

WORK SESSION OF DECEMBER 7, 1999

Mayor Ganz called the meeting to order at 7:40 p.m. Municipal Clerk Kwasniewski read the statement of compliance with the Open Public Meetings Act.

PRESENT: Mayor Ganz, Deputy Mayor Ahearn and Councilmembers Dobrow.

ABSENT: Councilmembers Tedeschi and Trawinski.

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

Review of Tentative Agenda 12/14/99 - Municipal Clerk Kwasniewski advised that she would like to add two resolutions to award bids on the Truck Chassis and the Vehicle Exhaust System Rescue Squad. Manager Sacks has recommended the bids be awarded. The Council concurred.

Cancellation of Unexpended Balances - CFO Eccelston was present and explained the unexpended balances in the current fund that he recommended canceling so that the funds will go directly into surplus so they can be used in 2000. He felt it was appropriate to build up the surplus. The auditors have requested that he cancel any balances in old capital ordinances. The auditors have recommended that he cancel any accounts payable that is over five years old. There are two large items, \$58,000 and \$60,000, which were reserves for salary for a litigation matter was settled this year so that reserve is not needed any longer. Those funds will go back into surplus and then be transferred into the self-insurance fund.

He concluded that the bills will be paid December 15 so he will have a transfer resolution on December 21. If there are any funds that he does not anticipate using, he will add a cancellation resolution. He will attend the next meeting in case there are any questions.

Special Meeting - Upon motion of Deputy Mayor and a second by Councilmember Dobrow the meeting was adjourned to a Special Meeting at 7:45 p.m.

Mayor Ganz reconvened the meeting at 7:50 p.m.

RRIC - Robert Gordon was present on behalf of Bob Landzettel who is ill. Mr. Gordon asked for the Council's support of RRIC's request to reprogram Community Development Block Grant Funds previously authorized by the County. Nine loans were made but there is \$69,000 left which if is not used will be lost. They have asked that the funds be reprogrammed for the implementation of the shared parking plan.

The consensus was to authorize a letter and adopt a resolution supporting RRIC's request.

RRIC asked the Council to budget \$7500 again to fund the final phase of the shared parking plan. Mr. Gordon explained the efforts of RRIC this year. They are committed to submit final recommendations to the Council by February 1. The initial \$7500 supported the work done by Bohler Engineering, the sketch and design work and some of Bier Associates recommendations. He anticipates that there will be similar expenditures required for the implementation of the parking plan which needs to get underway. Mayor Ganz wanted to know exactly what the funds would be used for before committing to appropriating any funds. Councilmember Dobrow asked for a commitment that if the Community Development funds are reprogrammed the Council would not have to fund the \$7500. Mayor Ganz suggested that an overall presentation be made for the new Councilmembers. Deputy Mayor Ahearn stressed the importance of the shared parking plan.

Mr. Gordon explained that it has taken so long because it is being done piecemeal and RRIC is composed of volunteers. RRIC has been talking about a briefing session for incoming members to give them the history, the accomplishments and what they are trying to do. Deputy Mayor Ahearn suggested that it be a joint session with the

Planning Board.

RRIC asked that the SID ordinance be amended to incorporate the RRIC design manual which puts on paper how the physical improvements should look. They established a design committee that meets with the applicants before the Planning Board and Zoning Board to try to get them to conform to the design manual, but that process is voluntary. Some applicants have conformed. Others do not want to cooperate in any way. The only way this area is going to improve the physical appearance is to strengthen the SID ordinance. Deputy Mayor Ahearn pointed out that the Planning Board was unable to require a recent applicant to follow the guidelines and a significant opportunity to improve River Road was lost.

Mayor Ganz asked that a copy of the design package sent to the Council and the Councilmembers-elect.

Seymour Karas noted that there are a few applicants before the Planning Board where they want to put up signs that are prohibited in the design manual. The State statute on SID's give SID's certain powers that municipalities do not have. The SID operates as a quasi public body of the Borough. Within the SID ordinance it would be possible to have a committee that can deal with aesthetics. He thought there were a number of amendments that will be need but they must start some place so that people do not just build any way they want. RRIC would have to ask the Council to amend the ordinance.

Attorney Lustgarten stressed that standards should be specific before they can go into an ordinance. Mayor Ganz wanted to know what the Council could do as an interim solution to prevent haphazard development of River. Attorney Lustgarten noted that if RRIC advises the Council of discrete areas on a narrow scope the Council could amend the ordinance. If there is a list of critical items from RRIC he could easily amend the ordinance. Mayor Ganz asked Mr. Karas to get a memo from RRIC identifying what they want as soon as possible.

There are technical corrections needed to the B4/B5 ordinance. There are a number of inconsistencies between the SID ordinance and the B4/B5 zone. In November RRIC sent the Mayor and Council a list of the lots that need to be redesignated. They are asking that this ordinance be done. Attorney Lustgarten asked for a rationale for the changes in the event a homeowner asks why their lot is being changed.

Mr. Gordon indicated that they analyzed the lots in the B4/B5 zone and noticed that there were some lots were just left out. Mr. Karas added that in most instances there are one family homes which are used for commercial purposes that are within the SID boundaries but not included. There are some residential homes that were in the SID which should not be.

Municipal Clerk Kwasniewski explained that each year the Tax Assessor sends a letter to each single family resident asking them to certify that they are still residential. The Council then amends the ordinance. Attorney Lustgarten pointed out that the appropriate staff will have to visit each property. Councilmember-elect Etlar indicated that he has visited each of the properties on that list. The ordinance change will be done as expeditiously as possible after the first of the year.

Mayor Ganz asked Municipal Clerk Kwasniewski to advise Manager Sacks to follow up with the appropriate official to do whatever has to be done. Attorney Lustgarten indicated that he will speak to the Tax Assessor.

Mayor Ganz thanked Mr. Gordon and Mr. Karas.

Ground Space Lease Sprint/Spectrum - Attorney Lustgarten noted that some time ago the Borough adopted the appropriate ordinances to establish areas for cellular towers including the DPW Complex. Omnipoint Communication was the successful bidder to erect the tower. Two co-locators will be permitted on that tower. The Council had not anticipated that the subleases need additional structures to house their equipment which require ground leases.

Attorney Lustgarten advised that Mr. Czura had asked if the Council would authorize the Manager to execute an

application for a stream encroachment permit with the Department of Environmental Protection for Sprint Spectrum at the DPW Complex. He advised Mr. Czura that there is no particular sublessness since the Borough has not gone out to bid. He thought it was inappropriate for any Borough official to execute anything on behalf of any cellular entity because it may be deemed by others that somehow there is an inside deal with Sprint. Under the non-discrimination clause of the Telecommunications Act of 1996 he felt that the Borough has to treat every potential bidder the same. He was aware that the application process for a stream encroachment permit is lengthy. Mayor Ganz asked if any successful bidder will require a stream encroachment permit. Attorney Lustgarten thought so but he was not sure.

The consensus was that the Manager take all necessary and reasonable steps to implement the auction process.

Attorney Lustgarten noted that he thought the Council had taken a consensus in May or August to direct the Manager to direct the Engineer to draft the specifications so it could be put out to bid on an expedited bases. Time has dragged since the approval of tower for Omnipoint and there are other carriers that may be interested in this site.

The consensus was to have this done by December.

Mayor Ganz asked Municipal Clerk Kwasniewski to advise Manager Sacks that the Council want to proceed quickly.

Gregg Czura, 11-41 Greenwood Lake Turnpike was present on behalf of Sprint Spectrum. Since March Sprint has been trying to locate on that site. The Council needs to act to increase the size of the compound so that equipment can be located on the site. Once that happens there will be more rent for the tower from the ground. The stream encroachment permit is going to take another five months. It will probably be May 2000 before anyone can build on this site. Sprint just wants to start the process of the stream encroachment permit.

Mayor Ganz wondered if the Borough could apply for the permit as the owner of the space and require at the auction that the Borough be reimbursed for its costs to obtain the stream encroachment permit. Attorney Lustgarten thought the auction could be structured in that way.

The consensus was to have the Manager ask the Borough Engineer to start the application process tomorrow and submit the application by the end of the year with the understanding that the Borough will assign the permit to the lessee.

Mr. Czura noted that the specifications could include a minimum bid. He was not aware of the value of the ground space. Attorney Lustgarten advised that he was told that the annual leases are between \$15,000 and \$16,000. Deputy Mayor Ahearn suggested having the Engineer check to see if more than one permit is needed. Mr. Czura thought the stream encroachment permit would be for the fenced area. Mayor Ganz asked for a follow up report on December 14 and 21.

Attorney Lustgarten explained that the market will determine the value. The subtenants will owe money to Omnipoint so the amount will be less. He suggested that the staff check with other communities.

Pedestrian/Bicycle Safety Task Force - This item was deferred to December 21, 1999. Municipal Clerk Kwasniewski will advise Mr. Plotch.

Shop Rite - Attorney Lustgarten summarized the December 6 memo from the Manager on the items completed at Shop Rite and Walgreens. He wondered if the sidewalk is finished has the citizen safety issue been resolved. Manager Sacks was asked to answer that question. There will be a work session after the Regular Meeting on December 14 so that the Manager can make a recommendation whether the Temporary Certificate of Occupancy should be extended and to what date and what has to be done by that date. The Council asked that the Engineer provide an up to date punch list for Walgreens and Shop Rite.

Request by M. Hirshklau to Purchase Borough Property (Blk 3517, Lot 21) - Attorney Lustgarten advised that he still does not have a new appraiser. He noted that the Zoning Board of Adjustment has given already give approved the application before it.

Closed Session Resolution - Upon motion by Deputy Mayor Ahearn and a second by Councilmember Dobrow the following closed session resolution was unanimously adopted at 9:10 p.m.

WHEREAS, the Open Public Meetings Act of the State of New Jersey permits the public to be excluded from certain matters to be discussed by the governing body; and

WHEREAS, the Mayor and Council of the Borough of Fair Lawn desire to discuss personnel; and

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 by January 31, 2000;

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 10:25 p.m.

Scholastic Bus Litigation - The case is being remanded to the Zoning Board. Councilmember-elect Etler felt that there should be a joint meeting with the Council and the Zoning Board to discuss this matter. The situation has been exacerbated by the opening of Shop Rite. Mayor Ganz asked for the Borough Attorney's guidance. Attorney Lustgarten advised that this is pending litigation that should be discussed under in closed session under attorney/client privilege to determine strategy. Mayor Ganz noted that it is a request for remand with the Board required to make recommendations as to what can be done to Range Road. He thought there was going to be a fiscal impact on the Borough and every effort should be made to minimize the cost.

The Council agreed to hold a closed session on January 4, 2000 to discuss this matter.

Mayor Ganz asked that a copy of the judge's decision, the resolution, the briefs and the transcript from Bob Matule, Esq.

ADJOURNMENT - Upon motion of Deputy Mayor Ahearn and a second by Councilmember Dobrow the meeting was adjourned at 10:40 p.m.

Respectfully submitted,

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