

**MEETING OF THE MAYOR AND COUNCIL  
NOVEMBER 1, 2011  
7:30 P.M.**

A regular meeting of the Mayor and Council was held on November 1, 2011 in the Municipal Building.

**MEETING CALLED TO ORDER**

**ROLL CALL**

The following Council Members and Professional responded to the roll call:

Mayor Bivona, Councilman Friscia (7:45 P.M.), Councilman Kahwaty, Councilwoman Lota, Councilman Pedone, Council President Ramsey and Councilman Smith. Also present were Borough Administrator Greg Hart, Borough Attorney Lustgarten, and Borough Clerk Sally Bleeker.

Councilman Friscia left the meeting at 11:23 PM. Councilwoman Lota left the meeting at 11:30 PM.

**SUNSHINE LAW STATEMENT**

Borough Clerk Bleeker read the Sunshine Law Statement.

**FLAG SALUTE**

Raymond Gonzo, Eagle Scout, lead those present in the Pledge of Allegiance.

**MOMENT OF SILENT REFLECTION**

**APPOINTMENTS**

**William Zangara - Patrolman - Franklin Lakes Police Department**

Motion was made by Councilman Smith and seconded by Councilman Kahwaty to make the following appointment:

Franklin Lakes Police Department - William Zangara to the rank of Patrolman.

Roll Call Vote

Ayes: Kahwaty, Lota, Pedone, Ramsey, Smith

Nays:

Abstain:

Absent: Friscia

Motion Approved

Mayor Bivona swore William Zangara in as Patrolman in the Franklin Lakes Police Department.

**PRESENTATIONS**

**Raymond Gonzo – Eagle Scout Project**

Raymond Gonzo stated that he is an Eagle Scout and he is hoping to achieve the William T. Hornaday Award for outstanding services in conservation. His proposal is to set up boxes for wood ducks at the Franklin Lakes Nature Preserve and he is here to obtain permission from the Council to proceed. He distributed information about the project to Councilmembers and said that he is seeking donations in order to raise money for the project. Mr. Gonzo described the wood duck as a small and elusive species and he has mapped out the best areas to locate the nest boxes in order to attract the birds. He noted

that the best time to put the boxes out is in November and Boy Scouts from Troup 34 will assist him with the project.

John Spizziri, Planning Board Attorney, said that he has been affiliated with Ducks Unlimited for some time. This organization is involved in international conservation and education. The wood duck is a beautiful bird that will successfully nest from year to year in these boxes that are located in trees. He said he would appreciate the Council's support of Mr. Gonzo who will do an outstanding job.

Mayor Bivona asked for approval of the project.

#### Roll Call Vote

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

Nays:

Abstain:

Absent:

Motion Approved

#### **MAYOR'S REPORT – STORM RECOVERY UPDATE**

Mayor Bivona reported that during the weekend before Halloween the area was again hit by a severe storm resulting in a widespread loss of trees, power outages, resident frustration, displacement of residents and the unfortunate loss of a life. The storm hit four days ago, however, many residents remain without power. He stated that there has been some progress today but the response from Orange and Rockland Electric (O&R) has not been good. Initially 70% of residents were in the dark and, at this time, there are still 1,000 homes that have not had power restored. Crews continue to clear trees from electrical wires.

Mayor Bivona stated that the Police, Fire and Ambulance Corps members worked hard throughout the storm and continue to work throughout the recovery stage to ensure the safety of the residents. They are putting themselves in danger while responding to calls from residents. The Office of Emergency Management (OEM) provided shelter and emergency services when needed. The DPW have been working constantly removing snow, trees and wires from the roadways and helping O&R in several trouble spots. Borough employees have responded as quickly as possible to questions from residents during these trying times. The Library has been a good place for people to go to access Wi Fi service and Library employees have been serving coffee and hot chocolate.

Mayor Bivona stated that Mr. Hart and his team have done an outstanding job in communications with residents through the use of Reverse 911 and Facebook. The Borough has worked closely with the schools to make sure the school closings were coordinated. The decision to postpone Halloween was made to ensure the safety of the younger Borough residents.

Mayor Bivona listed several areas where improvements are necessary. He stated that some of the fire sirens did not operate and although he had wondered about their utility in the past, he now realizes that the sirens provide a vital service. There were also problems with E-Dispatch not working which is a concern when combined with non-operational fire sirens. Power was lost in the Police and Fire Departments and Ambulance Corps building as well as Borough Hall and he stressed the importance of going forward with the purchase of a backup generator for the Ambulance Corp building.

Mayor Bivona stated that Bergen County did not open a shelter during the first day of the storm and the Borough was faced with a decision of whether or not to open a facility. The communication link with O&R was not good and it was difficult to give important information to frustrated residents. There are still many residents without portable devices to give them access to the most up to date information and he hopes to have the entire population of the Borough connected to receive up to date information in the near future. He thanked all of the employees and volunteers for their hard work in response to the storm during the past few days.

Council President Ramsey said that many people couldn't call out with their land line phones and she questioned whether it would be acceptable to provide police with the cell phone numbers of Borough residents. Mayor Bivona commented that the schools and sports teams have a much more extensive list of phone numbers and the Borough will do whatever it can to provide information to the residents. He said that the height and age of trees along with their proximity to electrical wires are contributing factors to the large losses of power in the Borough. He added that a snow storm in October is an extraordinary situation to deal with.

### **OPEN THE TIME FOR PUBLIC COMMENT**

Motion to open the time for public comment was made by Councilman Pedone, seconded by Councilman Smith. Discussion – none.

#### Roll Call Vote

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

Nays:

Abstain:

Absent:

Motion Approved

Doreen and Bernie Brevdeh, 881 Circle Avenue, said that they are experiencing major flooding problems in their backyard which has been going on for some time. Mr. Brevdeh recalled that their neighbor received a variance to subdivide their property in 1998. At that time, Mr. and Mrs. Brevdeh attended meetings and indicated that they were concerned about the possible impact of flooding; however, they were assured by Boswell Engineering that all of these issues had been addressed. A French drain and sump pump was installed in the basement because they experienced constant flooding from 2000, to the present which is getting worse. The Brevdehs were forced to file an insurance claim relative to severe basement flooding in January 2011. After Hurricane Irene in August, their basement had to be pumped out by the Fire Department and they were forced to file another insurance claim. There are severe mold and mildew conditions in the basement which are major concerns.

Mr. Brevdeh hired an engineer to look at possible ways to rectify the situation and these recommendations were forwarded to Boswell Engineer. On October 5<sup>th</sup>, Boswell responded acknowledging that the water problem were due to the fact that the back yard collects run off from neighboring properties. Ms. Brevdeh said that it is her understanding that water is supposed to be retained on individual lots. Mr. Brevdeh said that he is being told that he needs to pay \$1,800 to cover the legal costs of a Hold Harmless Agreement as well as engineering escrow. He commented that this is ludicrous because he has spent a lot of money already, and he feels that the town is responsible for this condition. It is obvious that the removal of a significant number of trees would result in water problems because the water has to have somewhere to go. He reiterated that the most recent letter from Boswell acknowledges that this situation is caused by runoff from the neighboring property.

Mayor Bivona said that he will have Mr. Hart review the letter with Boswell Engineering and prepare a response. Eileen Boland, of Boswell Engineering, explained that new construction is not allowed to increase water runoff which usually calls for the installation of seepage pits. Mr. Brevdeh stated that at the present time even a small amount of rainfall will cause water to collect in his basement. Ms. Boland said that it would appear that there is a groundwater issue in the neighborhood and the Brevdehs are at a lower elevation putting them at a disadvantage.

Kevin Boswell suggested that he meet with the Borough Administrator and the residents and he will report back at the next meeting. He has reviewed the plans with Ms. Boland and believes there is a better solution than the proposal offered by the Brevdeh's engineer. The Hold Harmless Agreement is a requirement for every homeowner who connects to a Borough drainage system and Mr. Boswell stated that he will not charge

Mr. and Mrs. Brevdeh for engineering fees. Mr. Lustgarten, Borough Attorney, also indicated that he would not charge for his time with the exception of the filing fee for the Hold Harmless document. Mr. and Mrs. Brevdeh thanked that Councilmembers for their time and attention to the matter.

Laurie Burnette, 860 Woodfield Road, thanked the Police Department for their response and cooperation with the Ambulance Corp after their building lost power. She said that as a volunteer and a resident the police are always responsive and do their job effectively. She added that the DPW staff was extremely helpful in assisting them with getting an ambulance out of the building.

No one else from the public came forward. Motion to close the time for public comment was made by Councilman Kahwaty. Seconded by Councilman Pedone. Discussion- none.

Roll Call Vote

Ayes: Friscia, Kahwaty, Lota, Pedone, Ramsey, Smith  
Nays:  
Abstain:  
Absent: Motion Approved

**PUBLIC HEARINGS**

**ORDINANCE 1529**

**AN ORDINANCE AMENDING CHAPTER 300 “LAND USE AND DEVELOPMENT” OF THE CODE OF THE BOROUGH OF FRANKLIN LAKES TO CLARIFY REGULATION OF ILLUMINATED SIGNS**

**WHEREAS**, an ordinance entitled, AN ORDINANCE AMENDING CHAPTER 300 “LAND USE AND DEVELOPMENT” OF THE CODE OF THE BOROUGH OF FRANKLIN LAKES TO CLARIFY REGULATION OF ILLUMINATED SIGNS, was introduced at a meeting of the Mayor and Council held on the 20<sup>th</sup> day of September, 2011 and duly published by law;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Franklin Lakes, County of Bergen, State of New Jersey, that Ordinance 1529 be and the same is hereby adopted on second and final reading; and,

**BE IT FINALLY RESOLVED** that the Borough Clerk is hereby authorized and directed to publish the Notice of Adoption as required by law.

Motion to open the hearing to the public and read by title only was made by Councilman Kahwaty, seconded by Councilman Friscia. Discussion – none.

Roll Call Vote

Ayes: Friscia, Kahwaty, Lota, Pedone, Ramsey, Smith  
Nays:  
Abstain:  
Absent:  
Motion Approved

No one from the public came forward.

Motion to close the time for public comment was made by Councilwoman Lota. Seconded by Councilman Pedone. Discussion – none.

Roll Call Vote

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

Nays:  
Abstain:  
Absent:  
Motion Approved

Resolution read and introduced by Councilman Kahwaty, seconded by Council President Ramsey. Discussion:

Mr. Lustgarten stated that the Council received a letter from John Spizziri, Planning Board Attorney, dated October 11, 2011. The letter contained several recommendations; however, the Council has decided to move forward with the ordinance as originally presented. The Council will consider the amendments at a subsequent date. Mayor Bivona pointed out that that the letter from the Planning Board refers to both ordinances 1529 and 1530.

Councilman Friscia asked Mr. Lustgarten to briefly review the Planning Board comments. Mr. Lustgarten stated that regarding Ordinance 1529, the Planning Board suggested that houses of worship be included in the advertising sign section. Councilman Smith pointed out that the Planning Board asked for clarification of some sections; however; they are ultimately approving this ordinance and asking that the Mayor and Council consider additional changes. After more discussion, Mayor Bivona stated that these are ordinances that the Borough should have in place, and it would be practical to get them into place. The changes recommended by the Planning Board are not significant enough to hold up the benefit these ordinances.

Roll Call Vote

Ayes: Friscia, Kahwaty, Lota, Pedone, Ramsey, Smith  
Nays:  
Abstain:  
Absent:  
Motion Approved

**ORDINANCE 1530**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 300, "LAND USE AND DEVELOPMENT," CHAPTER 425 "STREETS AND SIDEWALKS," AND CHAPTER 453 "TREES," OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF FRANKLIN LAKES**

**WHEREAS**, an ordinance entitled, AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 300, "LAND USE AND DEVELOPMENT," CHAPTER 425 "STREETS AND SIDEWALKS," AND CHAPTER 453 "TREES," OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF FRANKLIN LAKES, was introduced at a meeting of the Mayor and Council held on the 20<sup>th</sup> day of September, 2011 and duly published by law;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Franklin Lakes, County of Bergen, State of New Jersey, that Ordinance 1530 be and the same is hereby adopted on second and final reading; and,

**BE IT FINALLY RESOLVED** that the Borough Clerk is hereby authorized and directed to publish the Notice of Adoption as required by law.

Motion to open the hearing to the public and read by title only made by Councilman Kahwaty, seconded by Councilman Pedone.

Roll Call Vote

Ayes: Friscia, Kahwaty, Lota, Pedone, Ramsey, Smith  
Nays:  
Abstain:

Absent:

Motion Approved

No one from the public came forward to comment on this ordinance.

Motion to close the time for public comment was made by Councilman Kahwaty. Seconded by Councilwoman Lota. Discussion – none.

Resolution read and introduced by Councilman Kahwaty, seconded by Council President Ramsey. Discussion:

Mr. Lustgarten noted that the Planning Board is not disapproving this ordinance. Mr. Hart mentioned that the ordinance amendments referred to in the letter from the Planning Board, are listed for discussion later this evening. The ordinance contained a reference to solar panels and Mayor Bivona recalled that the Planning Board had determined that the space that a solar panel occupies would not be considered as impervious coverage. Councilman Friscia was concerned about limitations on solar panels but added that this would be discussed later this evening. Councilman Kahwaty said that the tree permit would limit the location of solar panels and Mayor Bivona pointed out that there is no State ordinance on solar panels.

After more discussion, Mr. Lustgarten recommended that the ordinance be adopted as introduced which will be followed by additional review by the Mayor and Council relative to issues raised by the Planning Board on any other issues.

Mayor Bivona called for a vote on Ordinance 1530.

#### Roll Call Vote

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

Nays:

Abstain:

Absent:

Motion Approved

#### **BOROUGH ENGINEER'S REPORT**

Eileen Boland recalled that the Borough had authorized Boswell Engineering to submit an application to FEMA for work on the dam to mitigate potential flood damage downstream. Ms. Boland spoke to a FEMA representative who told her that this program is geared more for repairs to homes that were damaged by the dam and not for mitigating potential damage. Therefore, Boswell is not recommending spending money to evaluate Borough homes downstream of the dam.

Ms Boland reported that the ADA ramps and the two handicap parking spaces at Firemen's Field are now complete. The invoice from D&L Paving is for slightly less than \$2,000 this is more than the estimate. This is due to project scope changes in the field and she recommended execution of this invoice.

Ms. Boland stated that the Borough authorized survey work on Bakers Long Pond due to flooding issues at the time of Hurricane Irene. The culvert under Summit Avenue is blocked and is affecting the properties surrounding the pond. Boswell Engineering is recommending that this area in the culvert be dredged which can be done without a DEP permit. Council President Ramsey inquired as to whether this is a private pond. Ms. Boland said that it is private; however, it drains as part of the Borough's storm system. Ms. Boland clarified stating that they are only recommending that the flow of the water be cleared and not a dredging of the pond.

Ms. Boland referred to the Bender Court Firehouse and stated that the Fire Department had requested a general structural evaluation and load rating regarding the second floor storage area in response to cites from OSHA. The recommendation is to post an allowable live load of 20 lb/sf for the floor of the storage structure. This rating is low for

a storage area and they are recommending some minor work be done to increase the load capacity rating to 40 lb/sf. This is an acceptable load rating for this area.

Ms. Boland stated that the kiosk at the Nature Preserve is expected to be completed by Friday, November 4, 2011. Ms. Boland said that the property owner at 831 Tequesta Drive has requested permission to discharge runoff from his property to a ditch located opposite Tequesta Drive via a new storm pipe. The property drains away from the roadway and acts as a sump, therefore, she recommended this connection to the Borough's drainage system. A road opening permit is necessary and she advised the homeowner that they would have until November 15<sup>th</sup> to do this work if the Mayor and Council agree. Ms. Boland noted that as per the ordinance, it is not permissible to excavate a street in the Borough between November 1<sup>st</sup> and March 30<sup>th</sup> without Mayor and Council approval. Kevin Boswell stated that he would monitor the weather conditions. Ms. Boland added that there is a new home at 856 Olentangy Road where the new stormwater management improvements were installed, however; there is a high water table in this area. This location is at the intersection of Winding Hollow Road and she is recommending a Hold Harmless Agreement. Council President Ramsey commented that this water will exacerbate the existing poor conditions on Apache Road and she can't understand why such a large house was allowed to be constructed in an area with such high ground water.

Mayor Bivona asked for a consensus on resolutions for the two Hold Harmless Agreements and Road Opening Permits. Council President Ramsey said that she would not be in favor of the agreements and Councilman Friscia indicated that he would abstain. The other Councilmembers stated that they were in favor of the agreements.

Mr. Hart referred to the acceptance of Wildwood Avenue and Ryerson Road as official streets in the Borough. He stated that since the Ryerson Road Special Assessment Confirmation Hearing on November 10<sup>th</sup>, 2011, there have been discussions about the Borough's acceptance of the roads. He recommended that the Council move forward and have the Borough accept these roads. Mr. Boswell said that the roads had been improved to minimum Residential Site Improvement Standards (RSIS) standards and even though they don't meet the Borough's width standard of 35 feet, the Borough will take over the maintenance of the roads based on the RSIS design parameters. Mr. Lustgarten explained that an Ordinance of Exception would include a metes and bounds description which would be filed with the County Clerk's Office. Mr. Hart noted that this may be brought up at the November 10<sup>th</sup> meeting during the Ryerson Road hearing and he asked that this be discussed again at the December 6<sup>th</sup> work session.

Council President Ramsey asked about the generator at the Ambulance Corps building. Mr. Hart stated that the Borough's electrician is preparing an estimate in order to appropriate the money for the generator. He will contact the electrician again to follow up. Laurie Burnette recalled that Mr. Hart had said he would follow up relative to this generator on August 30<sup>th</sup>. Mr. Hart said that he met with the electrician shortly after August 30<sup>th</sup> and the electrician indicated he was preparing an estimate for the installation of a generator. Council President Ramsey assured Ms. Burnette that they are in contact with the electrician.

## **CONSENT AGENDA RESOLUTION**

### **Resolution 247-11**

**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 resolution can be found after the Adjournment.

- |                   |  |
|-------------------|--|
| Resolution 248-11 | Accept Report of the Finance Committee             |
| Resolution 249-11 | Stipulation of Settlement CSB Realty Corp/Jacobson |
| Resolution 250-11 | Award Contract – T1 Line                           |
| Resolution 251-11 | Award Contract – Calendar Preparation              |

Resolution introduced by Councilman Smith, seconded by Council President Ramsey. Discussion –Councilman Pedone asked that the Budget Transfers be removed from the Consent Agenda.

Roll Call Vote

Ayes: Kahwaty, Lota, Pedone, Ramsey, Smith  
 Nays:  
 Abstain: Friscia  
 Absent:  
 Motion Approved

**BUDGET TRANSFER RESOLUTION  
 Resolution 252-11**

**BE IT RESOLVED**, by the Mayor and Council of the Borough of Franklin Lakes that the following 2011 Budget Transfers be made for the following accounts:

<u>From</u>	<u>From</u>	<u>To</u>
Social Security System	\$15,000	
Tax Collection O/E	5,000	
Unemployment Insurance	30,000	
Planning Board O/E	5,000	
Gasoline	5,000	
Audit Services	5,000	
<b>To</b>		
Vehicle Maintenance		\$30,000
Public Buildings & Grounds		15,000
Water		13,000
Litigation		5,000
Telephone		2,000
	<u>\$65,000</u>	<u>\$65,000</u>

Resolution introduced by Councilman Smith, seconded by Councilman Kahwaty. Discussion – Councilman Pedone referred to the Social Security system and Unemployment Insurance and wanted the employees to be reassured that they would not be affected and that money would not be owed at a later date. Mr. Hart confirmed that this is accurate.

Roll Call Vote

Ayes: Friscia, Kahwaty, Lota, Pedone, Ramsey, Smith  
 Nays:  
 Abstain:  
 Absent:  
 Motion Approved

**MAYOR’S REPORT**

Mayor Bivona stated that the BAN note has been reissued and he congratulated Mr. Hart on a well executed sale on the rate.

**COMMITTEE/LIAISON REPORTS**

**RECREATION AND PARKS**

**Amend Ordinance Facilities Use Permits Fees**

Councilman Pedone stated that the Recreation Committee has unanimously approved to increase fees for field use to \$250 for the first four hours, and \$50 for any additional hour after that. This increase will include set up and take down time incurred by the user. The proposal is to place the money into a reserve fund which would be used initially to improve the Pulis Avenue Field. The Recreation Committee also voted in favor of a Field Use Fee of \$10 per person for those using the fields. Councilman Pedone estimates that this would bring in revenue of between \$55,000 and \$60,000 that would be put into this reserve fund annually. At the end of ten years, this would amount to between \$700,000 and \$750,000, which would save taxpayer money because bonding of only \$250,000 and \$300,000 or less would be needed. The Committee feels that this is a good approach to field maintenance because only those using the fields would be paying for the fields.

Mayor Bivona asked how set up and take down time would be estimated and he suggested that the Council consider a flat fee. He referred to the reserve fund and said that this concept could have some flaws. The \$13,000 that is collected presently goes to defray the maintenance costs of the fields. The DPW keeps the fields in good working condition and they would no longer be reimbursed for their time. Mayor Bivona said that he finds the concept of segregation problematic because the revenue of \$13,000 is eliminated in the Borough's budget and this gap will have to be filled through higher taxes. It also segregates the taxpayer's money for a dedicated purpose for years to come which eliminates any flexibility that the Council has to use this money once it is placed in a trust fund. This system would give priority to the fields when the Borough has other needs that are more pressing. Mayor Bivona recalled that there was a commitment on the part of a former committee to raise money to repay the purchase of the turf which was several million dollars. This has not been repaid as of this time, and Mayor Bivona finds the suggestion that the Borough should segregate additional funds as problematic.

Councilman Pedone said that if the money wasn't being dedicated, the Recreation Committee would not be asking for a \$10 fee for field use. The only reason these fees were being increased is to raise money from outsiders who should pay for the maintenance and repairs of the fields rather than taxpayers. Mayor Bivona said that this proposal would increase taxes and fees for residents of Franklin Lakes in order to create a trust fund to improve the Borough's fields at a time when buildings are falling apart and basements are flooded. Councilman Pedone reiterated that money is being collected from people using the fields to be used exclusively for upkeep of the fields. Mayor Bivona questioned payback of the money for the turf. Councilman Pedone pointed out that it was the Recreation Foundation who was responsible for repaying these funds not the Recreation Committee. He commented that he couldn't answer for them.

Mayor Bivona said that he also objects to this proposed reserve fund for the fields since the Mayor and Council will have no authority over how the money is used. Councilman Pedone reiterated that the people who use the field should pay for this service and not the rest of the people in town who never use the fields. Some of this \$13,000 in maintenance costs would be covered by these proposed fees. Many organizations have reserve funds for a particular project and those who don't live in the Borough and who use the fields would be paying for the fields to be repaired.

Mayor Bivona explained that an ordinance relative to fees for field use was never passed; however, the reason money was collected was for the upkeep of the fields. Money was raised to pay for the fields and the balance was bonded out under the theory that the Recreation Foundation would raise money to repay this obligation over many years. Councilman Pedone said that the fees charged cover the programs only and not field related costs.

Councilman Smith questioned whether or not the Borough is charging an appropriate amount for their fields and if not, the Council should consider raising these fees. The question of putting money aside to be dedicated to field use is a separate issue. Councilman Pedone stated people will think a charge of \$10 for use of the fields is fair and money collected from people outside of the Borough should go into a reserve fund for field maintenance and repair.

Mayor Bivona agreed with Councilman Smith that they need to look at the cost of field use and any surcharge should be used to repay the old obligation. The question for the Council to consider is whether or not to segregate funds for that use. Councilman Pedone said that the Recreation Committee and town residents have no responsibility to pay back \$350,000 because this was an obligation of the Recreation Foundation.

After more discussion on this proposal, the Council recommended that Councilman Pedone bring the concerns of the Mayor back to the Recreation Committee. Councilwoman Lota agreed to attend Recreation Committee meeting also.

Councilman Pedone reported that the football season is winding down. Try outs are being held for the basketball teams which will be followed by the formation of recreation teams. He commended everyone involved for all the time and effort given to organizing and coaching of the various teams.

Council President Ramsey spoke about the Biathlon run by the Indian Trail Club, Wyckoff YMCA and Franklin Lakes Recreation. She said that this event was extremely successful and a check has been received for a second year. Councilman Pedone reported on a surplus relative to the Town Fair. The reserve for this event is now over \$11,000 and is restricted to be used for the Town Fair. Councilman Pedone discussed this with Bill Pike who said that the money can be used for the town and he proposed that he and Councilwoman Lota come up with some suggestions on how this money could best be used.

## **REPORT OF RISK MANAGER – FRANK COVELLI**

### **Annual Report**

Mr. Covelli said that his company PIA McCarthy-Ford, has worked as the Borough's risk consultant for the past six months. He referred to an annual report describing the Borough's standing in the Bergen County Municipal Joint Insurance Fund (JIF). He highlighted some statistics and noted that the Borough receives a majority of its coverage through membership in the Bergen County JIF. The statewide JIF decided to put the employment practices liability and public officials liability coverage out to market in 2010 for 2011, to defer litigation costs and claims in order to avoid a 22% cost increase. This strategy was successful and Excel Insurance has proposed insurance at a cost of \$13 million for 2011, along with a two year rate guarantee.

Mr. Covelli stated that the attitude relative to safety must be changed and made part of everyone's agenda. A new tracking system was put into place to track employees and OSHA related activity which should be beneficial to the Borough. Mr. Covelli described coverage which includes flood insurance, earthquake coverage, boiler and machinery coverage, automobile and mobile equipment coverage, among others. He pointed out that Franklin Lakes has the lowest co-insurance and deductible afforded through JIF because the Borough has an approved loss control plan. He described an accident and health policy for the Fire Department, Recreation Department and volunteer workers who serve the municipality. The joint insurance policy offers broader coverage than could be secured in the conventional market which is a notable savings to the municipality. Mr. Covelli detailed the financial situation of the Bergen County JIF and noted that \$261,495 was directly returned to Franklin Lakes in the form of dividends.

### **Flexible Savings Plan**

Mr. Hart explained that under the new health care legislation, every municipality must offer a Flexible Spending Account to employees as an optional plan effective January 1, 2012. Mr. Covelli assembled a number of options for the Borough and the proposals were reviewed. Mr. Hart recommended that the Mayor and Council enter into an agreement with Prime Flex and a resolution could be scheduled for the November 10<sup>th</sup> meeting.

Mr. Covelli said that he is comfortable with the due diligence report that was conducted with the various companies offering this plan. It is beneficial for employees to take

advantage of this service to manage health care costs while reducing their tax liability. Prime Flex will ensure compliance with the IRS regulations and they will be making a presentation to the employees to assist them in setting up their accounts. He noted that the Borough gets 7.5 cents back for every dollar that an employee puts into their account which helps to offset the cost of the plan.

## **PUBLIC WORKS**

### **Stormwater Drainage Policy**

Mr. Hart reported that this is a draft resolution or policy dealing with existing stormwater drainage issues. He is recommending adoption by the Mayor and Council. Mr. Lustgarten explained that this resolution would set up a two tier approach to a private property water problem; a public water situation; and the hybrid where the public water system drains into or through private property. He explained that the Borough will not waive any defenses it has under the Tort Claims Act by adopting this policy.

Mayor Bivona recommended eliminating the section that places responsibility on the Borough for all private ponds, streams and creeks. The Borough should be obligated to keep the streams open but not be responsible for erosions and things of that nature. Councilman Smith cautioned against having a policy that expands the Borough's legal obligations and noted that the policy at the moment is what is required by law. When put in writing, this policy could be used in Court as evidence against the Borough. After more discussion, it was suggested that the Borough should address this on a case by case basis. Councilman Smith reiterated that the Borough's obligation is to follow the law.

Mr. Lustgarten noted that case law refers to integrated water systems which are common in Franklin Lakes. He pointed out that these are fact sensitive issues. Mayor Bivona said that some precedent has been established through dealing with issues that are not required by law. Residents who have received assistance from the town in the past will come back and say that since an issue was treated one way, it should always be treated that way. He added that looking at these issues on a case by case basis could potentially become problematic.

Mayor Bivona stated that if a policy is not adopted, the Engineering Department would be making decisions on issues such as dredging, clearing and de-snagging. Councilman Pedone questioned whether or not there was a limit that could be spent by the Engineering Department. Mr. Hart said that these decisions would be brought back to the Council by the Engineering Department. Mayor Bivona said that aside from storm related damage, water and drainage are the biggest areas of complaint in the Borough. Direction is necessary in order to know how to operate. Mr. Hart said that they need to research what can be done without expanding the Borough's potential for liability. Councilman Smith said that if an easement is involved, the Borough sometimes has an obligation to repair damages.

After more discussion, Mr. Hart stated that it appears that this policy has to be refined and then edited by the Council. Mayor Bivona suggested that a map of the drainage system be adopted along with a policy which can be executed by management. They will rely on the map done by the intern over the summer. Mr. Hart said that the Council needs to discuss this with the Engineer and it will be re-listed for the December work session.

### **United Water Resolutions**

Mr. Hart referred to a resolution by the County supporting their legislation that would allow for the diversion of Green Acres parkland at the Campgaw Mountain Reservation. The County would transfer this property to United Water for the use of a water tank. In exchange for the diversion of Green Acres restricted land, the County would acquire 13.87 acres of land on Omaha Way in Franklin Lakes. The County has asked that Franklin Lakes approve a resolution in support of their application which appears to be beneficial to the Borough. Mr. Hart stated that this will be listed for the regular meeting on November 10, 2011.

### **Anti Snow Dumping Ordinance**

Mr. Hart stated that this ordinance has been introduced and is scheduled for a hearing on November 10<sup>th</sup>. Mr. Lustgarten explained that the State just adopted a public statute making a distinction between a commercial snow plow operators and any other type of operators. He has concluded that the Borough is not pre-empted and can go forward with the adoption of this ordinance on November 10, 2011.

### **Opposing Telecommunications Bill S-3062**

Mr. Hart explained that a communication has been received from the League of Municipalities asking for support to oppose Telecommunication Bill S-3062. This eliminates any obligation for public access and would erode the benefits of the franchise process. A majority of Councilmembers agreed to support opposition to this bill and it will be listed for the November 10<sup>th</sup> meeting.

### **Acceptance of Streets – Wildwood Avenue and Ryerson Road**

Mr. Hart stated that more details will be discussed at the December work session.

### **VFW Lease**

Mr. Lustgarten stated that he has some suggestions if the Council decides to update this lease. Councilman Smith advised that this be discussed in Closed Session on another night.

### **Clothing Bins**

Council President Ramsey said that she hasn't had the opportunity to review this with the DARE Officer and she asked that this be tabled to the December work session.

## **ENVIRONMENTAL AND COMMUNITY**

**School Funding Legislation** – Councilman Kahwaty recalled that this was discussed at the last meeting and concerns an individual who is running for Senate and is proposing a more equalized tax structure to reduce property taxes. Mayor Bivona asked if the Council would like to move forward and adopt a resolution of support for this proposal. Councilman Kahwaty indicated his support and stated that he is in favor of anything that would reduce property taxes at the school level. There did not seem to be a consensus among Councilmembers and Councilman Kahwaty suggested that the individual running for Senate be invited to a meeting to answer questions about the proposal. Mayor Bivona asked any Councilmembers with questions to address them to Councilman Kahwaty. This item will not automatically be listed for the next work session.

## **PLANNING AND DEVELOPMENT**

Regarding the recent Planning Board meeting, Councilman Kahwaty reported that some progress has been made in the Tice Medical Center matter with the applicant agreeing to narrow the footprint of the building

### **Opposing S-2887 and A-3992**

Mr. Hart stated that this legislation would exempt wind turbines from review, approval and application from State, County or municipal regulatory bodies. This bill deals with properties that have a farmland exemption which are over 33 acres. Councilman Smith pointed out that the bill doesn't seem to apply to Franklin Lakes but it is an erosion of local zoning authority. He recommended that the Council consider a resolution opposing this legislation and the Council agreed. This resolution will be listed for November 10, 2011.

### **Amendment to Sign Ordinance**

Mayor Bivona stated that there are two outstanding issues including two signs versus one sign should be allowed, and whether houses of worship should be excluded from the ordinance. He noted that there are houses of worship in residential zones with two signs. After a lengthy discussion, there was still confusion over what the Planning Board actually meant. Mr. Lustgarten indicated that he would draft language and submit it to the Planning Board for review and agreement with the language.

### **Amendment to Master Plan Ordinance**

Mayor Bivona said that he agrees with the recommendation relative to solar panels and tree removal. Mr. Hart said that more details are needed regarding the criteria for tree removal under the existing tree removal ordinance and, he pointed out that anyone can remove 10% of trees on their property with the proper permit. Mr. Lustgarten read from the proposed ordinance and found it confusing because the Planning Board has added a completely different process. Mr. Hart pointed out that the Environment Committee is recommending comprehensive changes to the tree ordinance and he suggested that this suggestion be incorporated at this time. Councilman Friscia suggested that Mr. Lustgarten look into how there can be some controls to avoid people blanketing their rear yards with solar panels.

Councilman Kahwaty said that the Planning Board is trying to discourage residents from putting solar arrays in their rear yards. He agreed that clarification is needed. After further discussion, it was agreed that Mr. Hart and Mr. Lustgarten will continue to work on the ordinance.

## **ADMINISTRATION AND FINANCE**

### **Beautification Fund**

Mr. Hart recalled that Mayor Bivona has discussed establishing a Beautification Fund to accept donations. This can be done through a Dedication by Rider resolution.

### **Ordinance Deleting References to Treasurer**

Mr. Hart explained that the Franklin Lakes Code would be amended to delete references to the Treasurer. In order to have a Treasurer, a separate bond is necessary which is an additional cost for the Borough. The CFO performs the functions of a treasurer and is appointed treasurer. Mr. Hart discussed this with Mr. Lustgarten who advised that any reference to the word treasurer should be removed from the code and the resolution will be introduced on November 10<sup>th</sup>.

## **PUBLIC SAFETY**

### **Fire Department Rescue Boat**

Council President Ramsey commented that the only change she sees at this time is that the DPW would be able to use a boat purchased by the Fire Department. Mayor Bivona said that this issue has been considered several times and a decision is needed. Council President Ramsey stated that with continuing budget problems she could not support the purchase of a rescue boat for the Fire Department.

Councilman Friscia questioned the storage of the boat; the cost of a storage facility; and whether the structure would require Planning Board approval. He asked if the storage facility would be visible from the street. Fire Chief Knubel said that the boat would be housed under a car port like structure at the side of the South Side Firehouse. He estimated that the materials for the structure would be \$500 and Planning Board approval would be necessary. Councilman Friscia said that he would be in favor of the boat because it could be used by the DPW.

Councilman Kahwaty asked about the financing of the boat. Chief Knubel said that a donation of \$5,000 had been received towards the purchase and there have been others who expressed an interest in making a donation. The cost of the boat is \$16,206, after the

donation is applied and the Fire Department will be looking at a pre-owned boat that may be \$5,000 less expensive. Councilman Kahwaty said that he would support the purchase given these conditions. Councilman Pedone said that he would be in favor of the purchase if the least expensive boat was definite. Councilman Smith said that he didn't feel the Fire Department really demonstrated the need for a boat.

Mayor Bivona remarked that the general consensus is that more information is needed relative to the aesthetics of a car port structure and whether additional funding or donations are a possibility. Upon questioning by Council President Ramsey, Chief Knubel said that there have been issues relative to apparatus and truck break downs and repairs. Council President Ramsey said that this is why she is reluctant to support the purchase of a boat when there are so many things that seem to be more important.

#### **Award Contract for Thermal Printer**

Mr. Hart explained that this is listed on the agenda because it involves awarding a contract to an entity where an employee has an interest. These are three thermal printers for the e-ticketing system. The lowest proposal was \$350 for the printers and he will list this for the November 10<sup>th</sup> meeting.

#### **BOROUGH ADMINISTRATOR'S REPORT**

Mr. Hart reported that he has put together a proposal for a merit bonus program. During budget discussions, the Mayor and Council approved \$5,000 for merit bonuses for Borough employees. He sent a proposed program for review by the Personnel Committee. It is important to have this in place before the end of the year for review with Department Heads. The program should be adopted through resolution at the November 10<sup>th</sup> meeting.

#### **BOROUGH CLERK**

##### **One Day Liquor License – Sicomac School PTO**

Mrs. Bleeker announced a one day liquor license application for Sicomac School PTO for November 29, 2011.

#### **OLD BUSINESS**

There was no old business this evening.

#### **NEW BUSINESS**

There was no new business for discussion this evening.

#### **RESOLUTION FOR CLOSED SESSION**

**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, November 1, 2011 which begins at 7:30 PM, in the Conference Room at the Municipal Building to discuss the following:

Closed meeting issues:

Personnel – Construction Official

**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 Councilman Kahwaty, seconded by Councilman President Ramsey at 11:30 P.M. to enter into Closed Session.

Roll Call Vote

Ayes: Councilmembers Kahwaty, Pedone, Ramsey and Smith  
Nays:  
Abstain:  
Absent: Councilmembers Friscia and Lota  
Nays: None

The Council returned to Open Session at 11:45 P.M. Mayor Bivona made a recommendation to appoint Raymond Dressler as the Construction Official and Building Subcode Official at a salary of 75,000, for a term of four years commencing immediately; and Zoning Officer for an unexpired term which ends December 31, 2011, at an annual salary of \$15,000. This is subject to the appointee's acceptance of the salary. Councilman Smith seconded the motion.

Roll Call Vote

Ayes: Councilmembers Kahwaty, Pedone, Ramsey and Smith  
Nays:  
Abstain:  
Absent: Councilmembers Friscia and Lota  
Motion Approved

**ADJOURNMENT**

Motion by Councilman Kahwaty to adjourn the meeting at 11:50 P.M. Councilman Smith seconded the motion.

Roll Call Vote

Ayes: Councilmembers Kahwaty, Pedone, Ramsey and Smith  
Nays:  
Abstain:  
Absent: Councilmembers Friscia and Lota  
Motion Approved

**Resolution 248-11**

**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 \$10,084,343.16 as shown on the Claims Bill List; and \$6,541.75 as shown on the Soil Account Bill List; and \$956.25 as shown on the Developer's Escrow List.

**BE IT FURTHER RESOLVED**, that the payroll of October 13, 2011 in the amount of \$228,217.92 and that the payroll of October 27, 2011 in the amount of \$228,992.81 be hereby ratified and approved.

**Resolution 249-11**

**WHEREAS**, CSB REALTY CORP., filed real property tax appeal for the year 2011 [Docket No. 1843-2011]; and

**WHEREAS**, the real property assessment for the subject premises, located at 868 Trailing Ridge Road (Block 1510.01, Lot 3) on the Tax Assessment Map of the Borough of Franklin Lakes for the year 2011 is as follows:

**2011**

Land	\$ 771,100
Improvements	\$2,373,700
Total	\$3,144,700

and;

**WHEREAS**, the **2011** tax appeal may be settled by reduction of the aforesaid assessment as follows:

**2011**

Land	\$ 771,000
Improvements	\$2,129,000
Total	\$2,900,000

**WHEREAS**, the aforesaid settlement is consistent with the Borough's review of applicable property values for the subject property and comparable properties; and

**WHEREAS**, the Mayor and Council have been advised by the Borough's Assessor and by the Borough Attorney that the settlement is in the Borough's interest;

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Franklin Lakes that said settlement be and the same is hereby approved; and

**BE IT FURTHER RESOLVED** that the Borough Attorney of the Borough of Franklin Lakes be and hereby authorized to take all steps necessary to effect said settlement; and

**BE IT FURTHER RESOLVED** that all actions taken by the Borough Attorney in effecting said settlement be and they are hereby ratified and confirmed.

**Resolution 250-11**

**AWARD CONTRACT – T1 LINE**

**WHEREAS**, the Borough Administrator solicited proposals for T1 services on the T1 line running from the Police Department to Ramapo High School; and,

**WHEREAS**, the Borough Administrator recommends that the contract for T1 services be awarded to the vendor that submitted the lowest proposal, Verizon, for the proposal amount of \$347.24 per month for the contract period of three years, for a total of \$12,500.64; and,

**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 Borough Administrator is approved and the contract for T1 services on the T1 line running from the Police Department to Ramapo High School be and is hereby awarded to Verizon, 5055 North Point Parkway, Alpharetta, Georgia, for the proposal amount of \$347.24 per month for the contract period of three years; 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 FINALLY RESOLVED** that a copy of this resolution be forwarded to Verizon and the Borough Chief Financial Officer.

**Resolution 251-11**

**AWARD CONTRACT  
BOROUGH CALENDAR**

**WHEREAS**, the Borough Administrator solicited proposals for the layout, design and printing of the 2012 Borough calendar, and several proposals were obtained; and,

**WHEREAS**, the Borough Administrator recommends that the contract for the layout design and printing of the 2012 Borough calendar be awarded to the vendor that submitted the most favorable proposal, price and other factors considered, for the proposal amount of not to exceed \$6,859; and,

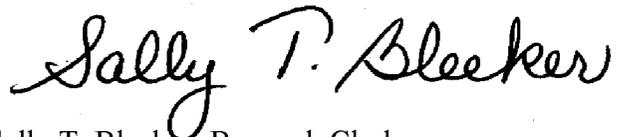
**WHEREAS**, it is anticipated that this cost will be offset by the sale of advertisements within the calendar, with advertisement revenue expected to exceed the cost of layout, design and printing;

**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 Borough Administrator is approved and the contract for the layout, design and printing of the 2012 Borough calendar be and is hereby awarded to Staples, for the proposal amount of not to exceed \$6,859, conditioned upon the sale of sufficient advertisements to offset the cost of the calendar; 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 FINALLY RESOLVED** that a copy of this resolution be forwarded to Staples and the Borough Chief Financial Officer.

Respectfully submitted,



Sally T. Bleeker, Borough Clerk