

## Regular Meeting - October 26, 1999

Mayor Ganz opened the meeting at 7:35 p.m. Municipal Clerk Kwasniewski read the following statement of compliance:

In accordance with the Open Public Meetings Act, annual notice of all meetings of the Borough of Fair Lawn was published in the "News Beacon" issue of December 17, 1998. Notices were also posted on the Bulletin Board located on the First Floor of the Municipal Building and at the Maurice Pine Free Public Library, copies mailed to the Record, the North Jersey Herald and News, and the Shopper. The Annual Notices identified the meeting location and the time of the Council Meetings and Work Sessions.

PRESENT: Mayor Ganz, Councilmembers Dobrow, Tedeschi and Trawinski. Deputy Mayor Ahearn absent.

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

### **MANAGER'S REPORT**

Manager Sacks stated there were no changes to her report. Councilmember Trawinski stated he understood a Police Officer was injured but did not see it under Personnel in the Manager's Report. He asked if this would impact the Police force. Manager Sacks said there will be no impact. She will get a detailed report for the Council.

### **CITATIONS: FAIR LAWN LITTER CLEAN UP DAY**

### **TROPICAL STORM FLOYD**

Municipal Clerk Kwasniewski read the citations.

Mayor Ganz stated that on behalf of the Council they all are grateful to the volunteers and to the Borough employees for their hard work during Tropical Storm Floyd. He then presented the citations to the departments that were in attendance.

Councilmember Dobrow stated the Borough is very fortunate to have such exceptional volunteers. Councilmember Trawinski said the Council was always criticized for funding the Office of Emergency Management but he feels this was the best insurance policy. Councilmember Tedeschi said Tom Metzler built a very good Office of Emergency Management. Mayor Ganz thanked everyone.

### **RESOLUTIONS BY CONSENT #19-99**

Upon motion by Councilmember Trawinski and a second by Councilmember Dobrow, Consent Agenda #19-99 containing the following items were unanimously adopted.

- a. Resol. #301-99 Approval of Minutes:  
Work Session 9/7/99  
Special Meeting 9/7/99  
Regular Meeting 9/14/99
- b. Resol. #302-99 Authorizing Execution of United Water New Jersey, Inc. Renewal Agreement
- c. Resol. #303-99 Approval of Raffles & Bingo: Congregation B'Nai Israel off-premises 50/50 Fair Lawn Jewish Center on-premise

- mdse
- d. Resol. #304-99 Extension of Contract Emergency Water Main & Storm & Sewer Repair
  - e. Resol. #305-99 Change Order Library Site Improvements
  - f. Resol. #306-99 Corrective Action Plan
  - g. Resol. #307-99 Award of Bid: Broom Sweeper with Belt Conveyer
  - h. Resol. #308-99 Award of Bid: 18" Wrap Drive Conveyer
  - i. Resol. #309-99 Award of Bid: Snow Plowing & Removal
  - j. Resol. #310-99 Appointment to Broadway Advisory Committee

**MOTION TO RECONSIDER RESOLUTION No. 13-99 DATED 1/5/99**

**MOTION TO RECONSIDER RESOLUTION No. 117-99 DATED 3/23/99**

Mayor Ganz stated that Items 8 and 9 were placed on the Agenda at the request of Councilmember Tedeschi. He took issue with the method they were placed on the Agenda. They violated Statute 2-2.8 (e) which required the consent of the Council at its prior session before any item was placed on the Agenda. Councilmember Tedeschi said point of order. Mayor Ganz stated at the conclusion of the Chair's comments, the point of order will be recognized. He continued that under Roberts Rules of Order, a motion to reconsider can only be made on the day of the vote or at the next session of the Council immediately following the vote. The first vote took place on January 5, 1999, so the next Work Session would have been the following week. The second one took place on March 23, 1999. The succeeding session would have been the following week. Procedurally it was defective and the Chair rules upon that basis that these are not appropriate for the Council to consider at this time. He would be happy to move them to the Work Session, if the person who has put those forth would like to have them there or to some other time.

Attorney Lustgarten said he was asked by Councilmember Tedeschi whether a point of order is in order when someone else is speaking. According to parliamentary procedure rules that he has, it can interrupt a speaker to assert a right.

Councilmember Tedeschi said he disagreed with the Chair's representation and he respectfully noted that a mistake was made, it was not a Resolution to reconsider, it was a Resolution to rescind. There is no obligation to discuss this at any meeting prior and he would also ask the Attorney to opine to that fact and he believed the Chair was out of order here.

Attorney Lustgarten noted there are two separate issues. One is the parliamentary Roberts Rules as to when a rescission motion or a reconsider motion can be heard. He thought the issue that the Mayor raised relates to the Ordinances of the Borough which indicate that a matter has to have been discussed at the previous Work Session in order to be placed on the Agenda. He believed it stated that nothing should be placed on the Agenda that has not been discussed at the previous Work Session unless there is a consent of Council to do so.

Councilmember Tedeschi said he would remove the motion to rescind Resolution No. 13-99 and he would like to speak of the motion to rescind Resolution No. 117-99. Mayor Ganz said he was not certain that he understood what it is he was doing. Councilmember Tedeschi said he was

removing Item No. 8 - Motion to Reconsider Resolution No. 13-99. Mayor Ganz asked if he wanted that moved to the Work Session and he did.

Councilmember Tedeschi said a motion to rescind Resolution No. 117-99 dated March 29th flies exactly in the face of the Mayor's comments and the Borough Attorney's comments. The Mayor is telling them they have to discuss it in Closed Session. Mayor Ganz stated he was not suggesting it in Closed Session at all. Councilmember Tedeschi corrected his comment to Work Session. He pointed out to the Mayor that when he introduced Resolution 117-99 it was done without appearing on a Work Session Agenda and without being discussed but now he uses the rules for his own convenience which was inappropriate. He believed the issue should be heard now. Consistent with the past practice that the Mayor had followed, unless he was planning on changing the rules again.

Mayor Ganz stated the Chair has so ruled. Councilmember Tedeschi appealed the decision of the Chair. Councilmember Trawinski seconded the appeal. Mayor Ganz explained the decision of the Chair was not to permit this to be discussed now but to move it to the Work Session.

Attorney Lustgarten explained that a yes vote would overrule the Chair and a no vote would sustain the Chair. Mayor Ganz asked if a discussion was allowed under Roberts Rules of Order. Attorney Lustgarten informed him to appeal the decision of the Chair, it needs to be seconded, which it has been, it is not amendable but it is debatable. He read the subsection note and said if the Council wishes to debate it the Council can.

Mayor Ganz stated they will take limited debate on it. He said he will vote no on this. He has no objection to discussing this matter in Work Session then bringing it back before the full Council after the full Council has had the opportunity to understand the reasoning that is offered by the proponent of it.

Councilmember Tedeschi said the very reason why it is on Agenda and should not be removed is the very reason why the Mayor said how it got here in the first place. Again, this resolution was never discussed in a Work Session. He thought the Chair could stipulate to that. Mayor Ganz said he did not recall. Councilmember Tedeschi said he did and it wasn't. The problem that he has is that they now have a resolution that they cannot rescind because they cannot discuss it unless they take it to a Work Session when it was never discussed in a Work Session. One of the fundamental reasons why this is on the Agenda in the first place is because representations were made at that Public Meeting that there were no relationships with the party when the resolution was passed. He said he voted for that resolution. The Mayor and Deputy Mayor were specifically asked in a general question if they had any relationship with this firm and the response from both the Mayor and Deputy Mayor Ahearn was no. Subsequently he discovered that this firm was one of the larger contributors to the Deputy Mayor's election last year. Councilmember Tedeschi told the Mayor that it was inappropriate now to hide behind the rules when he violated the rules to get the resolution passed.

Councilmember Trawinski echoed Councilmember Tedeschi's comments and appealed to Councilmember Dobrow to do the right thing. The right thing on this was to rescind their action and take another look at this appointment. This was not the only action that has come before the Council that they are taking a look at where items were not put on a Work Session Agenda before. There is at least one other item he vividly recalls that they discussed in Closed Session, never went to an open Work Session and came directly to a Public Meeting and voted on it. They ought not to be caught up in the technicalities of Roberts Rules but get the substance out there. If after they hear the discussion and debate on the substance and they decide not to rescind or hold it for another day, that is appropriate, but he believed the residents of Fair Lawn were entitled to know.

Mayor Ganz said the people of Fair Lawn were indeed entitled to know as indeed they will know in the Work Session in about a half hour from now.

Mayor Ganz explained the motion that a vote of yes overrules the Chair and a vote of no sustains the Chair. Having no further discussion, the motion failed with Councilmembers Tedeschi and Trawinski voting in favor.

### **MISCELLANEOUS PUBLIC COMMENTS**

Upon motion by Councilmember Trawinski and a second by Councilmember Tedeschi, it was unanimously agreed to open the time for public comments.

Arlene Rubinstein, 28 Rutgers Terrace, said she was very concerned with who was buying Fair Lawn. She wanted to know who else made massive contributions to a political campaign and was appointed without discussion at a Work Session. She asked if there were other appointments besides the Bond Counsel and the Labor Counsel. Mayor Ganz asked if she had any additional comments. Ms. Rubinstein said she was asking him a question. Mayor Ganz said the Chair would not respond. She said she had no further comment except to the people of Fair Lawn to note that the Chair does not respond to comments or questions and they cannot get answers from him.

Edward Rosenthal, 38-23 Wilson Street, said the Council came to them for their votes. They promised to look out for the people. No one came to their section of town after the storm except for Councilmember Trawinski. He came to find out what kind of problems they were having. Mr. Rosenthal asked why no one else on the Council came to see what the residents lost. He said the only one on the Council to show compassion was Councilmember Trawinski and the people from Wilson and Paterson Streets will be voting for him.

John Monihan, 5-24 5th Street, said he has had three or four sewer back ups in the past year and a half. The Sewer Department clears the line but it backs up again. He wanted to know what the Borough will be doing about the sewer line. He felt there has to be a better way of solving the problem. Manager Sacks said she will follow up on this and knows that there have been a number of back ups in that area.

Shirley Giamongo, 5-12 5th Street, a resident since 1954 expressed her concerns about the sewer back ups. She felt that something was wrong with the maintenance of the sewer lines. She said there are many on her block experiencing the same problem and hoped they will look into it.

Sophie Dubowick, 02 Yost Place, said last January she had a sewer back up in her basement. Her insurance refused to pay. She spoke to Mrs. Sacks, Mr. Davidson and Attorney Lustgarten. They told her it was her fault because she did not notify the Borough before the sewer back up. She asked how was she supposed to know when the sewer will back up into her basement. The Sewer Department came out to check it. They told her there was nothing they could do and that she should call her plumber. She called her plumber who said there was nothing wrong with her plumbing. She got a story about too much paper and grease in the sewer lines. She lives alone and cannot see how she could have filled up the line with toilet paper and grease. The Borough came and cleaned her basement with a dirty mop and they used her shop vac and contaminated it with sewerage. She has asked the Borough to replace her shop vac.

Ms. Dubowick said when the Sewer Department was outside she went to talk to the man working there who told her to go away or he would call the Police. That was not very nice. She has asked to see a work sheet and has not seen it yet. She is a taxpayer and this is not the way she should be treated.

Attorney Lustgarten explained the Borough's policy and procedures on sewer back ups. He articulated that a sewer back up can occur at any time and any place and the Borough does not necessarily have any warning. In certain areas, which they call low areas or hot spots, the Sewer Department checks the area daily. Other areas are given periodic exams. When the Sewer Department gets a complaint that there is either slow flow or they see something coming out of a manhole or a particular resident calls, a crew is sent out and immediately checks the main line. The Borough's legal responsibility is to make sure the main lines are kept flowing. The lateral from the house is the homeowner's responsibility. He said that after seeing all the records and having all of the discussions he has had, he found no indication of the Borough having prior notice of a back up on her street. Had the Borough had prior notice he would have recommended the Borough's insurance company pay her claim. Under the self insurance program the Borough will pay only if it is their legal responsibility. The residents may disagree with that when it is their house. The Borough cannot spend the taxpayers dollars to pay someone else's claim when they are not legally responsible. If they had been notified of a prior problem either orally or in writing, she would have been paid.

Attorney Lustgarten said back in 1987 when Sandoz was in that area, there was a major sewer back up and not only did the Borough go to bat for the residents in terms of clean up, the Borough recovered over a quarter of a million dollars and reimbursed the residents who lost property there. He said he could not speak to the lack of courtesy from the Sewer Department since he was not there. The legal issue is if the Borough did not cause the back up and they did not have prior notice about the back then they cannot pay the claim.

Mrs. Dubowick asked what made it her responsibility. Wasn't it a notice to the town when she called the Sewer Department and they told her to call her plumber. Attorney Lustgarten stated she was told to check her lateral line from her house to the street. Mrs. Dubowick wondered why her other neighbors flooded at the same time. Attorney Lustgarten said that did not automatically make the Borough responsible. Mrs. Dubowick stated that sending two men from the Borough is sufficient notice. Attorney Lustgarten said if they had found an obstruction they would have cleared it. The Borough takes these back ups seriously because they know it is devastating for the homeowner and it is expensive for the Borough to ignore it. He said she may not want to hear it but there are over ten thousand residences in town and the Borough only has maybe ten sewer complaints a year. He is glad that the people from 5th Street raised the question, now the Borough is on notice and the Clerk has put it into the minutes. This has been taken seriously and that is why Mayor Ganz asked the Borough Manager to check it out.

Mrs. Dubowick said it was too late. She cannot help that a sewer backed up in her basement. She felt the Borough was remiss in the job they did cleaning up.

Rich Caposi, 5-08 5th Street, has lived in his house for over twenty five years and this has been the first time he has had a sewer back up. He asked now that the Borough Manager knows who is responsible. Attorney Lustgarten stated again that if it is the Borough's responsibility, the Borough will be held responsible for property damage and personal injury.

Mr. Caposi said it is backing up in the easement property. He spoke to someone in the Sewer Department who told him that line was collapsing. He wondered if the Borough will be monitoring that situation, if the residents will be told if it is being monitored or if the pipe is replaced. Attorney Lustgarten stated replacement would be a policy call by the Council after the Engineer's report. He will request that the Manager monitor that line on a daily basis.

Councilmember Trawinski said this is the first he has heard about this. He wondered when the Borough found out about this as the Manager indicated there was some kind of report received. It was not reflected in any Manager's Report that he is aware of. He asked why the Council has not been told about it.

Manager Sacks stated the Council is not normally told of every little sewer problem. However she did ask the DPW to keep her advised and while they don't give her formal written reports they do tell her if they are experiencing a problem in a certain area or if they get a complaint of a back up in an area. She then asks them to touch base with the Borough Engineer if it looks like it is time

for a sewer replacement.

Councilmember Trawinski asked again, when are they as a Council told about this because aside from the specific problem these residents are having, they are charged with an oversight responsibility for this municipality. If they as a town knew about this four days ago and actions have not been taken there may be liability issues for the Borough. He also wondered about an appropriation as the Borough just did an emergency appropriation because of Hurricane Floyd. He felt they could have easily rolled into that a capital appropriation to deal with the problem if there is indeed a collapsing line.

Manager Sacks said the Council is told when she is made aware of what the disposition has to be. It could be that something is being dumped into the sewer such as grease that is clogging it as they have found in the past where there are restaurants, or it is something that is collapsing or the Engineer feels it is time to do a replacement. She then brings it to the Council for an appropriation. She has not received that much yet. When she gets it she will pass it on the Council.

Councilmember Trawinski asked that this be placed on all the Work Session Agendas until they come to some conclusion or closure on it. Mayor Ganz said without objection it is so ordered that the Clerk will add this to the Work Sessions.

Fred Levine, 38-27 Wilson Street, noted that at the last Council meeting they discussed the completion of the culvert at the end of Wilson Street parallel to Dorothy Street. He understands that some cosmetic work was done to clear away some of the brush. He wondered what plans are being made to complete that culvert so that it goes past Wilson Street and goes into Allwood and Grant Street. He understands that money was appropriated for that and would like to know if any plans have been made.

Manager Sacks stated they were out there but she did not have a report from them yet as to how much further down the culvert they will go.

Mr. Levine said he feels like he is talking to the wall and gets no response. He feels something positive should be done.

Councilmember Trawinski said he did go out there and found that it was apparent the culvert was not completed. He talked about the pitch of it and the silt inside of it. It is apparent maintenance work needs to be done. He called the County to see if any grant money was available and found there are two grants. He suggested at the next Work Session they start talking about it and possibly get grants. He felt the other problem was the pitch was too shallow where it goes into the Saddle River. He also mentioned that he saw grass growing up into the sanitary sewer system on Wilson Street and felt that it needed general maintenance.

Manager Sacks stated that when the crews went out there they pulled out tree trunks and plastic. The Department of Environmental Protection does not allow the Borough to disturb anything on the bottom because they do not have a permit. She said the neighbors around the area have been throwing grass clippings and leaves into the area.

Mr. Levine insisted that if the culvert had been completed it would not have flooded his home.

Councilmember Trawinski stated he agreed with Manager Sacks about the work that was done by the Borough. He suggested the Borough close up the gaps in the railings by the path. Manager Sacks stated the gaps were taken care of. Councilmember Trawinski said Manager Sacks was also correct about the DEP. The Borough does have to apply for permission to remove the silt.

Frank Brenneisen, 23-34 Ellington Road, said he thought he would see the presentation from Susan Gruel. Mayor Ganz informed him it will be on November 9, 1999. Mr. Brenneisen said he has been waiting two years and wondered about the striping that was supposed to be done. He said the Borough did nothing. He said Saddle Brook had closed up the streets to the local traffic and the problem here has to get solved.

Mayor Ganz told him the last time he was there he was supposed to get pictures to Attorney Lustgarten. Mr. Brenneisen asked why they had to do the Police Department's work. He stated he was giving prior notice to the Borough.

Councilmember Trawinski stated that three weeks ago this issue was put on the Work Session Agenda as a follow up item. He said that Mr. Brenneisen was promised last December that things would be done to alleviate the problem on his street. He has been told there is a report coming from the Borough Engineer.

Manager Sacks stated the Council got a memo regarding the speed bumps and the history of Ellington Road. Councilmember Trawinski stated he did not receive that memo and that it should go back on the Work Session Agenda.

Mr. Brenneisen said that it seemed to be an internal problem and to fix it. He said that Councilmember Trawinski was the only one that seemed to care about his street. He also said the Police were there writing tickets and while they were there it helped but they

went away.

Manager Sacks said the Police were there and did not find many trucks or speeders. Mr. Brenneisen said there was a truck every six minutes. He also asked if what she was saying was there was no speeding problem on his street. He said the Manager's Report showed that seven out of nine violations were on Ellington Road. He felt the Mayor and Council were ineffective.

Viola Betty Salsbery, 23-29 Ellington Road, said she has been calling the Police since 1993 regarding the traffic problem on Ellington. The Police go there and the trucks take off and then return again. She said this morning a dump truck sped down the entire length of the street. She sees trucks all the time. She has called the Mayor's office and has never received a call back. She felt it was a courtesy to return her phone call. Mayor Ganz said the Mayor's Office policy is to return calls within twenty four hours.

Arlene Rubinstein, 28 Rutgers Terrace, said she supports what these people are saying. She has driven on Ellington Road and has seen trucks traveling on that street.

Raina Valenzuela, 2 Katherine Avenue, said eight pines were planted behind her house. She thanked Councilmember Trawinski for following up on this issue.

Ms. Valenzuela said she had hoped to address Deputy Mayor Ahearn about revisions the Planning Board is doing to change the way things are done with the resolutions and about revised landscaping plans. She wants to see the report that Councilmember Trawinski requested and would like that to include any changes that have been implemented with the Planning Board. Mayor Ganz said he would ask the Chairman of the Planning Board to provide him with the information and he will send it to her.

Ms. Valenzuela said that she wrote a letter and could collect only a few signatures on it the last few days. She said she got a report from Manager Sacks to Attorney Lustgarten which addressed the situation in a short term basis but they are not addressing what will happen long term. She asked when Walgreens would be fixing the sidewalk. She gave a copy of the letter to the Municipal Clerk regarding the Walgreens problems. She stated that Walgreens must provide walkways of adequate dimensions with properly graded curb and driveway cuts along the entire length of the parking area. If parking spaces are lost, so be it. It is through their arrogance or ineptitude that no provision was made for a sidewalk. No developer should be allowed to sidestep the Planning Board guidelines. Mayor Ganz said the entire Council is aware that it does not address the long term problem. The step they have taken is to insure that tomorrow morning and yesterday morning the children going to school will get there safely. She thought the report was very complete but it did not research the issue of the older children walking or riding the bikes to Memorial School.

Ms. Valenzuela spoke about the debate last Sunday where she asked about the June 17, 1999, Closed Session meeting where Wendy Dabney was appointed to the Health Board and Mayor Ganz said he did not recall the meeting or what happened. Mayor Ganz said he recalled their conversation but still does not recall what happened. He recalls that Ms. Dabney was appointed to the Board. The minutes reflect that Mayor Ganz wanted to check with the Democratic Municipal Chairman. She informed them that Ms. Dabney was not aware of her appointment. Mayor Ganz said she was appointed to the Board and would get the information to her.

Councilmember Trawinski stated the appointment was never made to the Health Advisory Board. He checked with Municipal Clerk Kwasniewski and both agreed the appointment was never made. Councilmember Dobrow said Wendy Dabney was a member of the Environment Commission and the Garden Committee and that she belonged on the Health Board.

Ms. Valenzuela stated she was not sure Wendy Dabney would accept but felt that things were being done incorrectly. She said she was a Democrat but is concerned about how appointments are made. Mayor Ganz stated it was only a joke about checking with the Democratic Chair. He said they all know who Wendy is and they all know what her qualifications are. Councilmember Tedeschi said she was never appointed.

Councilmember Trawinski said with all due respect, his recollection is very vivid and it was Councilmember Dobrow who proposed Wendy Dabney for the appointment. He and Councilmember Tedeschi said they could support that appointment. The Administrative Code says in no uncertain terms that once an individual's name is proposed for an appointment and that individual receives the support of three Councilmember's that individual was in fact appointed. It was no joke that Ms. Dabney was not appointed that night. There is no doubt that Ms. Dabney got the three votes that night and yet she has never been appointed to the Board. It has never even been put back on a Work Session Agenda to discuss it.

Ms. Valenzuela said her concern was that the citizens put their trust in the Mayor and Council and they hold them accountable. She asked to have the commitment of all of the Councilmembers that appointments would be made regardless of party affiliation. Councilmember Dobrow stated it was almost automatic if three Councilmember's vote for her to go on she's got it. Ms. Valenzuela said her point was why are they violating the democratic procedure that has been established. Councilmember Dobrow did not understand what was violated. Ms. Valenzuela explained that if the people elect Councilmember Dobrow they put their trust in her

and they trust that she will do the job not consult someone else. Councilmember Dobrow said the Municipal Clerk would automatically put it on the next Agenda for the formality of it. Ms. Valenzuela asked if the persons party affiliation is considered before they are appointed. Councilmember Dobrow said no and that she did not even know what party Ms. Dabney was with.

Councilmember Tedeschi said he read from the June 15th minutes and Ms. Dabney was not appointed and there was also another individual the Mayor indicated he wanted to speak with personally and that person was not appointed either.

Ms. Valenzuela said she would like to see this process opened up instead of appointments being discussed in Closed Session. When they make an appointment, they should publish their resume. Mayor Ganz said they have actually initiated that this year. For the first time it is Council policy to require new individuals to submit resumes so they all know the persons general qualifications.

Ms. Valenzuela asked if the Mayor would be notifying Ms. Dabney of her appointment. Councilmember Dobrow said she will get a notice. Mayor Ganz said if it is correct that three members of the Council did this and there is no objection then it will be put on a Work Session. He said the reason they do this in Closed Session is if there was a serious reason why that person could not be on the committee they would not want to embarrass them.

Councilmember Trawinski said they wanted this to take place in Closed Session because they really do not want to embarrass the person. Once they reach the decision all of the decisions are announced publicly.

Ms. Valenzuela said he was at the debate and she asked all of the candidates the same thing. She wants the commitment that the Councilmembers will not have interference from the politicians into the appointment process.

Councilmember Trawinski stated there is always interference from the politicians and he thought what she meant was from the political parties and the municipal chair because collectively they are all politicians. From the municipal chair the answer is a resounding no there is no such requirement. He ran on the platform four years ago and for the first three years he was there they never asked party affiliation and in many cases never even knew party affiliation. He stated that Attorney Lustgarten is a well known Democrat in Fair Lawn and he does a very good job for the town and has survived both Republican and Democrat administrations. So his answer is an resounding yes, he has taken such a pledge voluntarily four years ago.

Ms. Valenzuela stated Attorney Lustgarten is here on merit. He does a good job and deserves to be here.

Attorney Lustgarten said he appreciated the comments. He said he wanted to speak for all the Council who are sitting there and for all the Council that had previously sat there since 1983. He has been appointed in non partisan and bi-partisan governments every single Councilmember takes their responsibility extremely seriously when it comes to appointments. They know when it comes to appointing the attorneys, the judge and the board members that not only reflects on the job that is being done for the people but very frankly it reflects on the people sitting up there. He said he has been very satisfied as a resident that this Council has acted in best interest of the Borough in their appointments. Merit is the first criteria he has heard every Councilmember mention when any appointment is considered. In every instance they have always asked if this person is qualified to serve on that board.

Ms. Valenzuela thanked him for bringing it up. She said once they are elected they are responsible to the people in general and she does not care about party affiliation.

Councilmember Trawinski thanked Manager Sacks for her efforts to implement short term safety measures on River Road by Walgreens. While the one that they were thinking of did not work for a variety of reasons he thought good initiative was demonstrated by finding an alternative and implementing that alternative. He thanked Ms. Valenzuela for bringing it to their attention in the first instance but it is done and in place. He said the first item on the Work Session Agenda was a discussion about long term solutions.

Steve Kwait, 0-111 Whitehall Street, a member of the Broadway Advisory Committee stated that no one knew about the resolution asking to take Broadway back from the State. He wants to get the committee working with the government and asked if there was some way to do it. Mayor Ganz stated he understood that some of the first steps towards that have been taken and some more are going to be on the Work Session Agenda this evening. Mr. Tregidgo has asked that the Borough Clerk have the Minutes transcribed and circulated to the Council. That will be happening and there are some additional mechanical things. He said some of it will be on the Work Session Agenda and some after Mr. Tregidgo gives them some specific recommendations.

Mr. Kwait asked if Item J on the Consent Agenda had anything to do with an appointment to the Broadway Advisory Committee. Mayor Ganz said it named another individual to the Advisory Committee. He said they have had other individuals ask to join the committee and the policy is that any resident that wants to serve can serve. He further stated that it was a Council committee which required the Council appointment.

Attorney Lustgarten stated the Council will be appointing a Council liaison to work with the Committee and that should help with communication. Mr. Kwait asked if it will be one person or more. Mayor Ganz stated it will be one individual and he thought they would do that on November 9th. Councilmember Trawinski stated they decided to hold off on that because the makeup of the Council could change after the election.

John Monihan, 5-24 5th Street, wanted to clarify something that was said earlier. It was his understanding that if it was a main sewer line and not a lateral that was the towns responsibility. He said the town has been put on notice so he expects that sewer line to be checked daily and if it backs up again the town is responsible.

Attorney Lustgarten stated the main sewer lines are the responsibility of the Borough. As the Attorney he would like to see daily inspections subject to the needs of the department and other areas of the town. For the near future he is requesting Manager Sacks to have someone go over there and take a look at it daily. He could not tell Mr. Monihan that if he had a back up again it would be the Borough's responsibility. The facts will have to be considered.

Mr. Monihan said with Hurricane Floyd they did have a back up but what he was talking about was that two weeks ago it was just a regular day. Attorney Lustgarten stated he wanted to make himself clear. If the Borough does daily inspections for two weeks and sees total flow, no problem. Then the Borough would do it every other day and then taper off to once a week or every two weeks. The Borough would be taking reasonable steps to investigate the line to see that it was flowing. Grease, debris, tree roots and anything else can get in there without being noticed. The Borough will be responsible if they negligently attend to that line.

Mr. Monihan said it could be tree roots and the line is old. He asked if the preventive measures don't work, will the Borough look into replacing this line. Attorney Lustgarten stated that would be a Council decision based on the reports they receive from Engineering and the Sewer Department.

Mr. Monihan asked if he could find out the determination at the next meeting. Manager Sacks told him to call her. Attorney Lustgarten informed him the Borough will take all reasonable steps to check the line.

Harvey Rubinstein, 28 Rutgers Terrace, said he did not hear anyone make a comment on the DEP permit needed to clean out the culvert. Mayor Ganz stated it will be a Council call and would be put on the Work Session Agenda.

Mr. Rubinstein said he raised the issue of the pavers and their maintenance. Councilmember Tedeschi stated that was not a function of the Council but an administrative function. The Borough Manager left the last meeting early. Manager Sacks said she did get his message and had passed it on the DPW and to Engineering.

Mr. Rubinstein reiterated that there should be some type of maintenance code for those pavers. He informed them there is a tremendous hole by the Exxon Station on Fair Lawn Avenue and it seems that nothing has been done even though he brought it up awhile ago. He suggested they create rules and regulations regarding the sidewalk and pavers. Mayor Ganz stated that Attorney Lustgarten will be discussing sidewalks. Attorney Lustgarten stated if this is an imminent danger it will be taken care of immediately.

Mr. Rubinstein asked why the Council will adjourn to a Public Meeting after the Work Session. Manager Sacks told him it was the leaf removal bid that the Council wanted to consider separately.

Mr. Rubinstein spoke about the water quality at the pool and that they drink. He suggested sending someone to the International Trade Association Convention that will be held in March in Long Beach, California. They deal in things such as ionization and reverse osmosis, filtration, ultra pure and softening. He said if they wanted more information they could find it at "[www.wqa.org/sitelogic.cfm](http://www.wqa.org/sitelogic.cfm)".

Councilmember Tedeschi informed him that a few weeks ago he was at the WEF convention which is the largest water environmental foundation organization in North America. He brought back to Engineer Garrison the disc that had the complete detail of what was presented there.

Leon Wender, 7-22 Manor Avenue, informed the Council of a problem he had getting rid of a fence he took out of his yard. The garbage men would not pick it up. He had to rent a truck to take it to the Recycling Center where he was refused the dumping privilege because it was a commercial vehicle. He was referred to a panel truck in an adjacent parking lot. The town residency was not checked. He said he was never told he could not use a commercial vehicle.

Mr. Wender spoke about the expenses on the Manager's Report. He then mentioned another day the Senior Center would be closed and said it was another day the poor go hungry.

Frank Brenneisen, 23-34 Ellington Road, said he had found a picture in his truck of one of the many violating trucks on his street which he gave to the Clerk. He talked about the missing memo that they never got, physical changes are under way, somebody is going to talk about it, there is something going on. Manager Sacks said the Borough Engineer was looking at some of the traffic calming devices that he could use. One of the things he asked him to look at was speed bumps which they know cannot be put in the street but there is a type of speed hump that can be used in a public street and that is what he is considering. It is like a speed bump but it is longer so that you don't get the same jolt and the liabilities for the municipalities are substantially less.

Mr. Brenneisen confirmed that they are waiting for the Borough Engineer. He also asked about the cross walk paint, the ladder bar. Manager Sacks said she had asked the Borough Engineer to look at that also. He told her that he is not sure that will redirect traffic, the whole purpose is to move the traffic around to keep it in a narrower area and go right over it.

Mr. Brenneisen talked about his crosswalks and the size of the lines. He felt that anything he could do to alert the people that they are going around a corner to slow down. Manager Sacks advised them the State was supposed to do that but she will look into the Borough taking care of it.

Mr. Brenneisen expressed his frustration with the Police. No one is coming to the residents to talk to them. He asked them to tell the Police Department to cooperate and do their job and communicate with the residents. Manager Sacks said she will talk to them again. She knows they have had Officer Opalka sitting out there and he has spoken to her about it. She asked Mr. Brenneisen if the time period was between 6 and 6:30 a.m. she will ask them to have added enforcement there during that time period.

Councilmember Trawinski said that Mr. Brenneisen made this request for the lines last November. As a Council they said in January 1999, that regardless of whether or not it was on the State ramps the Borough was going to paint the crosswalk. He does not know why it has not been done. Manager Sacks said the Borough Engineer had advised her that the State would be doing the work and the State has not changed what they left there. Mayor Ganz said he was putting this on the Agenda for the Work Session in several minutes. Upon motion by Councilmember Trawinski and a second from Councilmember Dobrow it was unanimously agreed to have the lines painted within ten days as long as the temperature is above fifty five degrees.

Attorney Lustgarten informed Mr. Brenneisen that if he was going to get pictures to him it had to be within thirty days because the tickets have to be issued within thirty days of the event. He has to tell him the date and time. Mayor Ganz told him to keep track because he was sure Mr. Brenneisen did not want it to be a warning. He wants it to be a ticket and to be enforceable.

Councilmember Dobrow suggested that if the people are so worried in that area on Halloween eve they have a Police Officer present. Mayor Ganz asked if it was on goosey night or Halloween. Mr. Brenneisen said it was during trick-or-treating he was concerned about the children's safety. Manager Sacks said trick-or-treat will be starting earlier because it is on the weekend but the Borough will have extra patrols out for safety as well as vandalism.

Sophie Dubowick, 02 Yost Place, wondered if there was any way Halloween trick or treating could be limited to certain times and if there was any law about that. She said her daughter lived in Pennsylvania where they have limited the time to between 7 and 9 p.m. She knows that other towns have been talking about limiting the time for safety sake. Mayor Ganz said this Council does not consider this. He is aware that one town has attempted to make Halloween on the 30th of October but they decided they were not going to enforce it and arrest the third and fourth graders who are out trick or treating. Ms. Dubowick said this was not about changing the date it was just about changing the time to make everyone aware that the kids were out walking. Mayor Ganz said it was certainly something for the Council to look at and will refer it to Manager Sacks and Attorney Lustgarten but it will not happen this year.

Ms. Dubowick asked Attorney Lustgarten about the statement he made previously about the Sandoz claim. Attorney Lustgarten explained to her that he did not say he saved the money the Council did. In 1986 when the private municipal carriers were raising their premiums because of a host of lawsuits, the Borough's premium quote went up from \$400,000 to over \$900,000 for a million dollars worth of insurance. It was at that point the Council decided to go to self insurance. When the Council voted in the self insurance fund the Borough has not been paying a commercial fee since 1986. The town was paying a liability payment, they switched from that and the Borough is now self insured.

Ms. Dubowick asked why can't the Borough take care of all of these petty claims. Attorney Lustgarten said for all the reasons he stated before the Borough cannot do that. He also said he did not call the claims petty. He knows they are serious to the people who have them.

Ms. Dubowick talked about the garbage cans being left in the road. Mayor Ganz stated that Manager Sacks wrote a letter recently to the carting company advising them if there are any additional violations they would be fined for each one.

Manager Sacks stated she fined them for leaving the cans on the street and not returning them to the curb. Mayor Ganz stated

these are not inexpensive fines. They are \$500.00. Ms. Dubowick said it is a shame that they have to go around looking for their garbage cans. The cans get mangled and cars drive over them.

Councilmember Trawinski stated the Council is very aware of the problem and the Borough Manager has worked very hard to solve it. The fines are in the hundreds. Manager Sacks stated that some areas are better than others. She went out personally and logged and took pictures of the cans in the street and when it was not corrected that is when she imposed the fines. Ms. Dubowick stated the contractor must have a lot of money to throw around. Manager Sacks stated the contractor was going to start firing people.

Viola Betty Salsbery, 23-29 Ellington Road, asked the Borough Manager about the new garbage trucks. Manager Sacks said they do have some new ones. Ms. Salsbery said they were huge and wondered if these were the kind of trucks to expect on our roads. Manager Sacks explained they are trying to increase their capacity so that they can pick up the garbage quicker, keep the trucks on the streets early and be gone by the end of the day. Ms. Salsbery said she had no complaint because on her street they return the cans to the curb. She asked if they were over four tons and that they come down her street, not to pick up. Mayor Ganz said they are allowed to as long as they are picking up. Ms. Salsbery said they come down her street when they have to dump their load.

There being no additional comments from the public, upon motion by Councilmember Trawinski and a second by Councilmember Tedeschi, the time for public comments was unanimously closed.

### **Adjournment to Work Session**

Upon motion by Councilmember Trawinski and a second by Councilmember Dobrow, the meeting was unanimously adjourned at 9:50 p.m.

Respectfully submitted,

Marilyn B. Dugan, RMC

Assistant Municipal Clerk

### **WORK SESSION OF OCTOBER 26, 1999**

Mayor Ganz reconvened the meeting at 10:00 p.m.

PRESENT: Mayor Ganz, Councilmembers Dobrow, Tedeschi and Trawinski.

Absent: Deputy Mayor Ahearn

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

Walgreen's Sidewalk - Attorney Lustgarten reported that he had sent letters to the interested parties. He received a telephone call from Drill Construction who is upset with the letter and indicated that he is not the one responsible for the placement of the building. Attorney Lustgarten advised them that the County has refused to allow them to encroach on the right-of-way. At some point by the end of this month if there is no interim solution and a plan to rectify, the Council will look at the Temporary Certificate of Occupancy. Drill Construction wants to cooperate. Thor Engineering has sent a letter denying responsibility but they will cooperate. Walgreens has also sent a letter indicating they want to cooperate. Engineer Garrison rejected an uncertified site plan because it did not comport to the field measurements. Attorney Lustgarten thought that after the next work session if the Council has not received a satisfactory response to pedestrian safety and the long term solution they should consider pulling the TCO. Sustaining that position will be difficult unless he can prove the safety issue.

Mayor Ganz suggested that the TCO be renewed for seven days only so that the Council can decide whether it should be renewed or not. Attorney Lustgarten noted that Drill Construction suggested that some spaces be made compact spaces. Engineer Garrison is not sure that will help. Merely going to the Planning Board for approval of the mistake is not acceptable.

Councilmember Trawinski noted that while he was prepared to be reasonable once, he will not support another recommendation to renew the TCO.

The consensus was to recommend to the Construction Official that the TCO be renewed for seven days and that Walgreens be so

notified. Manager Sacks will notify the Construction Official. Attorney Lustgarten will send the letter to the same people advising them of the Council's recommendation to the Construction Official.

Hepatitis B Shots - Manager Sacks advised the Health Officer would like to do a new program with the High School. To charge for the shots they need an ordinance. The Health Officer has recommended that the ordinance be changed to include any programs that the Health Officer sees the need to provide would cost \$2.00 above the cost or a percentage of the cost. Mayor Ganz wondered about those who cannot pay for the program. Manager Sacks advised that they will look at that on a case by case basis. She advised that the students will need the hepatitis B shot to attend college. Councilmember Tedeschi wondered why it is the Borough's responsibility. Manager Sacks noted that it is not the Borough's responsibility. It is a new initiative of the Health Officers. They will not be giving the shot to the general public at this point. The cost is \$45 for the students and \$90 for the faculty and staff. The cost to the Borough would be several dollars above those figures. She thought between \$2 and \$5. Councilmember Tedeschi wondered why the Board of Education cannot do this program. They have nurses and doctors on staff. Councilmember Dobrow suggested asking the Health Officer why it is the Borough's responsibility instead of the Board of Education.

Manager Sacks advised that they wanted to start the program in November so they can get the students inoculated before the end of the school year. Mayor Ganz wanted to know the actual calculated cost to deliver this service. Councilmember Trawinski indicated he would support changing the ordinance so they do not have to keep changing it to cover the fees but not to single out the Hepatitis B inoculation. He suggested establishing that the Chief Financial certifies the actual cost and the overhead and then parameters for the Health Officer to establish the fee. He did have a problem with this program that should be the Board of Education responsibility. He thought they should amend the ordinance and get the answers from the Board of Education at the same time. Mayor Ganz wanted to know what the liability the Borough will have and what liability the Board of Education will have doing it at their facility. Attorney Lustgarten noted that it will be the Borough's liability. If this is a life vaccine, there is the potential of a reaction. Parental consent is needed for anyone under eighteen.

Lisa Yourman noted that there are three shots involved and they have to be done within the required period of time. Students have to get a physical to go to college anyway so they will get the shot from their physician.

The consensus was to have Attorney Lustgarten draft the ordinance for the next meeting provided he receives the cost breakdown from CFO Eccelston.

Removal of Leaves in Excess of DEP Permit - Manager Sacks advised that the bid was for a reasonable price. She had sent them a memo with details of the history. Councilmember Tedeschi wanted to know when the Council decided to go out to bid. Manager Sacks advised that the Council did not decide. The Council said to get rid of the leaves. When Paramus was not interested, she had to explore other alternatives so she went out to bid. It is the only alternative.

Councilmember Trawinski pointed out that Mr. Bleeker told them that the landscapers dump 3000 cubic yards. The ordinance change will mean fewer leaves being brought to the Center. He suggested waiting a year to see what the cubic yards are before incurring the expense of trucking the leaves out of the Borough. Manager Sacks pointed out that they will only pay for what is removed. They will have to truck leaves out periodically over the season. Councilmember Trawinski noted that there is legislation pending that would allow certain exemptions from the DEP regulations for municipalities. Manager Sacks pointed out that legislation would not pass in time to help the Borough this year.

Attorney Lustgarten noted that the term of the contract is from 11/15/99 to 12/15/99 so the Council has to decide soon. He thought Mr. Bleeker indicated that with the change in the ordinance he thought he could comply with the permit. Mayor Ganz wanted to know the downside of having a contract if the Borough does not ask them to remove any leaves. Attorney Lustgarten thought any reasonable bidder was anticipating picking up leaves so the Borough may not have the option of telling them when to come. Councilmember Trawinski thought the specifications obligated them to remove 6,000 cubic yards of leaves.

Mayor Ganz then asked the downside of exceeding the regulations. Attorney Lustgarten replied that the DEP could fine the Borough although Councilmember Tedeschi did not think the likelihood of that happening was very high. Councilmember Trawinski thought the Borough could reapply for the exemption and even if the Borough does not get it, it would demonstrate a good faith effort that the Borough is trying to comply. He thought they should rebid the contract so if they have to remove the leaves they can.

Manager Sacks expressed concern that there was not sufficient time to rebid and that the price might not be as good. She stressed that the specifications indicated that they are anticipating approximately 6000 cubic yards. They know it is the first year so the Borough does not know how much will have to be removed. They are not bound to the 6000 cubic yards. Attorney Lustgarten did not agree. Manager Sacks added that the specifications include that the DPW Superintendent will notify the contractor when his services are no longer needed. She felt the December date was an outside parameter.

Attorney Lustgarten was concerned that there was a conflict in the language of the specifications and the current contract with Mr.

Bleeker. He suggested that the specifications be reworded so that the leaves in excess of the permit amount are to be removed.

The consensus was to rebid this project with revised specifications.

Councilmember Trawinski wanted to be sure that there were sufficient funds available.

Councilmember Tedeschi indicated that the funds will be coming out of the tipping fees which were less than anticipated.

Possible Change in Meeting Date for 11/15 Work Session - It was agreed to cancel the Work Session of 11/15. A work session will be held on 11/23/99 with the Regular Meeting immediately following it. A special meeting will be held on 11/15 at 8:00 a.m. to adopt the health fees ordinance.

Destruction of Tapes of Council Meetings - Attorney Lustgarten advised that he, Municipal Clerk Kwasniewski and Manager Sacks recommend that the tapes be kept for six months from the date of the meeting or subject to attorney request for litigation purposes or the specific request of any Councilmember. The Council concurred.

Ad Regarding US Attorney - The press release has been published.

Broadway Advisory Committee - Manager Sacks advised that she has received a request for a number of documents for each of the 26 members of the committee. She wanted the Council to know that it will be expensive to reproduce some of the items requested.

Appointment to the Board of Health - The consensus was to appoint Wendy Dabney non pro tempore.

ADJOURNMENT - Upon motion of Councilmember Trawinski and a second by Councilmember Tedeschi they adjourned the meeting at 11:05 p.m.

Respectfully submitted,

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