

**MINUTES OF THE SUPPLEMENTARY MEETING
OF THE MAYOR AND COUNCIL**

JULY 5, 2011

SPECIAL AND WORK SESSION MEETING

A Special Meeting of the Mayor and Council was held in the Municipal Building on July 5, 2011. Mayor Bivona opened the meeting at 7:30 P.M. and Borough Clerk, Sally Bleeker, read the Sunshine Law Statement.

ROLL CALL

The following Council Members and Professional Staff were present: Mayor Bivona, Councilman Friscia (7:40 P.M.), Councilwoman Lota, Councilman Kahwaty, Councilman Pedone, Council President Ramsey, Councilman Smith, Borough Administrator Hart and Borough Attorney Lustgarten.

APPOINTMENT

- **DPW SEASONAL EMPLOYEE – MATTHEW HALKNER**
- **DPW SEASONAL EMPLOYEE – BRETT DEVENEY**

Motion by Councilwoman Lota to appoint Matthew Halkner and Brett Deveney as seasonal employees in the DPW. Councilman Kahwaty seconded the motion. Discussion –None.

Roll Call Vote

Ayes: Councilmembers Lota, Kahwaty, Pedone, Ramsey and Smith

Nays: None

OPEN TIME FOR PUBLIC COMMENT

Motion by Councilman Kahwaty to open the meeting to the public. Seconded by Councilman Smith. Discussion – none. On voice vote, all in favor, motion approved.

There were no comments from the public and Councilman Kahwaty made a motion to close the public portion of the meeting. Councilwoman Lota seconded the motion. Discussion – none. On voice vote, all in favor, motion approved.

BOROUGH ENGINEER’S REPORT

Status Report

Kevin Boswell referred to his report dated June 30, 2011. He reported that the 2010 Community Development Grant is being coordinated through Capital Alternatives. This grant was awarded to D&L Paving. Both the Fireman’s Pond and the Memorial Pond dredging have been completed. The NJDEP have issued the required permits on June 15, 2011, for waterfall improvements. Mr. Boswell stated that Bergen County is only paving 20 roads this year.

Mr. Boswell said that Mr. Sabbagh of 670 Shawnee Drive is abiding by the Stop Work Order; however, he has still not submitted a plan. He indicated that there are offsite drainage issues at Woodside Avenue Elementary School and he will continue to follow up to ensure that this drainage issue is resolved.

Mr. Boswell stated that the Borough has an inventory of streams and ponds as part of the Borough’s stormwater prevention plan. This should include a detailed listing of culverts and detention ponds. An intern, who is planning to start a Masters Program in Civil Engineering this fall, has volunteered to do this work and he is familiar with the Excel program. He will go through the proper background check and Mr. Boswell will oversee

his work. He will be working at no charge to the Borough and this is a wonderful way to get some necessary work accomplished.

Request to Vacate Right of Way

Mr. Boswell referred to the intersection of Arapaho Trail and Summit Avenue and said that the right of way becomes quite a bit wider as it intersects Summit Avenue. A large space has been created in front of the home at 989 Arapaho Trail which is in the northeast corner of the intersection. This is probably a result of the north side of Arapaho Trail being subdivided first which left no alternative but to line up the road at a 90 degree angle. When the south side was developed, the County would not allow the intersection to be too close to Clark Road in order to have a minimum offset of 150 ft. between the two intersecting roads. This created a safer intersection for traffic exiting Arapaho Trail and Clark Road but resulted in excess property which is under the Borough's control. Mr. Boswell suggested that the Council could consider vacating this area. He added that the present design of the road is better than it would have been if it hugged the northern side, therefore, he has no objections and thinks this is a safer design to maintain a better separation between the two roads. This is a County intersection and Mr. Boswell recommended checking with the County and asking them to prepare a vacation of a parcel map showing metes and bounds so that Mr. Lustgarten can prepare a vacation ordinance.

Mr. Smith said that there is no reason not to vacate this right-of-way provided the Borough feels there is no use for this now or in the future. There is no reason not to give it to the abutting property owner as long as the costs involved are covered by this individual. Mr. Lustgarten indicated that he and Mr. Boswell will take the steps necessary to vacate this right-of-way property. Mr. Hart will have the Tax Assessor determine the value of this property which may be several thousand dollars and the Council can then decide if any compensation is due to the Borough. He will work with Mr. Lustgarten to formulate a letter to be sent to the homeowners and if everyone is agreeable an ordinance can be prepared for introduction. Councilmembers agreed to move forward as outlined by Mr. Hart.

CONSENT AGENDA RESOLUTION

Resolution 171-11

BE IT RESOLVED that the following resolutions, placed on this agenda by consent, require no discussion and the same having been previously reviewed by each Governing Body member, be and are hereby adopted in their entirety by the Mayor and Council of the Borough of Franklin Lakes. Full text of all consent agenda resolutions can be found after the Adjournment.

Resolution 172-11 Accept Report of the Finance Committee

Resolution introduced by Councilwoman Lota. Seconded by Councilman Kahwaty. Discussion – None.

Roll Call Vote

Ayes: Councilmembers Kahwaty, Lota, Pedone, Ramsey and Smith

Nays: None

Abstain: Councilmember Friscia

Resolution approved.

RESOLUTIONS

Award Contract – Kiosk for Franklin Lakes Nature Preserve

RESOLUTION 173-11

AWARD CONTRACT – KIOSK FOR FRANKLIN LAKES NATURE PRESERVE

WHEREAS, the Borough Administrator solicited proposals from several vendors for the purchase of an informational kiosk for the Franklin Lakes Nature Preserve; and,

WHEREAS, the Franklin Lakes Nature Preserve Executive Committee recommends that the contract for the purchase of an informational kiosk of the Franklin Lakes Nature Preserve be awarded to GK Brothers Construction LLC, 297 Joralemon Street, Belleville, New Jersey 07109, for the proposal amount of \$4,750;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Franklin Lakes, County of Bergen and State of New Jersey that the recommendation of the Franklin Lakes Nature Preserve Executive Committee is hereby accepted and the contract for the fabrication of signs for the purchase of an informational kiosk of the Franklin Lakes Nature Preserve be awarded to GK Brothers Construction LLC, 297 Joralemon Street, Belleville, New Jersey 07109, for the proposal amount of \$4,750; and,

BE IT FURTHER RESOLVED that a Certification of Funds has been prepared and authorized by the Chief Financial Officer for the said contract assuring that there are sufficient appropriations to fund the payments authorized in this resolution as an express and mandatory condition of the award of this contract; and,

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to GK Brothers Construction LLC and the Borough Treasurer.

Resolution introduced by Councilman Kahwaty. Seconded by Councilwoman Lota. Discussion – Mr. Hart stated that seven proposals were received for the kiosk. The proposals were reviewed at the Nature Preserve meeting and the committee feels comfortable that this is a fair price for the type of structure that is suitable for the area. The costs at the Nature Preserve are eligible for the 50% Bergen County Open Space Grant.

Roll Call Vote

Ayes: Councilmembers Friscia, Lota, Kahwaty, Pedone, Ramsey and Smith

Nays: None

MAYOR'S REPORT

Mayor Bivona reported that he was present at the signing of the Pension and Health Care Reform bill and he said he was impressed by the bi-partisan efforts of the Republicans and Democrats in order to help municipalities. This will result in significant costs savings to the taxpayers of the State. He recognized that some of these cost savings are coming from the sacrifices of municipal workers who can now be assured that the pension and benefit plans will be there for them in retirement. Mr. Hart explained that the increased medical insurance contributions on the part of employees take effect immediately. The impact will be limited because this doesn't take effect until the contracts expire for those employees under a collective bargaining agreement.

Mayor Bivona announced that a representative from New Jersey Fish and Wildlife is coming on Tuesday night to discuss the bear situation in Franklin Lakes as well as Oakland and Wyckoff. A trap has been set on Hilltop Terrace with no results as of yet.

Mayor Bivona received a phone call from a Freeholder stating that they are looking for someone to fill an open position on the Bergen County Sewer Commission. He said that it would be advisable to consider finding someone from the Borough to serve on the Board since sewers will soon be coming to the downtown area of Franklin Lakes. He encouraged Councilmembers to let him know if they have any suggestions. Mayor Bivona stated that the Borough has ten volunteers who are assisting on various fronts and he recognized Mr. Hart for his leadership in this regard. Councilman Pedone suggested that the Borough do something in recognition of the efforts of these volunteers and Mayor Bivona agreed that this is something that should be acknowledged.

COMMITTEE/ LIAISON REPORTS

Administration and Finance

Councilman Smith had no report this evening.

Public Safety

Councilwoman Ramsey stated that a public safety announcement was issued via email today from the Police Department reminding everyone about the recent home burglaries in the Borough. The message also stressed the importance of locking vehicles as a preventative measure.

Councilwoman Ramsey said that interviews were conducted for a dispatcher at the Police Department. It is vital that this position be filled so that they are not using higher priced police officers to do this job. Interviews were conducted and the police have submitted their choice of an individual who seems to have the necessary experience for the position. Mr. Hart said that any decision by the Council must be subject to a satisfactory reference review and background check. Mayor Bivona recommended the immediate hire of James Scott Peterson as a police dispatcher subject to a satisfactory background check. Councilman Kahwaty made a motion based on the Mayor's statement which was seconded by Councilman Pedone.

Roll Call Vote

Ayes: Councilmembers Kahwaty, Lota, Pedone, Ramsey and Smith

Nays; None

Abstain: Councilman Friscia

Public Works

Authorize Capital Alternatives to Prepare and File Application to DOT for McCoy Road and Huron Road Rehab – Councilwoman Lota reported that Capital Alternatives has been authorized to apply for a grant from DOT for the paving of McCoy and Huron Roads. Councilman Smith questioned why Boswell Engineering doesn't handle the more basic annual grant applications. Mr. Hart said that the Borough is taking advantage of the knowledge and expertise of professional grant writers through the use of Capital Alternatives. Councilman Smith recalled that Capital Alternatives unsuccessfully made this grant application last year at a small cost to the Borough. Mr. Hart commented that Capital Alternatives is filing basically the same application this year and there shouldn't be much work involved. He added that the Borough doesn't pay Capital Alternatives unless they are successful in obtaining the grant. Councilman Smith recommended asking Mr. Boswell how much his firm would charge to file the application.

Councilwoman Lota said that the DPW is hoping to hire a part time worker. In the past, there have been 13 employees in the DPW including the superintendant and the mechanic. Two temporary workers are hired in the summer. She suggested hiring a part time worker for 20 hours a week to save the cost of benefits, along with three summer employees instead of two. The DPW is actually down one employee from several years ago and they are asking to have one permanent, part time employee to help with the work load.

Mr. Hart reported on a meeting with the DPW Committee when they considered the question of whether or not the work load in this department warrants a part time employee. The Committee concluded that the DPW has more work than ever and it is often difficult to quantify exactly what the DPW does. The Committee felt that the workload justifies a part time position and the Council agreed to start the process of hiring a permanent, part time DPW worker.

Environmental & Community

Return of Excess Library Funds – Mayor Bivona reviewed a draft of a resolution which is an attempt to get excess Library funds returned to the Borough pursuant to the new law passed in December 2010. The Council supports the Library in many ways. Franklin Lakes has the highest per capita support of the BBCLS system in the County at

six times the average, and there is significant usage of the Library by non-residents. The Library was renovated in 2003 at a cost of \$3.6 million through independent funding, a grant and the Borough paying the balance of \$2.3 million which it continues to pay off today. During the renovation, the Library was moved to a temporary headquarters and saved a tremendous amount of money and a fair amount of surplus, \$1.3 million, was created by the Library during renovations. This surplus was not used to pay the debt involved with the renovations and the surplus remains with the Library to the present time while the Borough still has \$2.3 million of debt.

Mayor Bivona explained that a new law requires municipal libraries to return excess funds to the municipalities to provide for taxpayer relief. The Board of Trustees for the Library has transferred all of the unrestricted reserves to a restricted capital fund which means that there is nothing left to give the Borough for tax relief. Mayor Bivona has attended all recent Library Board meetings and has tried to discuss the situation with individuals Board members as well as the entire Board and has asked them not to sign off on the capital reserves and take the necessary steps to return the excess funds to the Borough as required by law. This request was met with opposition and the Board has hired a consultant with his compensation of \$20,000 being financed by this fund. Mayor Bivona stressed that this money is part of what could have been returned to the taxpayers. The Library is a pearl in the community but there are many other Borough properties and buildings that could use some of these funds for repairs and renovations.

Mayor Bivona is proposing a resolution of objection in order to go back to the Library and other State agencies in order to take any and all actions permissible to get this money returned. He said that the money in the Library's annual budget is more than sufficient to run a first class facility. Pursuant to the statute, this is tax payer money that should be returned to the Borough and could be used to pay off the Borough's portion of the debt. Councilman Smith pointed out that the law states that any money returned must be used to reduce taxes and he agreed that this legislation should be enforced.

Councilwoman Ramsey recalled that after the renovations at the Library, there were some serious construction issues particularly with the HVAC system. Mayor Bivona said that he is aware of the substantial amount of money that was spent on this issue and there may be some lingering issues that need to be taken care of and he doesn't have a problem with that. Councilman Smith asked whether it is necessary to get a report from the Borough Auditor indicating that this money should be returned to the Borough under this Statute. Mayor Bivona said that an independent review would cost money and he is only asking for Council support at this time to see if there is a way to move ahead. If so, he will ask that the appropriate money be used to support the Council's stance on this issue. Councilman Smith anticipates that it will be unlikely that the Library will change their position and further discussion should take place in Closed Session.

Mayor Bivona stated that the law was changed regarding excess capital and it requires that this capital be returned to the taxpayers of the Borough. Mr. Lustgarten stressed that this is a mandated statute for taxpayer relief with no discretion on the part of the Library Board. Councilmembers agreed that the resolution should be listed for the meeting of July 19th.

Shared Service – Library – Mayor Bivona stated that the Borough has been working diligently to pursue shared services where ever possible. The libraries in Oakland, Wyckoff and Franklin Lakes are in close proximity. There may be the ability to share services and find different way to coordinate activities that could be advantageous to residents while saving money for the three municipalities. Mayor Bivona has written to officials in Oakland and Wyckoff asking that this proposal be discussed in an effort to save taxpayer money. He pointed out that due to lower assessed values many libraries are experiencing a revenue reduction. There could be potential savings through resource sharing that could help with budget efforts and he will discuss this with the Library Board at the next meeting.

Planning & Development

Councilman Kahwaty stated that tomorrow evening's Planning Board meeting will include a discussion on the Tice Road - Sabra Realty application. He reported that Chris Martin has been appointed as Special Counsel in the absence of John Spizziri due to the filing of a law suit.

Master Plan Zoning Amendment - Mr. Hart discussed the Master Plan Zoning Amendments that were recommended by the Planning Board to implement some changes to the Master Plan. The Planning Board also asked the Planner to do some clean up of the zoning ordinances. The Planning and Development Committee met with the former planner, Paul Grygiel, and reviewed the rationale behind each of the provisions. The revisions, including one on lot width, have been incorporated and there were several other issues that need to be reviewed by the Mayor and Council because they involve policy decisions.

Councilman Smith said that the most important amendment pertains to 300-113 which would add "medical, dental and/or veterinary office and facilities" to the list of permitted uses in the RB District and would impact the suit which is now pending. Mr. Lustgarten noted that the law at the time the application was filed would be effective in this case which prevents municipalities from changing the law midstream and adversely affecting applicants. Upon questioning by Councilman Kahwaty, Mr. Lustgarten said that the re-starting of the original application without change would be a continuation of the application. Councilman Smith maintained that this could have a possible impact on this application.

The remaining changes were reviewed and Mr. Hart said that the other substantive changes are consistent with the recommendations in the Master Plan. Councilman Smith agreed that the changes were non-substantial with the exception of the litigation that would be impacted by the first amendment. Councilman Kahwaty suggested removing 300-113 from the list because it may have an impact on the pending litigation. Mr. Hart said that this would give the Mayor and Council the opportunity to clarify what type of use they want in this zone.

After a long discussion, Mayor Bivona recommended that they get an affirmative recommendation from the Planning Board who will be made aware of the Council's concerns. Mr. Hart will forward all of the information to the Planning Board for confirmation including the provisions as outlined in his memo dated July 1st, 2011.

Illuminated Signs – Mayor Bivona stated that the Council may want to regulate the operation of LED signs as well as the functions they perform. He spoke to Dr. Romano about the sign at Franklin Avenue Middle School (FAMS) and he indicated that they want to cooperate with the Council. If the Council is not going to prohibit LED signs, they should be able to negotiate a proper sign to be located at the corner with the school board so that the school can move forward. Changes in the ordinance should be consistent with the general agreement with FAMS.

Councilwoman Ramsey recalled that the Chairman of the Zoning Board, Steven DiFlora, was concerned that any moving signs could distract a driver. This is the reason for her concern with this type of sign at this intersection which is already the busiest in the Borough. Mayor Bivona was concerned with whether FAMS was being held to a different standard than the business district. Councilwoman Ramsey pointed out that this is a residential neighborhood and the Council has a responsibility to maintain safety at this intersection.

It was stated that the blinking or movement and the high intensity of light are what distracts drivers. If FAMS is willing to have a sign that doesn't blink or is not of a high intensity the sign becomes almost like any other. Mayor Bivona referred to the Bloomington, Minnesota ordinance which controls whether a picture is moving, words are blinking and the intensity of the lights. Mayor Bivona said that the school wants the ability to change the message from time to time. Councilwoman Ramsey cautioned that this is opening the door to any number of signs throughout the Borough and this should be restricted to the business district. Mr. Lustgarten commented that although aesthetics can be regulated, a personal opinion of aesthetics cannot be used to ban certain signs.

Councilman Smith recommended banning these signs from residential districts and Mr. Hart confirmed that FAMS is in a residential district.

After more discussion, Mayor Bivona said that the Council agrees that signs of this nature cannot be allowed in a residential zone. FAMS is a public school that has the authority to do what they want; however, they may try to comply with Borough ordinances. Mayor Bivona suggested that he report back to the Council on a sign proposal from FAMS for consideration and consensus by the Council at the August work session. At the same time, Mr. Hart will work on a revised ordinance similar to the Bloomington, Minnesota ordinance which will regulate the business district. Mr. Lustgarten referred to the jurisdictional issue and commented that this is the reason for negotiation.

Recreation & Parks

Franklin Lakes Nature Preserve Rules & Regulations Ordinance – Councilman Pedone reviewed the ordinance that was written by Mr. Hart who said that fishing is permitted with a New Jersey State license at the Nature Preserve. Littering, boating, swimming, wading and motorized ATVs are prohibited. Dogs are permitted if they are leashed. The ordinance will be introduced at the July 19th meeting.

McBride Field Use Approval Ordinance – Councilman Pedone suggested that this ordinance requiring a review by the Mayor and Council for McBride Field should cover the private use of all fields in Franklin Lakes. Mayor Bivona agreed that the language should be changed to read “municipal fields”. Mr. Hart said he has established criteria for this review and factors such as wear and tear on the fields, scheduling conflicts, provision for sufficient parking and whether the event benefits the Franklin Lakes community have been included.

Councilman Friscia questioned the history behind this ordinance and Mr. Hart described the five groups who can request use of the field. He noted that at least 50% of the host group participating must live or work in Franklin Lakes and the events are scheduled on McBride Field through the Recreation Department. Councilman Pedone reiterated his suggestion that the Mayor and Council should review groups who are in Class Five and one field should not be singled out. Mr. Hart pointed out that this would include all the camps that are private, non-resident groups. Councilman Friscia said that McBride Field presents different issues and that is the reason why a review by the Mayor and Council is necessary. Councilman Smith stated that the question is whether the Recreation Director should review use of the other fields by outside groups or should the Council control what outside organizations are given permission to use Borough facilities. This would probably involve the review of approximately 20 to 30 applications annually as opposed to half a dozen for McBride Field. Councilman Smith characterized this as a rubber stamp and said that he wouldn't expect this to be a lot of additional work for the Council.

Mayor Bivona pointed out that this ordinance would give the Council leverage over groups coming in that have no connection to Franklin Lakes. The group may decide to provide something beneficial to Franklin Lakes residents such as a donation in exchange for permission to use a field. Councilwoman Ramsey said that the Council does not have the authority to grant the use of Fireman's Field, other than to recreation groups, because it is owned by the Fire Department.

Mr. Lustgarten explained that this ordinance pertains solely to the final review and control of the fields and he asked if the Council must decide if it wants the authority to have the final review or should this be done by the administrative staff. Mr. Hart will make some changes and have the ordinance ready for the meeting of July 19th.

Facilities Use Request –

Ramapo Rally – Councilwoman Ramsey said that this doesn't involve a Borough field and she recommended that it be given to the Traffic Officer. Mr. Hart explained that this will be administered through the Parks and Recreation Department.

Jersey Lakeland Regional – Vintage Chevrolet Club of America – Councilman Pedone pointed out that the \$250 fee for the use of the field was not included in this contract. Mayor Bivona commented that this activity has little to do with Franklin Lakes and Councilman Pedone suggested an increase of fees particularly for Class Five. Councilman Smith recommended that the Council hold off in approving this activity until the ordinance is in place.

Councilman Pedone reported that the lacrosse and baseball seasons have ended but travel baseball is still ongoing. Football will begin in August and baseline testing for concussions has been done in the Middle School computer lab. Next year there will be a 9th grade basketball team. A meeting regarding the Town Fair will be scheduled shortly.

BOROUGH ADMINISTRATOR’S REPORT

There were no questions by Councilmembers on Mr. Hart’s report.

OLD BUSINESS

There was no Old Business this evening.

NEW BUSINESS

There was no New Business this evening.

RESOLUTION FOR CLOSED SESSION

Mr. Lustgarten asked if there were any questions regarding the Tax Appeals listed on the closed session. There being none they were removed from the closed session agenda.

RESOLUTION

CLOSED MEETING

BE IT RESOLVED, by the Mayor and Council of the Borough of Franklin Lakes, County of Bergen and State of New Jersey that a Closed Meeting be held on Tuesday, July 5, 2011 which begins at 7:30 PM, in the Conference Room at the Municipal Building to discuss the following:

Closed meeting issues:

- Personnel - DPW Superintendent

BE IT FURTHER RESOLVED, that the discussion conducted in closed session shall be disclosed to the public once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW, THEREFORE BE IT RESOLVED, that the public be excluded from this meeting.

Motion by Councilwoman Lota, seconded by Councilman Kahwaty at 10:00 P.M. to enter into Closed Session to discuss Personnel – DPW Worker.

Roll Call Vote

Ayes: Councilmembers Friscia, Kahwaty, Lota, Pedone, Ramsey and Smith

Nays: None

ADJOURNMENT

Motion by Councilwoman Lota to adjourn the meeting at 10:40 P.M. Councilman Kahwaty seconded the motion.

Resolution 172-11

BE IT RESOLVED by the Mayor and Council of the Borough of Franklin Lakes that the report of the Finance Committee be accepted and recommendations adopted; that the report be made part of the record of this meeting; and the proper Borough Officials are hereby authorized and directed to issue warrants in the amount of \$4,321,038.65 as shown on the Claims Bill List; and \$1,261.75 as shown on the Soil Account Bill List; and \$1,827.00 as shown on the Developers Escrow List.

BE IT FURTHER RESOLVED that the payroll of June 9, 2011 in the amount of \$236,358.99 and that the payroll of June 23, 2011 in the amount of \$246,489.91 be hereby ratified and approved.

Respectfully submitted,

A large black rectangular redaction box covers the signature and name of the official. Below the redaction, the text "Mayor of Franklin Lakes, Borough Clerk" is partially visible.