmember Tedeschi thought developing a long term mission statement or vision would be a good exercise. Mayor Ganz noted the vision may give direction to that goal. Councilmember Trawinski noted if the concept is that it is a long term strategic vision he thought it might be worthwhile although he agreed somewhat with Councilmember Dobrow. Councilmember Tedeschi thought the idea gives the Council an opportunity to reach out to the community.

Mayor Ganz announced that under Section 24-1.10 he will create that committee to act in an advisory capacity to the Planning Board and will open it up to everyone in the community who wishes to have a part in it, i.e., homeowners, tenants, businessmen and anyone who have a stake in Fair Lawn. He asked that applications be sent to the Borough Manager by the end of the month.

Councilmember Dobrow expressed concern that it will distract people from now. Mayor Ganz did not agree. It is strictly an advisory committee and they will have a different perspective than the Boards or Council.

**Proposed Revision of the Land Use Ordinance in Anticipation of Digital Television Tower Deployment** - Deputy Mayor Ahearn noted that this is similar to when the cellular towers began in the 1990s. They are already being deployed. The technology is different. He felt that the communities that are proactive and amend their ordinances to maximize whatever local control is left in this area will be in a better position. He recommended that the Council amend the language for the cellular towers to include the digital tower.

Attorney Lustgarten wondered if the Borough would be more likely to get co-located for the new technology if the Borough has a tower for cellular technology. Deputy Mayor Ahearn indicated not from a technical standpoint but the companies will look for the easiest place to get in. Attorney Lustgarten noted that the ordinance limits the number of co-locators on a particular tower. Deputy Mayor Ahearn indicated that the Council has to decide where to zone for them.

Councilmember Trawinski advised that the FCC is reviewing the preemption request by the broadcasters for existing facilities to be upgraded to digital. The FCC has indicated that the siting of new facilities is not something they will adopt preemption on. The local

control will still be there for siting new towers. It not subject to Section 704 of the telecommunications act so the same issues do not exist. The siting areas are far more enormous. Deputy Mayor Ahearn noted they are now saying that it is not as clear preemption, but there are some areas that the industry feels they need preemption on the environmental aspects. The transmission powers are significantly higher.

Councilmember Trawinski noted that the Borough has an ordinance that is permissive. If the use is not permitted, it is expressly prohibited. He felt the Council should monitor the notice of proposed rule making but if it is going to apply only to existing facilities that can be put into the ordinance. Attorney Lustgarten wondered if it was realistic to expect to see them coming into Fair Lawn. Councilmember Trawinski did not think the Council should ignore this issue but he thought it was a little premature until the notice is adopted. Deputy Mayor Ahearn disagreed. He thought it was an area to start looking at it. Mayor Ganz asked Attorney Lustgarten to ask the attorneys for the Planning Board and Zoning Board for a written opinion on this matter with their advice if the land use ordinance should be amended at this time or in the future and their specific recommendations. He asked that they report to the Council within 30 days.

**Abbott Road Status Report** - Manager Sacks advised that the pedestrian safety task force consultants are including in their study the plans and recommendations for Abbott Road. As soon as that is available, she will provide it to the Council. Councilmember Tedeschi asked if making Abbott Road one way was still under consideration. Manager Sacks indicated that is one of the things being considered. This item will be on the agenda for the April 6 work session.

**Review of Farmer's Market** - Councilmember Trawinski noted that when the Farmer's Market was implemented it was only possible to have it on Saturday but the commitment was made that the Council would review it to see if it was possible to alternate days to accommodate the needs of the Jewish community. Manager Sacks asked the Chamber of Commerce to look at another day of week. Saturday is the only day they can get the farmers to come. They can solicit again for another day. There are many reasons for doing it on Saturday. Mayor Ganz suggested that when the contract is renewed it be authorized for Saturday and Sunday and let the market rule. Councilmember Trawinski suggested that the Mayor contact Joe Meer.

The consensus was to follow Mayor Ganz's suggestion. Manager Sacks will send a letter to Mr. Meer.

**Status of Stop Sign on Prospect Avenue and Jasper Road** - Councilmember Trawinski noted that there was certain data that had to be submitted. Engineer Garrison had reservations about the viability of meeting the State criteria for this stop sign. Manager Sacks advised that Engineer Garrison contacted Acting Chief Marshall who indicated that the Department does not have an accident history at that location. They will use the traffic equipment as soon as the weather improves. The DOT has denied the stop sign request so they are trying to justify it. The consensus was to implement the stop sign for 90 days and then get the approval.

**Use of Arts Center Building** - The consensus was to allow Hadassah to use the Arts Center on March 14 and April 18 for a fee of \$100 each day. Councilmember Tedeschi noted that the Council had discussed establishing a permanent schedule of fees last year but he did not think that had been done.

**Snow Plowing Letter** - Councilmember Trawinski expressed concern that the letter is telling one taxpayer that particular attention is going to be paid to his area. Manager Sacks noted that they are already paying particular attention to everyone's area but if there was one area overlooked the DPW was reminded to be a little more careful. Mayor Ganz commended the DPW for their outstanding work on the snow plows.

**Closed Session Resolution** - Upon motion by Deputy Mayor Ahearn and a second by Councilmember Trawinski, the following closed session resolution was unanimously adopted at 10:45 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 matters under labor negotiations, personnel, appointments, pending litigation and anticipated litigation; and

**WHEREAS**, these matters permit 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 within 30 days relating to labor negotiations, within two weeks relating to personnel, within six months relating to pending litigation and within one year relating to anticipated litigation as long as it does not relate to strategy;

**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 above are ones which permit the exclusion of the public.

**ADJOURNMENT** - Upon motion of Deputy Mayor Ahearn and a second by Councilmember Tedeschi, the meeting was adjourned

at 12:00 a.m.

Respectfully submitted,

Joanne M. Kwasniewski, RMC/CMC/AE

Municipal Clerk