

## Work Session - September 21, 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 (late).

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

Review of Tentative Agenda 9/28/99 - Municipal Clerk Kwasniewski advised that a raffles application for the Friends of Music and confirmation of Fire Board actions would be added to the agenda. It was agreed to defer the resolution on the vehicles being donated to the Board of Education.

Councilmember Trawinski arrived at 7:40 p.m.

Community Development Project Bris Avrohom - Rabbi Kanelsky was present. Councilmember Tedeschi advised that Bris Avrohom has asked for an endorsement of their Community Development application to continue some work that has been going on for years. Rabbi Kanelsky indicated that he had been in Fair Lawn seven years. He explained that immigrants from the former Soviet Union arrive with poor English which hampers them in getting a job so they rely on public assistance. The aim is to improve their English so they can get a job and get off public assistance. For the past three years they have had a program for children to improve their English. They have a small grant from New Jersey. Bris Avrohom funds the rest, but they need additional funds. They would like to apply for Community Development Block Grant funds. Anyone who wants to learn English is welcome.

The consensus was to endorse this application with Councilmember Dobrow dissenting.

Request to Place Menorah on Borough Property - Rabbi Mordecai Weiss, Executive Director of the Friends of Lubavitch of Bergen County was present. Councilmember Tedeschi advised that the request had been made in February. He believed everyone had the right to address the Council.

Rabbi Weiss indicated that they have been active for the past 20 years. They run outreach activities for the Jewish community. One of their activities is to place menorahs on public property. He indicated that menorahs are placed on public property in Washington, D.C., Philadelphia and Trenton. There are strong legal reasons for allowing the menorah to be placed on public property. He asked the Council consider this request.

Rabbi Weiss was aware that the Jewish Council in Fair Lawn is not in favor of this which is usual. They have fought it in other areas. He explained that it is a time of celebration for the entire community. The menorah has become a cultural symbol. They believe that public property is something that belongs to the people and they should be able to use it. He stressed that legally the menorah is not a religious symbol.

Deputy Mayor Ahearn wondered why the local organizations do not support their request. Rabbi Weiss replied that being part of a religious minority they are extremely sensitive to issues concerning the separation of Church and State. Some religious groups believe that there should be no displays. They live in a country founded on religion. They fear that if they do not use their space they will lose it.

Deputy Mayor Ahearn asked if they would prefer that there be no display at all. Rabbi Weiss indicated they would not. Deputy Mayor Ahearn indicated that he would prefer no displays. He took exception to the Supreme Court decision.

Councilmember Dobrow indicated that the Fair Lawn Jewish Council speaks for the people of Fair Lawn because every temple has a delegate. The Jewish people do not want the menorah at the Borough Hall. She felt that the Mayor and Council should do what the people want.

Joseph Meer, president of the Fair Lawn Jewish Council, indicated that since 1993 Fair Lawn has a community

menorah publicly displayed in the geographic center of Fair Lawn. The electric menorah has no religious value. He thought that putting the menorah on municipal property would be harmful. It is the preference of the majority of the Jewish Council to keep it the way it is now.

Yesko Jerome, 26-08 High Street, did not think that Mr. Meer spoke for the Jewish community since there was no resolution by the Council. He presented "And Then There Was Light" showing various pictures of menorahs on public property. He also read an article entitled "Supreme Court Allows Pittsburgh Menorah to Remain".

Deputy Mayor Ahearn indicated he was a strong believer in separation of church and state. He would like to see all decorations eliminated.

Borough Attorney Lustgarten addressed the legal issues indicating that there is a great deal of case law on this matter. He expressed concern that there has been instances where after the forum has been established, hate groups try to come. Rabbi Weiss indicated that while they do not want the hate groups either, they do want to take advantage of the liberties to which they are entitled.

Councilmember Trawinski indicated that in 1996 he investigated this issue and came to the conclusion that he did not support it because it was not in the best interest of the people of Fair Lawn. He believed that he has to look to the Borough as a whole. He felt that where there is religious diversity, government should not be intrusive. He supported the first amendment, but thought there was a real risk that hate groups would come. If there was no forum for the placement of the menorah, he might not think this way. He is not in favor of this request.

Attorney Lustgarten referenced *Congregation Lubavitch vs. The City of Cincinnati* which was decided in 1993 where the court upheld the placement of a menorah because it was a public park. The Court of Appeals said "there is an equality of status in the field of ideas and government must afford all points of view and equal opportunity to be heard. Once a forum is opened up to assembly or speaking groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusion from a public forum may not be based on content alone and may not be justified by reference to content alone." The Sixth Court permitted the KKK to display their cross in the area where it had previously permitted the menorah.

Councilmember Tedeschi felt the Rabbi had an absolute right to petition the governing body and the Council has the absolute right to decide.

Mayor Ganz indicated this issue has been struggled with since the founding fathers struggled with it. There are two things that are being breached; the wall of separation of church and state and causing an excessive entanglement of government and church. He thought it would cause divisiveness in the community. The Rabbi had the right to make his presentation to the Council. He is satisfied that there is a menorah in the community sponsored by groups that treat it as a religious symbol commemorating the festival of lights. He would not support the request.

Mr. Meer added that they do not feel the menorah should be equated with anything else. It is something special. The placement of the menorah in the center of the Borough is significant. He concluded that there have been many discussions by the Jewish Council in the past.

The consensus was not to approve the request with Councilmember Tedeschi dissenting.

**Operation Floyd** - OEM Director Metzler was present. Mayor Ganz thanked the Borough's professional staff and the volunteers who helped during Tropical Storm Floyd. He mentioned OEM Director Metzler, Deputy Director Messina and President of the LEPC Marks specifically. There are four stages planning, response, recovery and mitigation. Fire Department, Police Department, Ambulance Corps. and the Radio Club helped during the emergency. He commended Deputy Mayor Ahearn who lead the efforts to have communication with Trenton and Hackensack when there were no other means of communication.

Manager Sacks stated that it was a very serious tropical storm. She met with the County and other municipalities today. This municipality was by far the best prepared and responded much better than many of those municipalities.

OEM Director Metzler explained some of the things done to prepare for the storm, what happened during the storm and the responses of the emergency services. He indicated that many people worked very hard to make sure that the community recovered quickly. Building Department and the Health Department personnel were out Friday and Saturday. The Fire Department pumped out basements. The lessons he learned in Hardin, Ohio were invaluable during this time. He estimated that damage in the public sector was \$1.5 million. He commended Deputy Mayor Ahearn for establishing the communication link between Trenton and Bergen County.

Attorney Lustgarten noted that there are several areas that have sink holes. Thirteen homes have been affected. He commended OEM Director for his leadership efforts.

Councilmember Trawinski proposed a Council unit citation for all those who performed so well during this emergency.

OEM Director Metzler noted that there was some discussion about giving the fire fighters their money back for their room if they come back. He thought that was rewarding those who left and went to the Firemen's convention which was not appropriate. They should reward the people who stayed. He recommended that there be a unit citation to any organization that participated and then perhaps there can be a Mayor's proclamation for those who chose to stay.

Mayor Ganz thought it would be helpful if OEM Director Metzler would address those items that need to be included in the next budget to solve any problems that arose.

OEM Director Metzler announced that the Deputy Director resigned today because he knew that he was not able to serve any longer.

Manager Sacks advised that at the Chamber of Commerce meeting there were so many compliments on how Fair Lawn handled this emergency. Deputy Mayor Ahearn noted that without the Fair Lawn Amateur Radio Club there would have been no communication in the northeast section of New Jersey. The lack of telephone service compounded the problems. The Red Cross, State and County emergency management released their people Friday morning. It took several hours before people knew how widespread the problems were.

**Request by M. Hirshklau to Purchase Borough Owned Property (Blk 3517, Lot 21** - Attorney Lustgarten advised that if they do not need the property for public purposes they can sell it. If it is less than a buildable lot, it has to be offered to contiguous property owners. If it is a buildable lot, it will have to be offered at an auction. Manager Sacks advised that she has the certification from the Engineer and DPW. She will give that to Attorney Lustgarten. Attorney Lustgarten will get a value from the Assessor.

This item will be on the October 5 agenda.

**Award of Minibus** - Attorney Lustgarten advised that the lowest mathematical bidder did not conform to the specifications. The next lowest bid was slightly higher than the money allocated. It was a policy call to reject the bids or to award to the next lowest bidder. The time to act is about to expire so the Council must take some action this evening. CFO Eccelston has indicated that there are funds in a bond ordinance that could be used to make up the difference between the cost and the grant received. He would then cancel the balance of that ordinance. In addition, Manager Sacks advised that the County will take the grant back unless they award the bid.

Councilmember Trawinski noted that while he did not want to lose the grant he thought they should ask for an extension from the County so they can reject the bids. Councilmember Dobrow advised that she was at a meeting when the grant was canceled. She advised Manager Sacks who managed to get them to extend it. She would not risk losing the grant. Attorney Lustgarten expressed concern that if they get an extension from the County and reject the bids, the bids can come back higher. He recommended awarding it now.

The consensus was to award the minibus with Councilmember Trawinski dissenting.

**CDBG Applications** - Manager Sacks advised that she expects to have the applications for the next meeting. Councilmember Trawinski thought they were going to set priorities at this meeting. Manager Sacks advised that the projects were curb cuts, Memorial Pool modifications, the interpreter for the deaf and the deaf program renovations to the Borough owned building. She advised that Engineering could not include the handicap items for Walsh Pool because they do not what is going to be done. Councilmember Tedeschi pointed out that Community Development only funds the incremental difference between regular facilities and handicap facilities.

Public Advocate Position for Land Use Boards and Consultants to be hired for Planning Board to be paid for by the Applicants - Deputy Mayor Ahearn advised that getting an attorney to represent a group of objectors is extremely difficult. He would like the Council to review and to consider West Orange's ordinance creating the Public Advocate position. Councilmember Trawinski thought it was a good idea. He spoke to West Orange who indicated that it does not work as well as they would like. He thought that they could refine it to meet the Boroughs needs. Mayor Ganz thought the trigger could have a minority of members of either the Zoning Board of Adjustment and Planning Board make a determination that public advocacy is necessary. Councilmember Trawinski thought the ordinance should sunset in two years and they should get a report from the Zoning Board and the Planning Board. Mayor Ganz thought it should be paid for by tax payer dollars through the Legal Department but it should be charged to the applicant. Councilmember Trawinski did not think that was contemplated under the escrow fee legislation. He thought the Borough should just fund it. The Planning Board is very aggressive on charging back consultants and some of the in-house expert fees. Deputy Mayor Ahearn pointed out that the Public Advocate would make sure that outside experts were hired when they were needed. Attorney Lustgarten did not think the Public Advocate should be under the Legal Department. The Public Advocate should be independent similar to the Public Defender. Mayor Ganz thought the Attorney Lustgarten should be in charge administratively. Attorney Lustgarten had no problem with that but he would not make judgment calls.

The consensus was to draft the ordinance. Attorney Lustgarten will do a draft and send a letter to the Boards advising them of the Council's intent and asking for comments.

**Tropical Storm Floyd** - Manager Sacks advised that there is money available for municipal losses. Getting those funds is a complicated process. How much the Borough receives depends on how detailed the application and documentation are and how much time can be spent on this matter. Filings will be done with JIF, FEMA and the State. It is going to take someone full time working on it for several months to get every dollar the Borough is entitled to. She recommended creating a temporary full time position to take care of this and to help the residents and businesses with FEMA filings for a few months.

Councilmember Trawinski thought the concept was good. His only concern is that this position does not become a permanent full time position. He wondered if it could be done as a professional services contract instead of an employee. Councilmember Tedeschi asked for the cost of this position. Mayor Ganz thought the discussion should be in closed session. Councilmember Tedeschi was willing to support this position as long as it will include helping the residents.

Manager Sacks recommended that the position be created beginning October 11 and ending March 1, 2000. Attorney Lustgarten indicated that an ordinance is needed to create the position.

The consensus was to create the position.

**Shop Rite** - Manager Sacks presented an update. She reported that landscaping is being done, but it is not quite finished. Shop Rite is designing Walgreen's sidewalk and is working with the County. Traffic control signage is not complete. The retaining wall on Richard Street has become an issue. Shop Rite will take down the fence but they will not take down the retaining wall. She would like to evoke the ordinances relating to sight line and front and side yard restrictions. If Shop Rite does not do it, she can go back to the Planning Board and ask them to make the changes.

There was a good deal of flooding. The drainage is free flowing on Shop Rite's side. The problem is on the residential side. A sewer is running the length of those property. They are recommending to Shop Rite that they install catch basins at the end of backyard. Engineering is working on that now.

The interior sight lighting is completed but not the street lights.

Walgreens did not finish the sidewalk. Shop Rite has agreed to do it but they must get County approval. Manager Sacks thought the building was not in the right place. Attorney Lustgarten advised that the permit can be revoked, they can be forced to move the building or go back to the Board and ask for a new approval. Councilmember Tedeschi asked if the Construction Office knew that it was built in the wrong place. Manager Sacks will check.

Attorney Lustgarten pointed out that the headlights shine into the house across the street. Councilmember Trawinski noted that the Planning Board resolution includes a provision to correct that by changing the curve of the driveway or putting shrubs on the resident's property.

Councilmember Trawinski noted that the residents asked the Council to solve the problems. There are items in the resolution that are pending and covered by a bond that Engineering and the Construction Department are working on them. There are items in the resolution that were never done. There are other items that are not found in the resolution or approvals but the residents have raised which are legitimate issues. He did not think the Council can resolve it on its own. He suggested a working group of the Construction Official, the Engineer, a representative of the Planning Board, i.e., the attorney, a representative of the residents, i.e., Sy Karas and a representative of Shop Rite. The authority contained in the resolution is broad enough to compel Shop Rite to remove the blocking of the sight triangle. He suggested creating a list, establishing a time line and then getting monthly reports.

Manager Sacks would like to see the Engineer and the Construction Official continue to work on this matter. They are doing a great job and have gotten cooperation from Shop Rite. Creating a committee would send a bad message. The residents seem happy with the service they have been getting from the administrative end of government. If it appears they need more assistance then consider a committee. It would undermine their efforts and usurp their authority.

Deputy Mayor Ahearn liked the idea of doing something to expedite the situation and trying to pull things together. He was afraid they were not addressing the real problem. It is a repeating thing that conditions are not enforced. He expressed frustration with enforcement.

Councilmember Tedeschi pointed out that objective is to get that facility to where it should be. The objective is to make the residents happy. The administration was responsible for making things happen and it did not happen.

Manager Sacks stressed that the administration is working very hard to get everything in the resolution met and additional things that the resolution neglected to address corrected. She expressed concern that Shop Rite bypassed the Construction Department too often. She was satisfied with the Construction Department.

Councilmember Trawinski noted that there is supposed to be a sign off process so that Certificates of Occupancy do not get issued until all the items are met which does not seem to be working as well as it should be. The residents have asked the Council to help solve the problem. Deputy Mayor Ahearn thought if the Certificate of Occupancy was issued when it was not supposed to be, the facility should be shut down. If it was properly issued and there are still items that have to be worked out that were bonded and within the land use law, then push them to get it done. He did not think another committee would do anything for the residents.

Manager Sacks advised that the Engineer put everything in the bond he thought was in the resolution. Attorney Lustgarten suggested getting a report of the items that are still outstanding. A temporary Certificate of Occupancy was given, the building has been opened substantially at this point, so he doubted that unless the Council could show some egregious violation of the resolution that a judge would uphold revoking the Certificate of Occupancy.

Manager Sacks will try to do the list for the next meeting. If not for September 28, then for October 5. The list will include health and safety issues and quality of life issues and whether or not they were in the resolution.

The consensus was that if the essential items on this list were not accomplished by the time the Temporary Certificate

of Occupancy expires it would be the Council's recommendation not to renew the Temporary Certificate of Occupancy.

Attorney Lustgarten was asked to give the Council their options if Walgreen's was built in the right location.

Attorney Lustgarten suggested that it would be appropriate to let the residents know what is going on. Mayor Ganz asked the Municipal Clerk to prepare the consensus points and a brief summary so that they would have some sense of what has happened. This information could be sent to the residents within 200 feet.

Without objection Seymour Karas was invited to comment.

Mr. Karas indicated that he wanted to be a liaison between the Council and the residents so that someone could report directly to them. He was not finding fault with any Borough employee, but there have been lapses. He favored the committee and would accept being the liaison of that committee.

He noted that RRIC entered an agreement with Shop Rite to have an amenity strip but there is none so that is a violation. Manager Sacks advised that the County had some problems with that plan. She will check with the Engineer. Mr. Karas indicated that by working with the Engineer, the Construction Official, the Planning Board Attorney and a Shop Rite Representative they could resolve many of these things amicably. He could report to the residents. He just wanted to make sure that these things get done.

Deputy Mayor Ahearn wondered if it were possible to have the meetings with the representatives that are needed without forming a committee. Attorney Lustgarten pointed out that if any litigation arises out of these issues, it has to be governmental action with the applicant. He thought they should not give the residents an official position. Manager Sacks indicated that she thought she could work with Mr. Karas, the Engineer and the Construction Official. Attorney Lustgarten suggested that Mr. Karas be included in the meetings.

The consensus was to include Mr. Karas.

Council Resolution to Freeholders & NJ DOT re Traffic Light at Fair Lawn Avenue & Chandler Drive - The consensus was to adopt a resolution requesting that a traffic light be installed at this location.

Council Resolution to Return Broadway to Fair Lawn - The consensus was to adopt a resolution requesting that the State return Broadway to Fair Lawn.

Engineering Report on Lackland - Councilmember Trawinski noted that at the July 14 Council meeting the Council agreed that this matter would be referred to the Manager with the request that she refer it to the Engineering Department for its review and comments. Manager Sacks indicated that the Engineer has not finished it. He is working on it. She indicated that the Council should receive it within the next two weeks. This item will be on the agenda in two weeks.

Bike Path, Basketball Courts Walsh Pool/Dobrow Complex - Manager Sacks advised that design work has been started on the bike path. Bidding will take place this spring which will be within the time frame for the grant.

Manager Sacks advised that work has not begun on the basketball court because there has been no decision on the Walsh Pool so the Engineer does not know where to locate it. Councilmember Trawinski pointed out that on August 24 the Council took a consensus to direct the Manager to proceed with this project. There is a rough sketch. The money has been budgeted. Manager Sacks asked if Walsh Pool is being closed and can the Engineer use that space. The Council has not reached a decision on the Walsh Pool. Councilmember Trawinski replied that the basketball court was designed regardless of whether the pool is there or not. It is outside the footprint of the pool.

This matter will be on the agenda in two weeks.

**Prospect Street Multi-way Stop Sign** - Councilmember Trawinski wondered if the Department of Transportation had

received the information and given its approval. Manager Sacks knew that DOT had rejected the original request. The Engineer has the Police Department doing traffic counts. This matter will be on the agenda in two weeks.

Reimbursement Request from the State regarding Thermal Imaging Camera - Councilmember Trawinski raised this issue about a month ago. Manager Sacks is filing for the reimbursement and gathering the information needed.

**Walsh Pool Fencing** - Councilmember Trawinski noted that when the fencing was discussed Mayor Ganz had indicated that he wanted to look at it again. Mayor Ganz advised that he would do that this weekend. This item will be on the agenda in two weeks.

**Borough Hall Parking Lot** - Manager Sacks advised that an ordinance is needed to have restrictions when the lot is restriped. Areas will be reserved for visitors, the police, employees and Borough vehicles. She will find out the cost of the parking lot and report to the Council in response to Councilmember Tedeschi's inquiry. The Council wanted to see a plan before they did any ordinance although they had not objections to an area for the police vehicles and visitors.

The consensus was to have an area for the Police vehicles and visitors.

Schedule date for Public Meeting to Receive Planner's Report - The Council agreed that any Tuesday was acceptable. Manager Sacks will discuss this with Ms. Gruel.

Resolution in Opposition of Assembly Bill 1112/Senate Bill 632 - Councilmember Trawinski reported that this legislation would mandate that they must permit home-based businesses in every residential zone. The League of Municipalities has proposed an alternative bill.

The consensus was to adopt the resolution proposed by the League of Municipalities.

Special Meeting - Upon a motion of Councilmember Trawinski and a second by Councilmember Dobrow, the meeting was adjourned to a Special Meeting at 11:35 p.m.

Mayor Ganz reconvened the meeting at 11:50 p.m.

Closed Session Resolution - Upon motion by Deputy Mayor Ahearn and a second by Councilmember Trawinski, the following closed session resolution was unanimously adopted at 11:50 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 attorney/client privilege 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 within six months for attorney/client privilege and by resolution regarding personnel;

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.

Mayor Ganz reconvened the meeting at 11:50 p.m.

Emergency Management - The consensus was to move some of the equipment from the Radio Club for use by Emergency Management into the Municipal Building and the Manager was requested to find the space and give the Council a written plan for its implementation.

ADJOURNMENT - Upon motion of Councilmember Trawinski and a second by Councilmember Tedeschi the meeting was adjourned at 12:30 p.m.

Respectfully submitted,

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