

**MEETING OF THE MAYOR AND COUNCIL  
NOVEMBER 1, 2012  
7:30 P.M.**

A regular meeting of the Mayor and Council was held on November 1, 2012 in the Municipal Building.

**MEETING CALLED TO ORDER**

**ROLL CALL**

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

Mayor Bivona, Council President Kahwaty, Councilperson Lambrix, Councilperson Lota, Councilperson Pedone and Councilperson Ramsey. Also present were Borough Administrator Greg Hart, Borough Attorney Smith and Borough Clerk Sally Bleeker. Councilperson Kelly was absent this evening.

**SUNSHINE LAW STATEMENT**

Borough Clerk Bleeker read the Sunshine Law Statement.

**FLAG SALUTE**

**MOMENT OF SILENT REFLECTION**

**OPEN TIME FOR PUBLIC COMMENT**

Motion to open the time for public comment was made by Council President Kahwaty, seconded by Councilperson Lambrix. Discussion – none.

Danielle Weitz, 512 Haddon Place, spoke regarding the proposed ordinance concerning temporary signs. She didn't understand the point of paying \$80 for a sign that would be allowed for a year when many homes sell in a shorter time frame. The only other town that has a one year sign ordinance is Hasbrouck Heights. Mayor Bivona indicated that there will be a discussion on this ordinance later in the meeting.

No one else from the public came forward and a motion to close the time for public comment was made by Councilperson Pedone. Seconded by Councilperson Lambrix. Discussion – none.

**APPOINTMENT**

- Electrical Inspector – Michael Wallace

Mr. Hart explained that the present electrical inspector does not have sufficient availability to devote to the Borough. Michael Wallace was recommended by the Construction Official for nine hours a week over a three day period. This employee is being hired on an as needed basis, will be paid hourly and is being hired in addition to the electrical subcode official. The appointment will expire on 12/31/12.

Motion was made by Council President Kahwaty seconded by Councilperson Ramsey to make the following appointment – Michael Wallace – Electrical Inspector.

Roll Call Vote

Ayes: Kahwaty, Lambrix, Lota, Pedone and Ramsey

Nays:

Abstain:

Absent: Kelly

Motion Approved

## PRESENTATION

### Joseph Commorata Rezoning Block 1424.01, Lots 1, 2 & 5

Councilperson Lota recused herself from this portion of the meeting.

#### Draft Ordinance

Michael Cavaliere, Esq., attorney for Joseph Commorata, introduced himself and stated that he has submitted a letter, map and report from Joseph Burgis, Planner for the applicant. Mr. Burgis stated that the property is located at the corner of Shirley Avenue and Franklin Avenue. He stated that in the late 1990s, when he was the Planner for the Borough, he concluded that office use for this property made the most sense. He feels the same way about the property today and agrees with the proposal for a 13,500 sq. ft., two story office building with 57 parking spaces located in the rear of the building. This would complement the nearby nursery, gas station across the street as well as the central business district located down the street from the subject site. He added that the Master Plan talks about a land use pattern that fits with the neighborhood which will not have an adverse effect on surrounding neighborhoods. The proposal complies with all the LB-1 zone requirements and area bulk requirements and is comprised of three different tax lots. Mr. Burgis pointed out that if the area were developed as residential there would only be two residential tax properties that would be of no tax benefit to the Borough. The access lane off of Shirley Avenue is included in the area that is part of the zoning change application. There was a discussion regarding another small area that was included as part of the proposal and Mr. Cavaliere said that the existing structure could be used as a small professional office. It would make sense to include this area in the application from a zoning and Master Plan perspective. Councilperson Ramsey raised a procedural question and Mr. Smith explained that the Mayor and Council control the ordinances and have the right to consider a re-zoning of the properties.

Councilperson Lambrix asked why all the lots on Shirley Avenue weren't included as part of the re-zoning. Mr. Cavaliere said that the two lots included in the proposal have frontages that are orientated towards Franklin Avenue and are opposite to the gas station. He stated that the Ciotti's who are the owners of these lots have opted to become part of the application but do not intend to develop the property at this time. There is more value to having property that is zoned commercial in this particular area.

Joe Commorata introduced himself and said that he has been looking at this property for 15 years. This property is ideal for attractive professional offices or a bank which will provide the Borough with a substantial ratable that will enhance the neighborhood. He envisions five or six tenants which could include a bank, lawyers, insurance brokers, accountants or real estate agents.

Mr. Smith said that the request is to re-zone the property as Limited Business 1 or LB-1 and he reviewed the types of businesses that could be located in that zone. Councilperson Ramsey was concerned about the intersection of Franklin Avenue and Pulis Avenue particularly around 3:00 P.M. when school is dismissed. Mr. Commorata said that this is a relatively small building and everyone would not occupy the building at the same time. Mr. Burgis said that most of the people who occupy the building would be settled in by 3 P.M. Mr. Cavaliere pointed out that because of the various types of technology available there is not the same amount of people in an out of an office building that there used to be even a few years ago. The property next door will be a small single or double use type of building such as an accountant. Mr. Lambrix indicated that he doesn't understand why the other two lots are included in this application and Mr. Cavaliere explained that he does not want the application to be viewed as spot zoning. This building on these lots is presently a rental and would become an eyesore if it were to remain residential if it was not part of this re-zoning application.

After more discussion, Mr. Cavaliere stated that timing is important since it is almost the end of the year. The application must go the Planning Board for review and comment because it is a land use issue and Mr. Cavaliere asked the Council to consider the re-zoning request on first reading in order to get the application to the Planning Board so

they can have their comments back to the Council in time for the December meeting. Mr. Hart stated that the Planning Board has received and is familiar with the application but cannot formally review it until the zoning change has been adopted by the Council. Mr. Comorata explained that he is the contract purchaser of the property; however, the contract expires at the end of 2012.

Mayor Bivona stated that the Council has a draft ordinance for consideration this evening. The ordinance could be introduced on November 20<sup>th</sup>. Councilperson Pedone indicated his concern relative to the two units that face homeowners on Shirley Avenue. Mayor Bivona said that these residents will be noticed regarding the Planning Board meeting. Mr. Smith commented that the residents within 200 ft. could also be notified of the intent to introduce the ordinance even though it is not required by law. Councilperson Pedone said that this would address his concerns. Councilperson Lambrix indicated agreement with this procedure. Mayor Bivona stated that he supports the project and said that although he was concerned about impact on the residents he is more concerned about a high density residential development and the subsequent traffic that would be created.

The Council continued to focus on the two lots that will not necessarily be developed at the same time as the property owned by Mr. Commorata. Mr. Cavaliere said that they would be willing to omit these lots if the consensus of the Council is positive regarding the major lot. These two lots were never the primary focus and are not part of Mr. Commorata's project. Mayor Bivona asked for a consensus of Councilmembers and the conclusion was that the Council will consider the proposal for re-zoning provided that Lots 1 and 5 are omitted from the application along with a provision for buffers. A notice of introduction must be provided to property owners within 200 ft. including the entirety of Shirley Avenue, Fieldstone Court and Cherry Street. Mr. Burgis indicated that he would revise his report in accordance with tonight's discussions.

## **BOROUGH ENGINEER'S REPORT**

- **Status Report**

There was no engineering status report and Kevin Boswell was absent this evening. Mayor Bivona stated that Lower Dam roadway has been repaired. Brian Petersen, DPW representative, described some of the damage in the Borough caused by Hurricane Sandy. He added that the dam was not impacted by the storm due to the fact that there weren't significant amounts of rain.

## **CONSENT AGENDA RESOLUTION**

### **Resolution 229-12**

**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 230-12** Accept Report of Finance Committee

Resolution introduced by Councilperson Lambrix, seconded by Council President Kahwaty. Discussion – None.

### Roll Call Vote

Ayes: Councilmembers Kahwaty, Lambrix, Pedone and Ramsey

Nays:

Abstain:

Absent: Kelly

Motion Approved

## **MAYOR'S REPORT**

Mayor Bivona spoke about Hurricane Sandy and said that Borough staff was well prepared after last year's storm. All departments did an outstanding job and Mayor Bivona recognized the police in particular, who responded to countless falling trees and wires and putting their lives at risk. A decision to pull the DPW off the road was made because of extremely dangerous weather conditions. It was difficult to respond the following day due to high winds, however, the DPW continued their attempts to clear the roads of hazardous debris. Mayor Bivona noted the efforts of OEM Chairman Craig Goldman, who has been manning the comfort center by providing volunteers and responding to people's basic needs.

Mayor Bivona said that initially there was frustration relative to communication with Orange and Rockland Electric. He reported that there was a positive response from Orange and Rockland Electric on Wednesday night and Thursday morning and six of seven areas of greatest concerns have been remediated. Mr. Petersen stated that Franklin Lake Road remains closed. Mayor Bivona said that progress has been made on most fronts and he is happy that Bergen County has come to the aid of the Borough today to open county roads. Orange and Rockland has engaged the Borough in the prioritization process and has allowed the DPW to use their equipment to clear some roads. He concluded that in a short period of time a lot has been accomplished.

Mr. Peterson said that a pole and a transformer are down on Franklin Lake Road and there are four poles down at Ramapo High School. He reviewed a list of the roads that continue to be blocked which are mainly secondary roads. Mayor Bivona remarked that roads are being cleared by the DPW so that Orange and Rockland is able to begin the process of wire reconnection. There has been a great improvement in the lines of communication between the Borough and the utility since the Halloween storm of 2011. Mr. Peterson noted a problem with Cablevision wires that are low on Franklin Lake Road.

Mr. Peterson said that fuel is a real concern at this time because there is only 150 gallons of gas available for Borough vehicles and he doesn't anticipate any deliveries in the near future. Mr. Hart stated that they have been attempting to purchase fuel through the County and State government offices as well as other connections. The conclusion is that the Borough should not be counting on any fuel deliveries in the next week or two. The Borough has negotiated with Lukoil and has purchased approximately 3,000 gallons of gasoline for Borough vehicles. Emergency vehicles are being topped off along with a ten gallon limit per person for Borough first responders and employees.

Councilman Lambrix congratulated Mayor Bivona on the wonderful job he has done in handling all aspects of the problems related to the Hurricane. Mayor Bivona said that he understands people's frustration and they need to rally together to offer support to residents.

Wallace Mathia Davis, said that he was impressed with the care and diligence of the Council. He said that Mayor Bivona, Mr. Hart and Ms. Bleeker have done a fantastic job during such a devastating time. Councilman Pedone added that residents have appreciated the fact that the Municipal Building has been open enabling them to charge their phones and other devices. He also thanked Mayor Bivona's wife for the work she has done to assist residents.

## **COMMITTEE/LIAISON REPORTS**

- **Planning & Development**

### **Sewer Ordinance**

Mr. Hart distributed the sewer ordinance and reviewed the changes and the fee schedule. This schedule is based on recommendations by the Engineer and this was scheduled for discussion at the Engineering Oversight Committee meeting which was cancelled due to the Hurricane. This will be discussed at the December work session and introduced in

January. Mayor Bivona stated that the Borough has submitted a proposal to extend a sewer line under Pulis Avenue in order to give the Borough the ability to hook up at no cost in exchange for a reduced connection fee or something similar. Until a response is received, Mayor Bivona indicated that he would not recommend going forward. Mr. Hart suggested that this matter be discussed by the Engineering Oversight Committee on November 29<sup>th</sup>. The matter will be listed again on the December work session. Councilperson Ramsey questioned whether or not Mountain Shadows is going to hook up to the sewer line and Mr. Hart said that he understands that they will be going forward. The Mayor and Council recalled that they had agreed that there would not be a conflict in allowing Mr. Boswell to represent Mountain Shadows in this matter.

## **RECREATION AND PARKS**

- **Request to Amend Fee for Lacrosse Non Residential**

Councilperson Lambrix spoke about a proposal to raise the fee by \$10 for participants from Oakland in the Borough's lacrosse program. Mr. Hart emphasized that this increase cost is only for non-residents of Franklin Lakes. He explained that the ordinance was amended and adopted last year, however, Oakland was not aware of the change. Twenty five percent of participants in the program are non-residents and this charge is warranted due to additional administrative work, additional equipment and field maintenance. Mayor Bivona said that the fees are designed to cover the variable end of the costs of the sports programs and the residents of Franklin Lakes are covering the cost of these non-residents.

Mr. Hart stated that the administrator in Oakland asked that the Council reconsider this additional charge. After some discussion, Councilmembers agreed that the ordinance did not need to be amended.

- **Code of Conduct Ordinance Revisions**

Councilperson Lambrix said that this is an across the board amendment which clarifies the duties and behaviors of the Recreation Director. It provides more details relative to the role of the Recreation Director and duties of the Recreation Committee. The conduct section defines behaviors that are prohibited by all participants including parents and coaches. The review process for violations of these behaviors is also noted.

Mr. Hart pointed out the changes to the ordinance and said that the Council may want to amend the rules and regulations to be consistent with the ordinance. Mayor Bivona said that he took the lead on re-writing this ordinance and he recommended that bullying needs to be addressed in the ordinance. The ordinance needs review due to the constant complaints, usually by parents, concerning coaches and playing time. He recommended that the Recreation Committee be included in these discussions and consulted on any changes to the ordinance.

Councilperson Lambrix agreed that the rules and regulations need to be reviewed for clarity and consistency with the ordinance. Mr. Hart commented that the rules and regulations don't deal with Code of Conduct and he will schedule a meeting to discuss the ordinance.

Councilperson Lambrix reported that the wellness hike showcasing the Franklin Lakes Nature Preserve and the proposed connector was a success.

Mr. Hart reported on discussions with Bergen County Open Space and Bergen County Community Development relative to the grant funding and the allocation of that funding. Bergen County Community Development has indicated that the grant application for the accessible trail is not eligible for funding. The Borough will not be able to transfer unspent monies on the nature preserve project to the Recreation Center. Mr. Hart will gather more information before the meeting of November 20<sup>th</sup> and he anticipates several resolutions regarding this situation.

## ADMINISTRATION AND FINANCE

- **Professional RFQ's**

Mr. Hart stated that there are two different methods to retain professionals which are included in the State Pay to Play legislation. The Fair and Open Process consists of an advertisement requesting qualifications similar to a bid process, however, the award does not have to go to the lowest bidder. The other process does not require a Request for qualifications. A professional can be retained and those professionals are required to sign a political contribution disclosure certification stating that the person has not made political contributions totaling over \$300 during the past year. Mr. Hart recommended the Fair and Open process and he added that the Zoning and Planning Boards would have to decide which procedure to use. He said that there may be no need to go through this process if there is no intention of changing that particular professional, however, the request for qualifications may keep the professional honest relative to the rate proposal.

Mayor Bivona recommended a Request for Qualifications in order to review the contracts and compensation plans even though he is pleased with the professionals employed by the Borough at this time. He indicated that the Planning and Zoning Boards should also be encouraged to use this process. After a short discussion, the Council agreed that this process should cover all professionals employed by the Borough.

- **Support A3393 – Clarifies Verizon's Responsibility to Remit Business Personal Property Taxes**

Mr. Hart explained that this is the legislation would provide guidance to the courts regarding the responsibility of certain telecommunication corporations to continue to remit business personal property tax payments to municipalities and the League of Municipalities has offered a sample resolution. The resolution will be listed on the November 20<sup>th</sup> meeting agenda.

## PUBLIC SAFETY

- **Temporary Signs – Borough Property**

Mr. Hart recalled that at the last meeting the Council had asked for a survey relative to the handling of the sign issue by other towns. He has provided the results of a survey of other northwest Bergen towns and has concluded that a majority of towns do not allow signs on public property or on rights-of-way. But, he went on to say that in practice, these signs are allowed which is the situation in Franklin Lakes. Borough Attorney Smith suggested allowing non-commercial signs that could be limited to Borough sponsored events. Council President Kahwaty questioned whether or not a specific area for signs could be chosen such as McBride Field. After more discussion, the Council agreed to be more aggressive to enforce the existing ordinance.

- **Temporary Signs – Permit Fees**

Mr. Hart reviewed his findings relative to the permit fees for temporary signs. The Construction Official has proposed changing the existing ordinance which requires a \$40 fee for a sign for a six month period to a fee of \$80 for a calendar year. The signs could be transferred from property to property rather than having the sign specific to an individual property. Mr. Hart said that the Construction Official has prepared a revenue analysis with information on revenue in 2011 and 2012 under the existing ordinance. He has predicated an increase of between \$500 and \$1000 as a result of this change to the ordinance.

Council President Kahwaty said that this would be advantageous for realtors, however, resident and realtor Danielle Weitz said that it would depend on the number of listings that an agent has. She added that this would only benefit some and not all realtors. Councilperson Lota did not think that the proposed ordinance was fair since the fee would be \$80 whether or not the permit was taken out in January or December of the

same calendar year. Councilperson Pedone said that it would be easy to generate a list of homes that do not have a valid permit via the computer. He agreed with Councilperson Lota and doesn't understand why any changes are necessary. Councilperson Lota said that the fee could be cut in half or pro-rated if a permit was obtained between June and January. Councilmembers thought that this could become complicated and agreed that the ordinance should remain unchanged.

- **Mutual Aid Resolution**

Mr. Hart explained that this resolution would memorialize Mutual Aid relationships with Northwest Bergen and Passaic County. This resolution is generally done during the Reorganization Meeting but it hasn't been included in that meeting for quite some time. Mr. Hart recommended that this be done now and again in January and the Council agreed to list it on the November 20<sup>th</sup> meeting agenda.

- **2012 Internal Affairs Policy Amendment**

Mr. Smith explained that this ordinance controls internal affairs information, how it is conducted and who has access to this information. This is controlled by the State Attorney General and is reviewed by the local prosecutor who has suggested these changes. Mr. Hart added that this has been recommended by the Police Chief and will be included on the November 20<sup>th</sup> agenda.

## **PUBLIC WORKS**

Mayor Bivona recalled that last year after the October storm the Borough brought in chippers at a cost of \$108,000 for brush and branches that fell. At this time, there are many trees that have fallen on private property and residents will have to be responsible because the Borough doesn't have the resources to finance tree removal on such a large scale. Mr. Hart said that people are bringing debris to a dumpster at the DPW and Mayor Bivona described that this is a compromise and an accommodation for residents.

## **ENVIRONMENTAL AND COMMUNITY AFFAIRS**

Councilperson Pedone said that the ground is so saturated that there are many trees that are in a weakened condition and may still come out of the ground. He suggested that an e-blast go out asking residents to check for dangerous trees. He reported that it is not necessary to go forward with the tree ordinance since there aren't as many trees left in the Borough.

## **BOROUGH ADMINISTRATOR'S REPORT**

Mr. Hart said that hazardous trees are being removed at the Ambulance Corp property and along DeKorte Drive.

Mr. Hart reported that the polling location has been changed because the Presbyterian Church doesn't have power. Ms. Bleeker said that voting for Districts 4, 5 and 6 will be at the Ambulance Corps. County Officials, ambulance corps personnel, police, School Board candidates, and the schools have been notified of the change. There will be an e-blast notification, reverse 911 notification and a posting on the door of the Presbyterian Church to make people aware of this change.

## **OLD BUSINESS**

Councilperson Ramsey asked that Most Blessed Sacrament Church on Franklin Lake Road be notified relative to any changes to the sign ordinance in connection with the sign that is erected concerning the Reindeer Run.

## **NEW BUSINESS**

There was no new business this evening.

**ADJOURNMENT**

Motion by Councilperson Pedone to adjourn the meeting at 10:45 P.M. Councilperson Lambrix seconded the motion.

Roll Call Vote

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

Nays:

Abstain:

Absent: Kelly

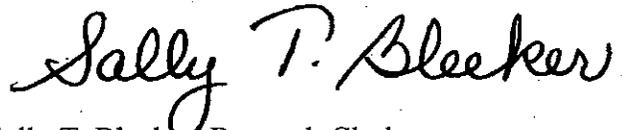
Motion Approved

**Resolution 230-12**

**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 \$6,738,025.76 as shown on the Claims Bill List; \$4,761.00 as shown on the Soil Account Bill List and \$2,178.50 as shown on the Developers Escrow List.

**BE IT FURTHER RESOLVED**, that the payroll of October 11, 2012 in the amount of \$246,343.15 and the payroll of October 25, 2012 in the amount of \$250,698.09 be hereby ratified and approved.

Respectfully submitted,



Sally T. Bleeker, Borough Clerk