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**FILED**

APR 14 2008

**B. THEODORE BOZONELIS, A.J.S.C.  
JUDGE'S CHAMBERS  
MORRIS COUNTY COURTHOUSE**

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FREDRIC KANTER,

Plaintiff,

v.

MOUNTAIN LAKES BOROUGH COUNCIL,

Defendant,

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY

CIVIL ACTION

DOCKET NO.: MRS-L-2388-07

**ORDER**

THIS MATTER, having been opened to the Court by Todd M. Finchler, counsel for Plaintiff, and by Robert H. Oostdyk, Jr., counsel for Defendant; and the Court having read the briefs and considered the argument of counsel; and for good cause shown;

IT IS on this 14<sup>th</sup> day of April, 2008;

**MINUTES TO REGULAR MEETINGS**

ORDERED, that Defendant shall release to the public a draft, unapproved version of minutes to its regular meetings at least two business days prior to the next regularly scheduled meeting;

ORDERED, that in the event the employee with responsibility for the preparation of the minutes to regular meetings is unable to do so, Defendant shall appoint another employee to prepare said minutes, so they are released in a manner contemplated herein;

**EXECUTIVE SESSION MINUTES**

ORDERED, that Defendant shall adhere to its new policies respecting its review and release of executive session minutes, which policies are reflected on the documents appended hereto. ~~Said policies are incorporated into this Order as if fully set forth herein;~~ - redundant 7

ORDERED, that the Court denies Plaintiff's request for an *in camera* review of all executive session minutes since January 1, 2005;

**FIVE-MINUTE RULE**

ORDERED, that Defendant's five-minute limitation on members of the public to speak during the public comment portion of meetings is hereby affirmed;

**OCTOBER 11, 2006 AND DECEMBER 12, 2006 MEETING MINUTES**

ORDERED, that the Court denies Plaintiff's request for Defendant to prepare new minutes to the executive sessions held on October 11, 2006 and December 12, 2006, as the released minutes were reasonably comprehensible;

**SUPERVISION**

ORDERED, that Plaintiff's request for the Court to appoint a monitor to supervise Defendant's compliance with the OPMA is hereby denied;

**COUNSEL FEES**

ORDERED, that Plaintiff's application for counsel fees is hereby denied.

  
\_\_\_\_\_  
THE HONORABLE B. THEODORE BOZONELIS, A.J.S.C.

Statement of Reasons  
on the record on  
March 7 2008

**BOROUGH OF MOUNTAIN LAKES  
POLICY CONCERNING THE RELEASE OF EXECUTIVE SESSION MINUTES**

1. The Borough of Mountain Lakes recognizes the requirement contained in the Open Public Meetings Act (N.J.S.A.10:4-1 et. seq.) to keep reasonably comprehensible minutes of all its meetings, including executive sessions, showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with the need for confidentiality, and the obligation to make the minutes available when the legitimate reason for confidentiality has passed.
2. The Borough Clerk shall attend all executive session meetings of the Borough Council and shall prepare a confidential set of draft minutes of each executive session meeting, with proposed redactions if necessary to maintain confidentiality, for approval by the Council at the next regularly scheduled Council meeting unless exigent circumstances delay her draft minute preparation (in which case minutes shall be presented as soon as is feasible under the circumstances).
3. The Council shall consider for approval the draft executive session minutes, including the proposed redactions, and shall vote on the approval of the minutes. The Council may discuss the approval of the draft minutes in executive session if there are issues concerning the draft minutes which require confidential discussion. Upon approval of the executive session minutes for public release these minutes shall immediately be available for release.
4. The Borough Clerk will maintain a list of topics which have been the subject of redacted executive session minutes and the date in which the topic was discussed. This list will be appended to each set of draft executive session minutes presented to the Borough Council. This list will be reviewed by the Council as part of the current minute approval process to ascertain if the legitimate reason for confidentiality continues to justify the original redaction.
5. When the Council determines that the legitimate need for confidentiality no longer justifies the redaction of the executive session minutes concerning a particular subject matter the Clerk shall record this determination in the minutes. The Clerk shall then remove the redactions from the approved minutes for public release of each meeting where the subject matter was discussed.

**Adopted by the Borough Council on February 25, 2008**

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**PLAINTIFF'S TRIAL BRIEF**

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### **NATURE AND STAGE OF PROCEEDINGS**

On August 17, 2007, Plaintiff commenced a Complaint in Lieu of Prerogative Writ based on Defendant's violation of the Open Public Meetings Act. By way of Pretrial Conference Order dated November 27, 2007, the Court fixed a schedule for trial briefs, whereby Plaintiff's Trial Brief is due on January 14, 2008. This is Plaintiff's Trial Brief.

## **STATEMENT OF FACTS**

Plaintiff would ordinarily submit a separately-numbered statement of facts, so the Defendant could admit or deny each statement. Nearly all of the exhibits are copies of Defendant's minutes or legal authorities, the truth of which is likely not in dispute. This action has been commenced to address the manner in which the Borough Council of Mountain Lakes conducts its business. Rather than repeat a statement of facts herein, Plaintiff shall recite the pertinent facts in the separate argument sections.

## ARGUMENT

### **I. THE BOROUGH COUNCIL OF MOUNTAIN LAKES HAS FAILED TO RELEASE MINUTES OF ITS PUBLIC MEETINGS IN A TIMELY MANNER IN VIOLATION OF N.J.S.A. 10:4-14.**

Borough Council has repeatedly violated the OPMA by failing to release to the public the minutes to its public meetings in a timely manner.

#### A. Practice of Borough Council of Mountain Lakes

The Borough Council does not release or approve its minutes to regular meetings in a prompt manner, as defined by the OPMA.

According to the Borough Council's website: "Minutes are not available until they have been approved by the Borough Council usually at the next Council Meeting two weeks later." (See Exhibit A.) According to its Answers to Interrogatories, the Borough Council described its release policy as follows: "Generally, the minutes of Borough Council meetings are available for approval by the Borough Council at the next subsequent meeting of the Borough Council. This sometimes varies during the summer when there is one (1) meeting per month or when the Municipal Clerk is either on vacation or ill. Generally, such minutes are available no later than 30 days after the meeting. It is the policy of the Borough Council that the minutes must be read and approved by the Borough Council by resolution before they are deemed official minutes." (See Exhibit B.) When asked whether it always releases minutes prior to the next scheduled meeting, it answered in the negative. (See Exhibit B.)

Based on a review of the regular session minutes from 2007, the Defendant approved regular session minutes as follows:

January 2	None.
January 22	December 12, 2006 January 2, 2007
February 12	None.
February 27	February 12 January 22
March 12	February 27
April 9	None.
April 23	March 12 April 9
May 14	None.
May 29	April 23 May 14
June 11	None.
June 25	May 29 June 11
July 23	June 25
August 27	July 23
September 10	August 27
September 24	September 10
October 9	September 24
October 22	October 9
November 13	October 22
November 26	None.
December 10	November 13 November 26.

There were six instances in 2007 where the Borough Council did not approve minutes from the preceding meeting.'

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'The approval dates are based on the 2007 minutes posted on the internet. Plaintiff does not believe the Defendant will dispute the information. In the event the dates of approval are disputed, Plaintiff will produce copies of all of the minutes.

## B. Legal Authorities

N.J.S.A. 10:4-14 states, in pertinent part: "Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, **which shall be promptly available to the public** to the extent that making such matters public shall not be inconsistent with section 7 of this act." (Emphasis supplied.) Making minutes promptly available serves three important purposes: (1) enables those attending a meeting to know what occurred at prior meetings; (2) provides all persons with the opportunity to take action prior to the next meeting; and (3) informs persons who might be aggrieved by actions of a public body, so they may take timely steps to appeal or respond. Matawan Regional Teachers Association v. Matawan-Aberdeen Regional Board of Education, 212 N.J. Super 328, 331 (Law Div. 1986).

While the statute does not define the phrase "which shall be promptly available to the public," other courts have interpreted this portion of the OPMA to require public bodies to release minutes prior to the next regularly scheduled meeting.

In Matawan, the Court held that, in the context of N.J.S.A. 10:4-14, the phrase "promptly available" must be determined based on five factors: (1) prior experience in publication of minutes; (2) subject matter of minutes and its importance to others affected by action; (3) importance of the subject matter to the general public; (4) intervals at which regular meetings scheduled; and (5) whether intervals of meetings were so short that the public body could not reasonably be expected to abide by the OPMA. Matawan, 212 N.J. Super. at 333.

The Matawan Court concluded that the minutes should be made available within two weeks after a regularly scheduled meeting because the public body's meetings were held at two-week intervals.

More recently, the Superior Court has required public bodies to release minutes at a certain period prior to the next regularly scheduled meeting. In O'Shea v. West Milford Township Council, Docket No. PAS-L-2229-04 (unreported), the Court required a public body to release minutes to the public no later than 48 hours prior to the next regular meeting. (See Exhibit C.) In O'Shea and Paff v. Kearny Board of Education, Docket No. HUD-L-856-07 (unreported), the Superior Court entered an Order requiring a public body to release its minutes at least three business days prior to the next scheduled meeting. (See Exhibit D.)

C. Application and Relief Sought

The public has a right to know what was discussed at a prior regular session meeting before the next one occurs. In order to give the public a meaningful opportunity to digest the minutes and determine whether action should be taken, the unapproved minutes should be made available to the public at least 2-3 business days prior to the next scheduled meeting. Since Borough Council convenes on a bi-weekly basis, it would have roughly 10 days to generate unapproved minutes.

As to the approval of the minutes, the Defendant must review and approve the minutes at the next regularly scheduled meeting.

Plaintiff seeks an Order compelling Defendant to:

(A) release its minutes to the public at least 2-3 business days prior to the next regularly scheduled meeting;

(B) review and approve its minutes at the following regular meeting; and

(C) appoint an independent monitor to oversee the Borough Council's compliance with the OPMA or, in the alternative, require its counsel to furnish compliance reports to this Court for a period deemed appropriate by the Court.

**II. THE BOROUGH COUNCIL OF MOUNTAIN LAKES HAS FAILED TO  
RELEASE MINUTES TO ITS EXECUTIVE SESSION MEETINGS IN A  
TIMELY MANNER IN VIOLATION OF N.J.S.A. 10:4-14.**

The Borough Council has violated the OPMA by releasing minutes to executive sessions on a biennial basis.

A. Practice of Borough Council of Mountain Lakes

The Borough Council of Mountain Lakes does not release its minutes to executive sessions in a manner contemplated and required by the OPMA. According to its Answers to Plaintiff's Interrogatories, executive session minutes were released to the public by Borough Council on September 23, 2002 (covering the years 2000-2002), September 13, 2004 (partially covering the years 2000-2004), September 12, 2005 (partially covering the years 2004-2005) and September 24, 2007 (partially covering the years 2002-2007). (See Exhibit B.) Defendant has also stated that between 2004 and the present, it reviewed executive session minutes for purposes of release only three times. (See Exhibit B.) The Board's 2007 release of executive session minutes appeared to be in response to the filing of the instant action, which was served upon the Defendant's counsel on September 10, 2007. In fact, the subject of releasing executive session minutes was listed on the executive session agenda of a regularly scheduled meeting on September 10, 2007. Assuming the executive session agendas are accurate and complete, the last time the Borough Council reviewed executive session minutes for suitability of release was prior to September 12, 2005. Thus, the Defendant released executive session minutes in 2002, 2004, 2005 and 2007.

When the Board votes to enter executive session, it adopts a resolution, but does not specify a date or time period when the minutes will be released to the public. A sample resolution is found in the December 10, 2007 minutes:

*Resolution 147-07*

*WHEREAS, the Borough Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey finds it necessary to discuss matters relating to:*

*PBA Contract Negotiations*

*Shared Services Negotiations*

*Personnel/New Borough Manager*

*Personnel Matter*

*WHEREAS, the Borough Council believes it to be in the best interest of the public to discuss such matters in closed session.*

*NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Mountain Lakes, that it shall enter Executive Session to discuss only those matters mentioned above; the results of which will be disclosed when the matters are resolved and upon vote of the Governing Body to release the minutes.*

(See Exhibit E.)

As is evident from the resolution, the public does not know when redacted minutes will be released, except for "when the matters are resolved and upon a vote...."

B. Legal Authorities

The Borough Council's procedure concerning the release of executive sessions minutes runs afoul of the OPMA for a few reasons. First, the resolution it adopts violates N.J.S.A. 10:413. Second, its biennial release of minutes violates N.J.S.A. 10:4-14.

1. Resolution

N.J.S.A. 10:4-13 requires public bodies to adopt a resolution prior to excluding the public from any meeting. Said resolution must state the general nature of the subject to be discussed and state, as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session can be disclosed to the public.

2. Minutes Promptly Available to Public

This Court - and others - have determined the timeliness of the release of executive session minutes. In fact, this Court provided extensive commentary on the issue in Kanter v. Mountain Lakes Board of Education, Docket No. MRS-L-2291-02 (unreported). A copy of the transcript to the a motion hearing held on July 11, 2003 is attached hereto as Exhibit F.

In Kanter, the Mountain Lakes Board of Education released minutes to its executive sessions every 6 months to one year. Counsel for Mr. Kanter noted that the Board of Education released executive session minutes only when Mr. Kanter requested their release, which was described as the "Kanter Rule." (See Exhibit F at 6.) The Court offered several comments on this practice and held that public bodies must release executive session minutes much more regularly and without the need for a citizen to request their release.

The Court questioned why the Board of Education waited until a request to release executive session minutes:

Why should he have to? That's not his job. The Board had the job of releasing the minutes to the public. As a matter of fact, in the resolution that was cited by the plaintiff in his brief it talks about the fact that it will be released in 30 days unless, unless a future date is necessary. I mean, you can redact whatever privacy information you release. I think that's really the one problem the Board has here, which is the failure to release at all the executive session minutes.

(See Exhibit F at 24-25).

This Court also noted, over the objection of the Board's counsel, that the OPMA does not make a distinction between the release of executive session and regular minutes.

(See Exhibit F at 32). The Court noted:

I mean, shouldn't the Board's obligation to do exactly what they do with the regular maybe they can't be available on a two weeks basis because there are privacy considerations and that likely can be redacted or whatever they need to do. But shouldn't they be available shouldn't the Board be saying these are when they move to approve the meeting minutes of the regular meetings from the previous meeting. And here they are, members of the public who are here. Shouldn't they be doing the same thing on a 30-day basis with executive session minutes... ..and redacting what they need to redact?

(See Exhibit F at 32).

The Court held that the Board of Education must make executive session minutes available to the public on a thirty-day basis based on the Board's own resolution that the minutes would be released then or sooner. (See Exhibit F at 39).

In addition to the Kanter decision, there are other authorities which should guide the Court in assessing the Borough Council's conduct. In Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 556 (1997), the Court concluded that N.J.S.A. 10:4-14 requires minutes of executive session meetings to be made promptly available to the public. As to the complete nondisclosure of executive session minutes, the Court noted: "...only the unusual case will justify total suppression of the minutes of a closed session; such a case would require great harm to the public interest underlying the exception from even minimal disclosure as well as a negligible interest in disclosure." Id. at 557.

### C. Application and Relief Sought

The Borough Council of Mountain Lakes regularly violates the OPMA by failing to adopt adequate resolutions prior to entering executive session and by failing to review and release executive session minutes in a prompt manner.

Before the Defendant enters executive session, it must adopt a resolution which informs the public that minutes - even if they are redacted - will be released by a date certain. After the executive session has concluded, the Borough Council should review its executive session minutes for release (or partial release) as often as it is supposed to review its minutes to regular meetings. If this Court had serious concerns about the practice of the Mountain Lakes Board of Education - which released executive session minutes every 6 months to one year - then the Defendant's conduct clearly warrants judicial intervention. Given the modest size of Mountain Lakes, one might have expected the Borough Council to have been made aware of this Court's 2003 decision involving the Board of Education through regular channels. Apparently, this did not occur, and the Borough Council continued to follow the "Kanter Rule" by reviewing and releasing its executive session minutes only as often as Mr. Kanter requested. As noted in the Certification of Fredric Kanter, he frequently notified the Borough Council in open session that they must release executive session minutes more regularly. He also advised Borough Council of this Court's decision involved the Board of Education.

Plaintiff seeks an Order compelling Defendant to:

(A) promulgate an adequate resolution before it enters executive session so the public knows when minutes will be released;

(B) release minutes to executive session, with appropriate redactions, on the same basis that it releases minutes to regular meetings; and

(C) appoint an independent monitor to oversee the Borough Council's compliance with the OPMA or, in the alternative, require its counsel to furnish compliance reports to this Court for a period deemed appropriate by the Court.

### **III. THE FIVE-MINUTE RULE FOR PUBLIC COMMENT, AS APPLIED BY THE BOROUGH COUNCIL, IS UNCONSTITUTIONAL.**

The Borough Council has imposed a five-minute limitation for members of the public to talk during the public comment portions of regular meetings. In its Answers to Plaintiff's Interrogatories, the Defendant explained the rule and the reasons for its existence. In response to Interrogatory 15, it stated: "The Borough Council has implemented a policy that permits each member of the public wishing to speak during the open public comment portion of Borough Council meetings to speak for five minutes." In response to Interrogatory 16, the rationale for the rule was stated: "This determination is made by the Borough Council to insure that meeting participation is fairly accessible to all members of the public wishing to address the Borough Council during the public comment portion of the Borough Council meeting." Defendant confirmed that members of the public have requested to speak for more than five minutes. (See Interrogatory 17.) When asked to identify such members of the public, the Borough Council named Fredric Kanter only. (See Interrogatory 18.) Defendant further states that, to the best of its recollection, no member of the public has been permitted to talk for more than five minutes at any meeting since January 1, 2006. (See Interrogatory 19.) Thus, the Borough Council claims it imposes a blanket limitation on public speech, regardless of circumstance. (See Exhibit B.)

There is legal authority for the proposition that public bodies may enact rules which promote order during their meetings. In fact, one court has even endorsed the notion of a five-minute limitation on public comment. Inganamort v. Ft. Lee, 120 N.J. Super. 286, 294 (Law Div. 1972). In Inganamort, a municipality enacted an ordinance limiting each speaker to five minutes at public meetings. Each speaker was given five minutes initially and an additional five

minutes after all speakers were heard. The Court concluded that there was: "...nothing patently unreasonable with such limitations. No speaker is alleging discrimination or unwarranted exceptions to the five-minute rule." Id. at 294.

The issue is not whether the Borough Council should have the authority to regulate the proceedings at its meetings. Plaintiff is not suggesting that this Court substitute its judgment for the judgment of the members of the Borough Council as to how its meetings are regulated. Rather, Mr. Kanter believes this Court has the authority to examine the speech limitations imposed by the Borough Council and, to the extent Borough Council wishes to adopt such limitations, require the Borough Council to adopt reasonable restrictions on speech.

Mr. Kanter offers three reasons why the five-minute rule, as applied by the Borough Council, should be modified. First, the Borough Council enforces the five-minute limitation regardless of whether one or 100 members of the public wish to speak, thereby abridging the free speech rights of members of the public. Second, the Borough Council strictly enforces the five-minute rule when Mr. Kanter speaks, yet allows other members of the public to speak beyond five minutes. Third, Mr. Kanter believes the five-minute rule must yield to common sense in view of how he has been treated in the Borough of Mountain Lakes. Mr. Kanter was twice arrested in April 2006 for speaking in excess of five minutes before the Borough Council and the Zoning Board of Adjustment. The arrests were based on N.J.S.A. 2A:33-8, which prohibits the disruption of public meetings. After considering the evidence, the Borough Council dismissed the charge prior to trial. The Zoning Board of Adjustment case proceeded to trial after which the court found Mr. Kanter not guilty. (See Certification of Fredric Kanter.) Permitting a public body to stifle public comment - regardless of time concerns - is censorship and does not represent an effort to maintain order.

1. Regulation of Public Meetings

As noted above, public bodies should have the authority to impose reasonable restrictions on speech to promote order at their meetings. Without such limits, public meetings could conceivably last several hours or longer, thereby forcing elected officials and other members of the public to sit through lengthy speeches by audience members. A five-minute limitation on public comment would be properly applied at a meeting where there are dozens of members of the public who wish to address a public body. However, where there are only a few members of the public who wish to address the public body, the speech limitation should yield to common sense.

As noted in the Certification of Fredric Kanter, there have been many occasions where there were only one or two members of the public who wished to address Borough Council, yet he was silenced after five minutes. In some of those instances, Mr. Kanter requested Borough Council to permit him additional time. As Borough Council acknowledges in its discovery responses, it has steadfastly refused to allow Mr. Kanter to speak for more than five minutes. This has occurred even during meetings where Mr. Kanter was the only member of the public to speak. (See Certification of Fredric Kanter.)

While it would be difficult to formulate a precise rule governing public comment at meetings, common sense would dictate that the concerns which implicate the need for a five-minute rule would not exist where only one or two members of the public wish to address a public body. In such instances, a public body should grant members of the public sufficient time to complete their comments which are relevant to the business of the public body.

## 2. Selective Enforcement of Five-Minute Rule

As noted in the Certification of Fredric Kanter, the Borough Council does not evenly enforce the five-minute rule. While Mr. Kanter is strictly limited to five minutes - and his speech is often interrupted with reminders as to time left on the clock - the Borough Council has permitted others to speak for more than five minutes without interruption. The Borough Council acknowledges that it has terminated the public comment of only Mr. Kanter. In all of the meetings he has attended, Mr. Kanter does not recall any instances where the Borough Council has enforced the five-minute rule against others. Any rule limiting speech should be enforced evenly.

As further proof of the Borough Council's uneven treatment of Mr. Kanter, the Borough Council took to reading a statement about me prior to the public comment portion of its meetings.

The statement read:

Mr. Kanter has served a written notice of his intent to make a tort claim against the Borough of Mountain Lakes claiming that the Borough, its employees, and elected officials are engaged in conduct that he alleges is harassing. On the advice of counsel any questions directed to us at this meeting by Mr. Kanter will be reviewed by our legal counsel; and if appropriate, will be responded to in writing. It is our considered judgment this procedure will minimize disruption and protect the interest of the public.

(See Exhibit G.)

The Borough Council minutes reflect that this statement was read for over one year. For some unexplained reason, the reading of the statement ended in October 2007, shortly after this action was commenced.

## 3. Use of Five-Minute Rule as Sword

Unfortunately, the Borough Council has used the five-minute rule to have Mr. Kanter

arrested. In April 2006, the Borough Council initiated a criminal complaint against Mr. Kanter for allegedly violating N.J.S.A. 2A:33-8, which prohibits the disruption of a public meeting. Mr. Kanter was forced to engage counsel to defend himself and prepare for trial. On October 26, 2006, the Borough Council - through the Municipal Prosecutor - notified Mr. Kanter that it did not believe it would be able to prove guilt beyond a reasonable doubt, and the charge was dismissed. (See Certification of Fredric Kanter.)

Another public body in Mountain Lakes, the Zoning Board of Adjustment, commenced its own complaint against Mr. Kanter a few days before the Borough Council's complaint was initiated. Said complaint was also based on Mr. Kanter's speaking in excess of five minutes. Unlike the Borough Council complaint, the Zoning Board complaint proceeded to trial before the Municipal Court of Dover. The Court found Mr. Kanter not guilty. (See Certification of Fredric Kanter.)

While this Court has no authority to prevent public bodies from using the Criminal Code to govern its meetings, a public body should not be permitted to use this procedural rule to stifle public comment. The Borough Council had much less restrictive means of enforcing its five-minute rule, including a vote to end public comment. Instead, it chose to enforce its rule by having Mr. Kanter arrested, forced him to defend himself for several months and then decided that it lacked sufficient evidence to gain a conviction.

Mr. Kanter believes this Court should require any rule limiting free speech to be based on the need to limit the length of a meeting and be predicated on the number of people who wish to speak. An unyielding five-minute rule - regardless of circumstance - should not be permitted.

**IV. THE BOROUGH COUNCIL HAS DISCUSSED SUBJECTS IN EXECUTIVE SESSION, WHICH ARE NOT INCLUDED AMONGST THE EXCEPTIONS IN N.J.S.A. 10:4-12.**

All meetings of public bodies shall be open to the public at all times, except to the extent the public bodies need to discuss one of nine subjects set forth in N.J.S.A. 10:4-12. On December 11, 2006, the Borough Council discussed a subject in executive session which should have been discussed before the public.

According to the minutes to the December 11, 2006 meeting (See Exhibit H.), the Borough Council adopted a resolution to enter executive session to discuss the following subjects:

Personnel/Brian Mason

Personnel Reviews

Contract Negotiations Rensselaer Grads

Shared Services Negotiation.

Prior to the executive session, Mr. Kanter sat in meeting room until such time as the Borough Council voted to enter executive session. Despite the resolution set forth in the minutes to the December 11, 2006 meeting, Defendant did not state why it was entering executive session. A newspaper reporter and Mr. Kanter left the meeting room and waited outside in the corridor adjacent to the meeting room. Borough Council was using a new public address system at said meeting, so the reporter and Mr. Kanter could easily hear what was being discussed in executive session. At Borough Council's direction, Officer Piambino stood outside of the meeting room with the reporter and Mr. Kanter.

Borough Council discussed the following subjects in executive session, which should have been discussed before the public:

- (A) litigation which had already been concluded involving Plaintiff;
- (B) Plaintiff's reputation and honesty; and
- (C) the Mayor's discussion that he had his wife file a harassment complaint against Plaintiff in response to comments by members of the public asking him what he was going to do about the "Kanter problem." (See Certification of Fredric Kanter.)

The minutes to the December 11, 2006 executive session meeting were produced without redaction immediately following the filing of this case. (See Exhibit I.) The minutes do not reflect the improper subjects which were discussed. Mr. Kanter seeks an Order compelling the Borough Council to prepare new minutes to said meeting, which adequately describe all subjects discussed, as required by law.

**V. THE BOROUGH COUNCIL DOES NOT MAINTAIN REASONABLY COMPREHENSIBLE MINUTES INASMUCH AS IT DISCUSSED SUBJECTS IN EXECUTIVE SESSION WHICH APPEARED IN DRAFT MINUTES AND APPEAR TO HAVE BEEN ELIMINATED IN SUBSEQUENT RELEASES.**

Mr. Kanter also believes the Board abused its executive session on October 10, 2006, by editing out of its minutes subjects which were actually discussed in closed session. But for sheer happenstance, there would be no way for the public to know whether improper subjects were discussed in executive session or whether subjects were discussed, but not included in the minutes. Fortunately for the general public, Mr. Kanter was inadvertently given draft, unredacted, unreleased minutes to the October 10, 2006 executive session. (See Exhibit J.) This instance leads Mr. Kanter to believe that the Board has a practice of sanitizing its executive session minutes.

The draft and released versions of the executive session minutes are attached hereto as Exhibit J. The draft, unreleased minutes show that the Borough Council discussed Mr. Kanter. Those unreleased minutes contained two separate paragraphs about Mr. Kanter. The recently-released, redacted version of those minutes is so heavily redacted that one cannot determine what was actually discussed. In the first paragraph, there appears to have been discussion about previously-concluded cases against Mr. Kanter. Why that first paragraph continues to be redacted is unclear since those cases have been concluded. It would appear that the redaction was inappropriate and violative of the OPMA. In addition, the original draft contains two paragraphs about Mr. Kanter at the bottom of the first page, whereas the released draft appears to contain only one.

In order to assure the public that the executive session is not used for improper purposes, Mr. Kanter requests this Court to require the Borough Council to provide the Court with an unredacted version of the October 10, 2006 executive session minutes, so the Court can conduct an *in camera* review of those minutes to determine if they were sanitized. If they were, then the minutes were not reasonably comprehensible inasmuch as subjects were discussed, but then eliminated.

**VI. COUNT I AND COUNT VI OF THE AMENDED COMPLAINT  
ARE WITHDRAWN.**

Count I of the Amended Complaint seeks the voidance of actions taken at a July 5, 2007 meeting of the Borough Council based on its failure to advertise the meeting in at least two newspapers, in contravention of N.J.S.A. 10:4-8(d). Subsequent to the filing of this action, Defendant convened a second meeting to reintroduce and adopt the same ordinance which was the subject of the unlawful July 5, 2007 meeting. The second meeting was properly advertised. Accordingly, Plaintiff's claim has been rendered moot by virtue of Defendant curing the defect which existed at the time this action was filed.

Count VI of the Amended Complaint seeks an Order compelling Defendant to respond to Plaintiff's questions. While the Defendant regularly responds to the questions posed by other members of the public, it has refused to respond to Plaintiff's questions. Even given that disparity, Plaintiff has not found any legal authority which compels a public body to answer questions of the general public. Accordingly, Plaintiff withdraws Count VI.

**CONCLUSION**

For the foregoing reasons, Plaintiff requests the Court to enter an Order requiring Defendant to adhere to the requirements of the OPMA and to grant whatever relief the Court deems necessary to ensure future compliance.



---

TODD M. FINCHLER, ESQ.  
DECKER & FINCHLER  
345 PARSIPPANY ROAD  
P.O. BOX 191  
PARSIPPANY, N.J. 07054  
(973) 884-4030  
ATTORNEY FOR PLAINTIFF  
FREDRIC KANTER

DATED: January 11, 2008

# **EXHIBIT A**

# Borough Council



Borough Council meetings are held the 2nd and 4th Mondays of each month in the Meeting Room at Borough Hall, unless otherwise noted. The public portion of the meeting convenes at 8:00 pm. An executive session, if necessary, at which the public is not present, begins at 7:30 pm.

## Borough Council Members

### **Council Meetings**

<b>Agenda</b>	<b>Minutes</b>
<u>Jan 02, 2008</u>	
<u>Dec 10, 2007</u>	<u>Dec 10, 2007</u>
<u>Nov 26, 2007</u>	<u>Nov 26, 2007</u>
<u>Nov 13, 2007</u>	<u>Nov 13, 2007</u>
<u>Oct 22, 2007</u>	<u>Oct 22, 2007</u>
<u>Oct 09, 2007</u>	<u>Oct 09, 2007</u>
<u>Sep 24, 2007</u>	<u>Sep 24, 2007</u>
<u>Sep 10, 2007</u>	<u>Sep 10, 2007</u>
<u>Aug 27, 2007</u>	<u>Aug 27, 2007</u>
<u>Jul 23, 2007</u>	<u>Jul 23, 2007</u>
<u>Jul 05, 2007</u>	<u>Jul 05, 2007</u>
<u>Jun 25, 2007</u>	<u>Jun 25, 2007</u>
<u>Jun 11, 2007</u>	<u>Jun 11, 2007</u>
<u>May 29, 2007</u>	<u>May 29, 2007</u>
<u>May 14, 2007</u>	<u>May 14, 2007</u>
<u>Apr 23, 2007</u>	<u>Apr 23, 2007</u>
<u>Apr 09, 2007</u>	<u>Apr 09, 2007</u>
<u>Mar 26, 2007</u>	<u>Mar 26, 2007</u>
<u>Mar 12, 2007</u>	<u>Mar 12, 2007</u>
<u>Feb 27, 2007</u>	<u>Feb 27, 2007</u>
<u>Feb 12, 2007</u>	<u>Feb 12, 2007</u>
<u>Jan 22, 2007</u>	<u>Jan 22, 2007</u>
<u>Jan 02, 2007</u>	<u>Jan 02, 2007</u>

*Note: **Agendas** are not available until they are approved by the Mayor, usually the Friday before the Borough Council Meeting.*

***Minutes** are not available until they have been approved by the Borough Council, usually at the next Council Meeting two weeks later.*

[Return to the Mountain Lakes Home Page](#)

## **EXHIBIT B**

**JOHNSON, MURPHY, HUBNER, McKEON,  
WUBBENHORST, BUCCO & APPELT, P.C.**

51 Route 23 South

P. O. Box 70

Riverdale, New Jersey 07457

(973) 835-0100

Attorneys for Defendant, Borough of Mountain Lakes

(improperly pleaded as Mountain Lakes Borough Council)

---

FREDRIC KANTER,

Plaintiff,

: SUPERIOR COURT OF NEW JERSEY

: LAW DIVISION: MORRIS COUNTY :

DOCKET NO. MRS-L-2388-07

Civil Action

vs.

**ANSWERS TO PLAINTIFF'S  
INTERROGATORIES**

MOUNTAIN LAKES BOROUGH  
COUNCIL,

Defendant.

---

TO: TODD M. FINCHLER, ESQUIRE

Decker & Finchler

345 Parsippany Road

P.O. Box 191

Parsippany, New Jersey 07054

SIR:

Pursuant to the Rules of Court, Defendant, Borough of Mountain Lakes (hereinafter referred to as "Borough"), responds to the Interrogatories of Plaintiff, Fredric Kanter (hereinafter referred to as "Kanter"), as follows:

Defendant makes the following general objections to Plaintiff's Interrogatories, which are hereby incorporated by reference in Defendant's responses to each request. Each of the responses set

forth below, which Defendant expressly reserves the right to amend or supplement, are submitted subject to and without waiver of these general objections.

1. Defendant objects to each interrogatory or document request insofar as it seeks information subject to the attorney-client, work product or other privilege.

2. Defendant objects to each interrogatory or document request insofar as it seeks information which is confidential and proprietary.

3. Defendant objects to each interrogatory or document request insofar as it is vague ambiguous, overly broad and unduly burdensome.

4. Defendant objects to each interrogatory which requests information not within the possession of Defendant, its agents, servants, or employees.

5. Defendant objects to each interrogatory which requires the production of documents and records too voluminous to append hereto, and said documents and records which are properly within the purview of the document discovery requests will be made available in accordance with the Rules of Court or inspection and copying.

6. Defendant objects to each interrogatory which requests the recitation of facts or opinion which will be contained within Defendant's expert reports and back-up material which will be provided to Plaintiff or made available for inspection and copying.

7. Defendant objects to each interrogatory or document request insofar as it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

8. Defendant objects to each interrogatory or document request insofar as it is unlimited as to time.

9. Defendant objects to each interrogatory or document request to the extent it seeks the production of information not within Defendant's possession, custody or control.

10. Defendant objects to each interrogatory or document request to the extent it seeks information which is within the knowledge and possession of Defendants or which may be more readily available from a more convenient, less burdensome and less expensive source.

11. Defendant objects to each interrogatory or document request to the extent it seeks information which is outside the scope of permissible discovery pursuant to the Rules Governing the Courts of the State of New Jersey.

12. Defendant objects to each interrogatory or document request insofar as it attempts to elicit protected information subject to the attorney-client privilege or any other applicable privilege; the attorney work product doctrine, including documents containing the impressions, conclusions, opinions, legal research or theories of the attorneys of Defendant, or materials prepared in anticipation of litigation.

13. Defendant objects to each interrogatory or document request to the extent it is vague, ambiguous and imprecise in that a particular term or phrase is undefined and subject to varying interpretations.

14. Defendant objects to the definition set forth in the interrogatories to the extent that such definitions are overly broad and are nonspecific to the extent that they exceed the limitations from the Rules of Court pertaining to discovery.

15. Any statement in these answers that documents will be produced and any objection to a particular interrogatory should not be deemed to be an indication that such documents exist.

16. Any and all responses tendered herein are made without waiver of, and with preservation of any and all questions as to the competency, relevancy, privilege, admissibility of

the responses tendered and the interrogatories responded to and the Defendant reserves the right to object to the use of the responses tendered herein, or to the documents produced hereunder, on any ground in any proceeding or action, including the trial of this action. Furthermore, the Defendant reserves the right to at any time revise, correct, add to, supplement, or clarify any of the responses contained herein.

17.                   Insofar as any of the foregoing objections or any of the specific objections which follow apply to each of the interrogatories, that interrogatory or document request is improper.

**RELEASE OF EXECUTIVE SESSION MINUTES**

1                   Describe your policy concerning the release of minutes to executive sessions to the public.

ANSWER: The Borough Council's policy concerning release of executive session minutes to the public is to once annually review such executive session minutes for the appropriateness of release and/or redaction of portions of the minutes prior to release. Based on practice, executive session minutes are first reviewed by the Borough Clerk and Borough Manager for recommendation of release and/or redaction, and such minutes are then sent to Borough Attorney for opinion on appropriateness for release and/or redaction. Executive session minutes recommended for release and/or redaction are then presented to the Borough Council for approval of release and/or redaction by resolution in open session.

2.                   Set forth the dates you have released minutes of executive sessions to the public since 2000.

ANSWER: Executive session minutes were released to the public by Borough Council resolution on September 23, 2002, which resolution covered executive session minutes pertaining

to the years 2000, 2001 and 2002; September 13, 2004, which resolution covered executive session minutes pertaining to the years 2000 through 2004 and previously redacted materials appropriate for release; September 12, 2005, which resolution covered executive session minutes pertaining to the years 2004 through 2005 and previously redacted materials appropriate for release; September 24, 2007, which resolution covered executive session minutes pertaining to the years 2002 through 2007 and previously redacted materials appropriate for release.

3. Between 2004 and the present, how often did you review minutes of executive sessions to determine suitability for release to the public?

ANSWER: Three times.

4. Between 2004 and the present, list the dates on which you review minutes to executive session to determine their suitability for release to the public.

ANSWER: Please see answer to Interrogatory 2 above.

5. With respect to the execution session minutes released pursuant to Resolution 10807 on September 24, 2007, set forth the reasons that the subjects contained therein were not released earlier.

ANSWER: Defendant asserts general objections 1, 2 and 3. Without waiver of said objections, as per the afore-stated policy, minutes of executive sessions are reviewed only at certain times annually. As no specific subjects are stated in the interrogatory question, and no subject is specifically stated within Resolution 108-07, no reason can be submitted at this time.

**JULY 5, 2007, MEETING**

6. Set forth the newspapers to which you sent notice of the July 5, 2007, meeting.

ANSWER: Notice was sent to the Daily Record of Morris County.

7. Was notice of the July 5, 2007, meeting posted in the municipal building prior to the meeting?

ANSWER: As per practice of the Municipal Clerk, notices are generally posted on the bulletin board within the entrance to municipal building, at least forty-eight hours prior to a meeting. However, the Municipal Clerk is unable to specifically recall with any degree of certainty when notice of the July 5, 2007, meeting was posted or removed.

8. If the answer to Interrogatory 7 is in the affirmative, set forth:

- (A) the name of the person who posted the notice;
- (B) the date the notice was posted;
- (C) the date the notice was removed;
- (D) the location where the notice was posted.

ANSWER: See answer to Interrogatory 7 above.

9. What time did the July 5, 2007, meeting commence?

ANSWER: 6:30 p.m.

10. What actions did you take on July 5, 2007, with respect to Ordinance 14-07? ANSWER: Ordinance 14-07 was placed on agenda for second reading, opened for public hearing, and voted upon in the normal course. Ordinance 14-07 was adopted on July 5, 2007.

11. After July 5, 2007, did you take any further action with respect to Ordinance 14-07?

ANSWER: No.

12. If the answer to Interrogatory 11 is in the affirmative, set forth:

- (A) the date(s) action was taken;
- (B) what action was taken;
- (C) why such action(s) was taken.

ANSWER: See answer to Interrogatory 11 above.

**RELEASE OF MINUTES TO BOROUGH COUNCIL MEETING**

13. Describe your policy concerning the release of minutes to Borough Council meetings.

ANSWER: Generally, minutes of Borough Council meetings are available for approval by the Borough Council at the next subsequent meeting of the Borough Council. This sometimes varies during the summer when there is one (1) meeting per month or when the Municipal Clerk is either on vacation or ill. Generally, such minutes are available no later than 30 days after the meeting. It is the policy of the Borough Council that the minutes must be read and approved by the Borough Council by resolution before they are deemed official minutes.

14. Do you always release minutes to Borough Council meetings prior to the next regular scheduled meeting:

ANSWER: No.

**FIVE-MINUTE RULE**

15. Do you have a rule which limits each member of the public to speak for five minutes at meeting?

ANSWER: The Borough Council has implemented a policy that permits each member of the public wishing to speak during the open public comment portion of Borough Council meetings to speak for five minutes.

16. Describe the reason(s) why the five-minute rule exists.

ANSWER: This determination is made by the Borough Council to insure that meeting participation is fairly accessible to all members of the public wishing to address the Borough Council during the public comment portion of the Borough Council meeting.

17. Since January 1, 2006, have any members of the public asked to speak for longer than five minutes?

ANSWER: During the public comment portion of the Borough Council meetings, members of the public have asked to speak longer than five minutes.

18. If the answer to Interrogatory 17 is in the affirmative, set forth:

- (A) the name(s) of the members of the public;
- (B) how they were permitted to speak on said occasion;
- (C) whether other members of the public spoke after said person.

ANSWER:

- A. Fredric Kanter.
- B. Limited to five minutes.
- C. To the best knowledge and recollection, other members of public have spoken, but all speakers have been limited to five minutes of comment during the public comment portion of Borough Council meetings.

19. Since January 1, 2006, have you permitted any members of the public to speak for longer than five minutes?

ANSWER: To best of knowledge and recollection, no member of the public has been permitted to comment during the open public comment portion of Borough Council meetings for greater than five minutes at anytime after January 1, 2006.

20. If the answer to Interrogatory 19 is in the affirmative, set forth:

- (A) the name(s) of the members of the public;
- (B) how long they were permitted to speak;
- (C) why they were permitted to exceed the five-minute rule.

ANSWER: See answer to Interrogatory 19 above.

**REFUSAL TO RESPOND TO FRED KANTER**

21. Explain why you refuse to respond to questions posed by Plaintiff during meetings.

ANSWER: Defendant asserts general objections 1, 2 and 12. Without waiver of said objections, such refusal is the prerogative of the Borough Council. Further, on advice of counsel upon the filing of a Notice of Tort Claim by Plaintiff, the Borough Council was advised not to respond to Mr. Kanter during meetings, but respond to questions via written request.

22. Since September 1, 2006, list the dates when you have responded to Plaintiff, in writing, in response to a question posed by Plaintiff during a meeting.

ANSWER: November 20, 2006.

23. Has Plaintiff filed suit against you pursuant to the Notice of Claim served upon you in September 2006?

ANSWER: No.

24. List the names of the members of the public to whom you will not respond during Borough Council meetings.

ANSWER: The Borough Council does not treat the open public comment portion of Borough Council meetings as a question and answer period, but rather treats that portion as the public's opportunity to comment.

**EXECUTIVE SESSION MINUTES**

25. Under what OPMA exception did you enter executive session to discuss Fred Kanter on September 25, 2006?

ANSWER: Potential litigation.

**PHOTOCOPY POLICY**

26. Set forth your policy concerning monetary charges to members of the public for photocopies of minutes to Borough Council Meetings.

ANSWER: Policy is as set forth in the Borough's fee ordinance and in compliance with State statutory limitations.

**CERTIFICATION**

I certify that in responding to the foregoing Interrogatories, I have furnished all information available to me and to my agents, employees and attorneys. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

34c \_\_\_\_\_

kWxxAkktkammettAxiagmx

Dated:

Dated: 12/17/07

4.1. c a. re 

CHRISTINA J. WHITAKER, Municipal Clerk

## **EXHIBIT C**

Martin O'Shea  
12 Greenbrook Dr  
West Milford, NJ 07480  
Telephone 973-728-0783  
Plaintiff

**FILED**

JUL 14 2004

**ROBERT J. PASSERO  
ASSIGNMENT JUDGE**

**MARTIN O'SHEA**

Plaintiff

vs.

**WEST MILFORD TOWNSHIP  
COUNCIL and WEST MILFORD  
TOWNSHIP PLANNING BOARD**

Defendants

Superior Court of New Jersey  
Passaic County  
Law Division

Docket no: L-2229-04

Civil Action

**ORDER**

This matter having been brought before the Court by Martin O'Shea, Plaintiff, and Defendant WEST MILFORD TOWNSHIP COUNCIL, represented by William J. DeMarco, L.L.C. (William J. DeMarco, Esq., appearing) and Defendant WEST MILFORD TOWNSHIP PLANNING BOARD, represented by Weiner Lesniak (Bryant Gonzalez, Esq., appearing) and the Court having read the parties' written submissions and heard argument on June 18, 2004, and July 1, 2004, and for good cause found, it is on this 14<sup>th</sup> day of July 2004 ORDERED that:

1. Beginning on August 1, 2004, minutes of the WEST MILFORD TOWNSHIP COUNCIL "regular" meetings shall be available to the public no later than 48 hours prior to the next "regular" meeting and minutes of the WEST MILFORD TOWNSHIP COUNCIL "workshop" meetings shall be available to the public no later than 48 hours prior to the next "workshop" meeting.

2. Beginning on August 1, 2004, minutes of WEST MILFORD TOWNSHIP PLANNING BOARD "regular" meetings shall be available to the public no later than 48 hours prior to the next "regular" meeting and minutes of WEST MILFORD TOWNSHIP PLANNING

the next "workshop" meeting.

3. The minutes of the WEST MILFORD TOWNSHIP COUNCIL "regular" and "workshop" meetings not yet prepared shall be prepared and made available to the public by no later than August 1, 2004.

4. That up until August 1, 2004, CDs of those WEST MILFORD TOWNSHIP COUNCIL "regular" or "workshop" meetings for which minutes have not yet been made publicly available shall be provided to Plaintiff free of charge.

5. That the Defendant WEST MILFORD TOWNSHIP PLANNING BOARD's future meeting minutes shall, for each person who addresses the Board, include the person's name, address and a summary of the comments made.

6. That Defendant ~~WEST MILFORD TOWNSHIP COUNCIL and the WEST MILFORD TOWNSHIP PLANNING BOARD~~ are jointly liable for Plaintiff's costs of court in the amount of \$259.50 and shall remit this amount to Plaintiff within 30 days of the entry of this Order.



Hon. Robert J. Passero, A.J.S.C.

Statements required by R.4:42-1(a)

This motion was (check one)  Opposed  Unopposed

Written / Oral (circle one) findings of fact and conclusions of law were rendered on \_\_\_\_\_, 2004, or

A statement of reasons why no findings of fact and conclusions of law were made is appended to this order.

*For the reasons stated by this Court on the record on June 18, 2004 as reflected in the transcript. All litigants to this action have received a copy of the transcript. And further for the reasons stated by this Court on the record this date.*



## **EXHIBIT D**

**FILED**

**MAY 08 2007**

JOHN A. O'SHAUGHNESSY, J.S.C.

Richard Gutman  
Richard Gutman, P.C.  
55 Warfield Street  
Montclair, New Jersey 07043-1116  
973-744-6038 (voice & fax)  
rickggg@yahoo.com  
Attorney for Plaintiffs O'Shea and Paff

MARTIN O'SHEA and JOHN PAFF,  
Plaintiffs,

vs.

KEARNY BOARD OF EDUCATION,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
HUDSON COUNTY  
DOCKET NO. **L 856-07**

Civil Action

**ORDER**

This matter being opened to the Court by Richard Gutman,  
P.C., attorney for Plaintiffs Martin O'Shea and John Paff, by way  
of an order to show cause summary action, on notice to Kenneth

S. Lindenfelser Esq., attorney for Defendant Kearny Board of

Education and the Court having considered the papers submitted by

the parties, and having heard oral argument on April 27, 2007, and for

at 10:00 on the  
12:00 on April 27 2007, and for good cause appearing,

IT IS on 8<sup>th</sup> Day of May, 2007 ORDERED

as follows:

~~1. It is hereby declared that the Kearny Board of Education  
violated the Open Public Meetings Act, N.J.S.A. 10:4-14, by  
denying O'Shea and Paff access to the minutes of the January 16,  
2007 public meeting prior to the February 2007 meeting;~~

*Denier*

2. The Kearny Board of Education is hereby ordered to grant  
access to the minutes of public meetings no later than ~~two weeks~~  
~~after the meeting or~~ three business days prior to the next

meeting, ~~whichever comes first;~~

3. It is hereby declaring that the Kearny Board of Education on February 8, 2007, violated OPRA, N.J.S.A. 47:1A-1, -5, and the common law right of access to public records by denying O'Shea and Paff access to the factual portions of the minutes of the January 16, 2007, public meeting;

*Denies*

4. The Kearny Board of Education to hereby ordered to grant O'Shea and Paff access to factual portions of unapproved minutes of public meetings.

5. ~~Plaintiff shall submit any bill of costs or petition for attorney's fees by \_\_\_\_\_, 2007.~~ \*

6. Plaintiff shall serve a copy of this order upon the Defendants within 7 days of the date hereof.

*John A. O'Shaughnessy*  
JOHN A. O'SHAUGHNESSY, J.S.C.

opposed   
unopposed

*\* Denies AS THIS COURT FINDS PLAINTIFF IS NOT ENTITLED TO COUNSEL'S FEES UNDER OPRA, N.J.S.A. 47:1A-1 ET SEQ. AS PLAINTIFF IS NOT A PREVAILING PARTY UNDER THE STATUTE.*

# **EXHIBIT E**

**BOROUGH OF MOUNTAIN LAKES COUNCIL MEETING**  
**MONDAY, DECEMBER 10, 2007**  
**MINUTES**  
**7:30 P.M.**

1. **CALL TO ORDER; OPENING STATEMENT:** This meeting is being held in compliance with Public Law 1975, Chapter 231, Sections 4 and 13, as notice of this meeting and the agenda thereof had been reported to The Citizen and the Morris County Daily Record on January 3, 2007 and posted in the municipal building.

Mayor George Jackson called the meeting to order at 7:30 p.m.

2. **ATTENDANCE AND FLAG SALUTE**

All Council members were present except for Councilman Gormally. Also in attendance were Borough Manager Gary Webb, Borough Attorney Marty Murphy and Borough Clerk Christina Whitaker.

3. **EXECUTIVE SESSION** - (Pursuant to the Open Public Meetings Act, P.L. 1975, Chapter 231)

Resolution 147-07

WHEREAS, the Borough Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey finds it necessary to discuss matters relating to:

- PBA Contract Negotiations
- Shared Services Negotiations
- Personnel/New Borough Manager
- Personnel Matter

WHEREAS, the Borough Council believes it to be in the best interest of the public to discuss such matters in closed session.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Mountain Lakes, that it shall enter Executive Session to discuss only those matters mentioned above; the results of which will be disclosed when the matters are resolved and upon vote of the Governing Body to release the minutes.

Motion by Councilman Shaw, second by Councilwoman Wilson, to enter into Executive Session with all members in favor signifying by "Aye".

Motion by Councilman Urankar, second by Deputy Mayor Davis to return to the public portion of the meeting at 8:05 p.m., with all members in favor signifying by "Aye".

4. **COMMUNITY ANNOUNCEMENTS**

The Christmas Tree and Menorah lighting have taken place. Mayor Jackson announced that Gary Webb received the "Citizen of the Year" award and Jim Gannon the "Citizens Achievement Award" at the Police Christmas Party. He noted this would be Mr. Webb's last official meeting before he retired from the Borough.

5. **PUBLIC COMMENT**

Mayor Jackson explained the Council's policy of limiting each speaker to 5 minutes and no

yielding of time to another person.

Fred Kanter - Hanover Road

Mr. Kanter questioned portions of the Borough Hall Facilities Committee's report on space needed for departments and storage.

Mimi Kaplan - Lake Drive

Ms. Kaplan asked the Council if it would be hiring a planner to determine the actual space needed by the Borough.

Terri McInerney – Littlewood Court

Ms. McInerney said she was not opposed to the proposed expansion of Borough Facilities but questioned why the Board of Education could not move, freeing up valuable space.

## **6. SPECIAL PRESENTATION**

Borough Hall - Facility Committee Report (hereto attached)

Councilman Urankar introduced the members of the Committee. He explained the purpose of the Committee and its recommendations.

In response to one of the question in the public comment portion of the meeting, Mr. Webb said that hiring a professional would be needed to evaluate the report and provide recommendations.

Councilwoman Emr noted that it was a three step process: first, the analysis of space needed, second the design, and third, the administration of construction. A smaller committee will help to determine the needed space and design and will include Joan Nix, Pat Rusak and Councilman Shaw. She also explained that the Board of Education had financially invested in the present Borough Hall when it was built.

Councilman Urankar pointed out that if a new space was not built, repairs to the present building would still have to be done. This would include a new roof and upgrade of the heating and air conditioning system. He also told the public he was in favor of shared services when it was cost effective to do so.

Councilwoman Emr said the Council would continue to study shared services but noted that the Borough already had 22 contracts for shared services.

Mayor Jackson read a statement from Councilman Gormally before opening the meeting for public comment on the Borough facilities report. (hereto attached)  
Speakers were limited to 3 minutes.

Doug McWilliams – Boulevard

Mr. McWilliams said the Fire Department was already a shared service with back up from other municipalities. He added that even if the Fire Department merged with another municipality, the Mountain Lakes Fire Department would still be a substation in need of additional space.

Joseph Hehir - Hanover Road

Mr. Hehir suggested moving the Fire Department to a more central location.

Steve Butera – Hanover Road

Mr. Butera said the present location was centrally located.

Mimi Kaplan – Lake Drive

Ms. Kaplan said she was more comfortable knowing that the Fire Department was located in Mountain Lakes.

Fred Kanter – Hanover Road

Mr. Kanter suggested that the Borough's Police Department be moved to Boonton Township.

Police Chief Tovo noted that the Township Police Department may not meet State specifications either.

Terri McInerney – Littlewood Court

Ms. McInerney suggested a survey be sent to residents asking what improvements they would like to see done in the town.

Mr. Webb explained that he requested less administrative space because he was concerned with the needs of the Police and Fire Departments. However, he said that it may not have been a fair assessment for all the other employees. A professional would be needed to help with the final calculated needs.

Michael Feigelis – Boulevard

Mr. Feigelis asked if a referendum would be required to budget money for a new facility.

Mayor Jackson said a public vote was not legally necessary.

Councilman Urankar noted that the public would have plenty of opportunity for input.

Rich Pierce – Pollard Road

Mr. Pierce said that it has been known for years that additional space was needed, adding nothing had changed. He said it was time to move ahead.

Mayor Jackson closed the public comment portion on the presentation at 9:30 p.m.

Motion by Councilman Shaw, second by Councilman Urankar, to move forward with the recommendations of the Facility Committee, with all members in favor signifying by "Aye" with no one opposed.

## 7. \*RESOLUTIONS

R132- 07 - Tax Appeal/Heller

R133- 07 - Change Order # 2/Pave King Inc. - Pulled by Councilman Urankar

R134- 07 - 2007 Speed Grant

R135- 07 - Tax Overpayment/Dyt

R136- 07 - Tax Overpayment /Ragland

R137- 07 - Interlocal Service Agreement with Morris County for Dispatching

R138- 07 – Housing Partnership

R139- 07 - Award of Bid to Allied Biological of NJ Inc. - Pulled by Councilman Urankar

R140-07 - Tax Overpayment/ Barkauskas

R141-07 - Contract Agreement with Montville for Animal Control

R142-07 - Contract Agreement with Montville for Health Services

R143-07 - Emergency Appropriation - Pulled by Councilman Urankar

R144-07 - Payment of Bills

R145-07 – New Borough Manager- Pulled for Discussion in Executive Session

R146-07 – Transfer of Funds

**8.\* MINUTES**

November 13, 2007-Regular  
 November 13, 2007 - Executive  
 November 26, 2007 - Regular  
 November 26, 2007 - Executive

**9. \* DEPARTMENT REPORTS**

- A. Animal
- B. Health Officer
- C. Public Health Nurse
- D. Construction Official
- E. Fire Department

**Consent Agenda Vote**

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Gormally						X
Emr			X			
Shaw	X		X			
Davis		X	X			
Wilson			X			
Urankar			X			
Jackson			X			

**R133 - 07**

Mr. Webb explained why the change order was necessary.

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Gormally						X
Emr			X			
Shaw	X		X			
Davis		X	X			
Wilson			X			
Urankar				X		
Jackson			X			

**R139 - 07**

Mr. Webb explained that two extra treatments were needed for Wildwood Lake.

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
----------------	-----	-------------------	-----	----	---------	--------

Gormally						X
Emr			X			
Shaw		X	X			
Davis			X			
Wilson			X			
Urankar	X			X		
Jackson			X			

R143 -

07

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Gormally						X
Emr	X		X			
Shaw			X			
Davis		X	X			
Wilson			X			
Urankar			X			
Jackson			X			

**10. ATTORNEY'S REPORT**

**11. MANAGER'S REPORT**

Pre-Disaster Mitigation Grant

Lease Agreement for Station asking for 6 more years beyond remaining 4 years.

**12. COUNCIL REPORTS**

Energy Audit

Master Plan Committee

Councilman Urankar said the Trails Committee does not want to meet monthly and suggested the committee become part of the Environmental Commission.

Councilwoman Emr said Duke Smith would be resigning as chair of the 55 Plus Committee.

Deputy Mayor Davis said the Master Plan Committee has appointed Barbara Palmer as Chair and asked that \$2000 be placed in the 2008 budget.

The Traffic and Safety Committee would like to be disbanded. The Council disagreed.

Councilman Shaw updated the Council on the Highlands Master Plan.

Motion by Councilman Urankar, second by Councilman Wilson, to go back into Executive Session at 10: 20 p.m., with all members in favor signifying by "Aye."

Motion by Councilman Urankar, second by Councilman Shaw to close the Executive Session and return to the public portion of the meeting at 11:15 p.m., with all members in favor signifying by "Aye"

Vote to hire new Borough Manager

**R145 - 07**

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Gormally						X
Emr			X			
Shaw			X			
Davis		X	X			
Wilson	X		X			
Urankar			X			
Jackson			X			

**13. ADJOURNMENT**

Motion by Councilman Urankar, second by Councilman Shaw to adjourn the meeting at 11:20 p.m. with all members in favor signifying by "Aye."

**\*Consent Agenda**

Attest: \_\_\_\_\_  
Christina Whitaker, Borough Clerk

\_\_\_\_\_  
George B. Jackson, Mayor

## **EXHIBIT F**

SUPERIOR COURT OF NEW JERSEY  
MORRIS COUNTY  
LAW DIVISION - CIVIL PART  
DOCKET NO. MRS-L-2291-02  
APP. DIV. NO. \_\_\_\_\_

---

FRED KANTER,

Plaintiff,

vs.

MOUNTAIN LAKES BOARD OF  
EDUCATION,

Defendant.

---

TRANSCRIPT

OF

MOTION

Place: Morris County Courthouse  
Washington & Court Streets  
Morristown, New Jersey

Date: July 11, 2003

B E F O R E :

HONORABLE B. THEODORE BOZONELIS, J.S.C.

TRANSCRIPT ORDERED BY:

FRED KANTER,  
(81 Hanover Road, Mountain Lakes, N.J. 07046)

A P P E A R A N C E S :

TODD FINCHLER, ESQ., (Decker & Finchler),  
Attorney for the Plaintiff.

THOMAS JOHNSTON, ESQ.,  
(Porzio, Bromberg & Newman, PC),  
Attorney for the Defendant.

Video Recorded By: N/A

////////////////////////////////////  
**METRO TRANSCRIPTS, L.L.C.**

**Cathy E. Betz**

**Mary Nelson**

316 Ann Street

Randolph, New Jersey 07869

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Summation

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MR. FINCHLER: Basically this action was filed under the Open Public Meetings Act because my client believed that the Mountain Lakes Board of Education has not been complying with its requirements as a public body.

My client has set forth a very, very simple approach for summary judgement. The minutes, which were prepared by the Board, we accept everything in them as true. The testimony of the Defense witnesses, we also accept as true. For purposes of our motion all reasonable inferences from those documents should be in favor of the defendant. And even if you accept those facts and inferences in a light most favorable to the non-moving party we still believe as a matter of law this Court should find numerous violations of the Open Public Meetings Act.

THE COURT: Let's talk about those because there are some, you know, exchange of briefs in terms of the relief being sought here in matters that plaintiff maybe now recognizing that being time barred. Why don't we go through and talk about -- and you know what? You can have a seat, Mr. -- (Indiscernible) take us awhile to go through all of this.

And talk about what remains here and, and exactly what the plaintiff is seeking in that regard,

1 which as I understand it now, the relief that you're  
2 seeking is injunctive relief with (Indiscernible).

3 MR. FINCHLER: The relief -- that's correct.  
4 However, the relief that any OPMA plaintiff seeks is  
5 that which the Court finds necessary to remediate  
6 violations. That meaning that all a plaintiff can do  
7 is make a suggestion. The Court can't be bound by it.  
8 It is --

9 THE COURT: No, I understand that. --

10 MR. FINCHLER: -- the Court's province to  
11 determine --

12 THE COURT: -- Your suggestion then is that

13  
14 MR. FINCHLER: Is, is, is a monitor for the  
15 purposes of determining if there are violations and to  
16 correct them in the future to make sure that the Board  
17 comports itself in a manner with the OPMA strictly  
18 adhering to its requirements. That's right.

19 THE COURT: Okay. Now let's go through each  
20 of your arguments. As I understand it, what you're  
21 saying -- one of your arguments is that the resolutions  
22 when the Board goes into executive sessions are not  
23 adequate. And you cite a June 24, 2002 resolution in,  
24 in the brief and you basically say that the  
25 (Indiscernible) statutory exemptions and they're not

1 laying out enough information --

2 MR. FINCHLER: That -- it's based on a Law  
3 Division from 1995, the State College local decision  
4 where --

5 THE COURT: Yes.

6 MR. FINCHLER: -- the Court specifically said  
7 you can't simply repeat the statutory exceptions. You  
8 have to provide some information. For instance, a  
9 resolution will not say we're going in to discuss  
10 litigation, period. It should be litigation, A versus  
11 B, so at least the general public has some general  
12 understanding as to what is being discussed without  
13 interfering at all with the public body's right to  
14 discuss such matters in private inside or outside the  
15 presence of counsel.

16 THE COURT: And then you're indicating that  
17 the minutes in many instances are not comprehensible.  
18 And most importantly, what you're saying to the Court  
19 is that the minutes of the executive session have not  
20 been timely released. As a matter of fact it's been  
21 egregious in terms of -- your argument is that it's  
22 egregious in terms of the fact that they don't release  
23 these minutes until a year later or six months later.  
24 And I believe you cite specific instances in that  
25 regard with respect to when minutes were released that

1 date back to over a year ago.

2 MR. FINCHLER: Your Honor is correct.

3 However, we, we believe that the comprehensibility of  
4 the minutes is an important issue inasmuch as it is the  
5 all -- one and only source for the general public to  
6 understand, even in a general sense without sacrificing  
7 privacy or confidentiality issues, to understand what  
8 was discussed behind closed doors. That's the whole  
9 purpose of the Sunshine Law, is to enable the general  
10 public to understand, even in a general sense without  
11 mentioning names or, or privileged communications with  
12 counsel or about litigation or about the purpose of  
13 real property. So we think the comprehensibility of  
14 the minutes is lacking.

15 And as far as the minutes being promptly  
16 available, there was a period of two years where the  
17 general public had to wait. And in fact I think both  
18 parties are agreeing that these minutes have been  
19 released on a -- according to a Kanter rule. Whenever  
20 Fred Kanter requests their release --

21 THE COURT: Right.

22 MR. FINCHLER: -- that, that's when they're  
23 released, and that's not the standard. The OPMA says  
24 you have to release -- they have to be promptly made  
25 available not just upon request.

1 THE COURT: Right. And you actually cite to  
2 the fact that on July 17th of 2002 there was -- minutes  
3 were released from July 10th of 2000 to June 24th 2001.  
4 So basically saying is a year later when those minutes  
5 were released and it was done on, on the behest of Mr.  
6 Kanter.

7 MR. FINCHLER: As much as two years if you  
8 back to the earlier portion, the June 2000 -- June 10th  
9 2000, the earlier point in time, people had to wait two  
10 years to get those records. If Mr. Kanter hadn't asked  
11 they may not be available right now.

12 THE COURT: And then you bring up adequate  
13 notice with respect to publication in two papers and 48  
14 hours in advance, correct?

15 MR. FINCHLER: That's correct, Judge.

16 THE COURT: You actually cite the instances  
17 that have occurred subsequent to the filing of this  
18 complaint.

19 MR. FINCHLER: By way of example, that's  
20 right, Your Honor.

21 THE COURT: Right. So are those the areas  
22 that we're talking about here or am I missing  
23 something?

24 MR. FINCHLER: Your Honor has not missed a  
25 thing. Your Honor has lifted my notes right out of the

1 pages.

2 THE COURT: Okay. And in terms of the time  
3 bar arguments, what you're saying to the Court is well  
4 first of all, we're not time barred on the June 24, '02  
5 resolution cited because we filed our complaint within  
6 45 days. And on the adequate notice, it's continuing,  
7 so you're not time barred in that respect. And of  
8 course, you didn't -- and the 45 days is when, when the  
9 public receives the information. And with respect to  
10 the minutes, they weren't received until just recently.

11 MR. FINCHLER: Yes, Your Honor.

12 THE COURT: Okay. And what you're also  
13 saying to me is all you have to do is look at these  
14 documents and you can see that there wasn't compliance  
15 in terms of what the minutes say in terms of being  
16 comprehensible in terms of the adequacy of the  
17 resolution. And certainly the untimeliness of the  
18 release of the executive session minutes speak for  
19 themselves.

20 MR. FINCHLER: That's exactly right, and  
21 that's further reason why we never requested written  
22 discovery of the other side, because we have the  
23 minutes. The minutes speak for themselves and they're  
24 being refute as to what they are. It's a stipulated  
25 point of evidence as to what they are. And the law is

1 what the law is. And we just believe that the Court  
2 can apply the Court to as to the minutes to determine  
3 if they're in violation.

4 THE COURT: Thank you. I'm going to come  
5 back to you and, of course, give you an opportunity to  
6 speak further. Is there something else you wanted to  
7 address to the Court?

8 MR. FINCHLER: Your Honor, this may be a  
9 little bit unorthodox. My client is here, Mr. Kanter.  
10 He has asked for a minute to address the Court. I'm  
11 not sure if counsel is going to object to that, but he,  
12 he kind of wants to let the Court know why he has  
13 brought this action.

14 THE COURT: Okay. Well let me hear from --  
15 there may be objection, but let me hear from the  
16 Defense, and then I'll come back to you and we'll ask  
17 about Mr. Kanter speaking at that time.

18 MR. JOHNSTON: Thank you, Your Honor. This  
19 is not an academic exercise. A lawsuit has been  
20 brought. And in every lawsuit you have allegations and  
21 you have a request for relief. In fact the rules of  
22 court -- it's so well settled that you don't even need  
23 a case for this proposition, but it is in the court  
24 rule. And it's rule 4:5-2. And that rules says that  
25 when you bring a lawsuit you have to specify what you

1 want. And --

2 THE COURT: But haven't they done that?

3 MR. JOHNSTON: They have done that,  
4 precisely, Your Honor. And they did that in the second  
5 amended complaint --

6 THE COURT: Right.

7 MR. JOHNSTON: -- and asked for three things.  
8 Number one, to void Board actions that were done  
9 without complying with the act. Number two was to  
10 impose penalties on the Board of Education. And number  
11 three was to recover attorney's fees. That's all they  
12 sought --

13 THE COURT: Or any other --

14 MR. JOHNSTON: -- in the second amended  
15 complaint.

16 THE COURT: Or any other relief.

17 MR. JOHNSTON: It -- in the third request for  
18 attorney's fees, with that sentence there's the throw  
19 away language, "and any other relief the Court deems  
20 just and reasonable". That language does not give a  
21 plaintiff, Mr. Kanter or any plaintiff, a right to  
22 disregard the court rules specifying that you need to  
23 ask for a specific demand for relief. If that was the  
24 case then that rule would have no meaning. --

25 THE COURT: Well let me ask you --

1 MR. JOHNSTON: -- All you would have to do --

2 THE COURT: -- about that in the context of  
3 the Sunshine Law. And after all we're dealing with the  
4 Sunshine Law here. And in their, in their paragraphs  
5 with respect to laying out the amended complaint they  
6 lay out all of what they say was improper by the Board,  
7 vis a vie, their allegations, okay? So you're  
8 certainly on notice as to all of that. And then in  
9 their relief they first ask for all of the other forms  
10 of relief -- because there's about four basic forms of  
11 relief under, under the Sunshine Law. And they use the  
12 catchall at the end, "any other relief". So yes, they  
13 don't specifically say injunctive relief, but isn't it  
14 really covered in the -- how are you prejudiced in any  
15 way?

16 MR. JOHNSTON: The, the requirement that they  
17 specify the type of relief -- it, it just -- it makes  
18 -- it's just a matter of -- first of all, in the rules  
19 of court it's required. But second of all, you need to  
20 know as a defendant in a matter what the case is about.

21  
22 THE COURT: Right.

23 MR. JOHNSTON: -- If you're defending a case  
24 and you know that you have potential exposure for  
25 avoidance of Board actions, --

1 THE COURT: Yeah.

2 MR. JOHNSTON: -- all right, so you're going  
3 to make certain decisions in the course of discovery,  
4 in the course of litigating with that in mind. And the  
5 same is true if there's a request for monetary  
6 penalties and there's a request for attorney's fees.

7 The request for a court monitor -- aside from  
8 the fact -- and I haven't had a chance to discuss the  
9 merits or the lack thereof with plaintiff's claims.  
10 I'm just speaking to the request for relief. That  
11 comes at a time where plaintiff's ship, in a sense, is  
12 sinking. It's underwater. And now conceding that the  
13 request for relief that they sought initially cannot be  
14 granted as a matter of, of the facts and the record and  
15 as a matter of law, now they come up with a catchall,  
16 well we're also looking for a court monitor.

17 In the OPMA there's a specific section of the  
18 act. It's a specific statute, --

19 THE COURT: Right.

20 MR. JOHNSTON: -- which calls for injunctive  
21 relief.

22 THE COURT: Yeah.

23 MR. JOHNSTON: Plaintiff sought specific  
24 relief under the OPMA. He did not seek relief under  
25 that statute. And certainly when bringing a lawsuit

1 defendant does not have unfettered discretion in  
2 changing the rules as you go along, depending on how  
3 the case is going.

4 THE COURT: I understand your argument on  
5 that point.

6 MR. JOHNSTON: Okay. Would you like me to  
7 address --

8 THE COURT: Yes.

9 MR. JOHNSTON: -- the other matters?

10 THE COURT: Yeah, address the other matters.

11 MR. JOHNSTON: As to the allegations, in  
12 every lawsuit, again, there are allegations. How do  
13 you find out what the allegations are? You look at the  
14 complaint.

15 Plaintiff filed a complaint in July of 2002.  
16 In or about the early part of August the Board's  
17 counsel sent a letter to plaintiff's counsel under the  
18 rule on prosecuting frivolous claims and said you're  
19 hereby on notice --

20 THE COURT: You can sit down if you want.  
21 It's --

22 MR. JOHNSTON: Sure. You're hereby on notice  
23 that you have 28 days to withdraw your untimely claims.  
24 Otherwise the Board will reserve its right to seek  
25 sanctions.



1 MR. JOHNSTON: The adequate notice and as to  
2 the resolution being passed before going into private.  
3 And, and also --

4 THE COURT: You mean the adequacy of the  
5 resolution?

6 MR. JOHNSTON: Yes, of the resolution being  
7 passed in public before going into private session. I  
8 mean, that just -- if that doesn't circumvent our rules  
9 of court on frivolous claims I don't know what does.  
10 Here you're put on notice. You take some remedial  
11 measure. You acknowledge okay, well perhaps my  
12 complaint was not firm. You make some changes. And  
13 then at the time of summary judgement after you  
14 litigate the matter somehow you pull up these claims  
15 again. I mean, that -- it's just -- it defies  
16 fairness.

17 THE COURT: Let's focus on the minutes and  
18 the timeliness of the minutes.

19 MR. JOHNSTON: Okay. As to the minutes, the  
20 question of the second amended complaint, the  
21 allegations there, as Your Honor noted, was the minutes  
22 are not kept in a reasonable, comprehensible manner.  
23 Okay. So the next question is all right, so what is a  
24 reasonable, comprehensible manner. Where, where do you  
25 look for that? And there's not a lot of law out there

1 and there's no law on maintaining minutes through  
2 executive sessions. But there is some law on  
3 maintaining minutes in the public sessions, and that's  
4 in the Libiscim (phonetic) matter of the decision by  
5 the Appellate Division and it's dated 1993.

6 They held that the minutes did not --

7 THE COURT: (Indiscernible) -- I'm sorry.  
8 Back up for me for a minute and repeat that again, what  
9 you just said to me.

10 MR. JOHNSTON: There's not --

11 THE COURT: There's no law -- go ahead.

12 MR. JOHNSTON: There's no law on the  
13 maintaining of minutes through executive sessions. No  
14 law was cited by the plaintiff and no law was found by  
15 the defendant.

16 There is law on maintaining minutes to public  
17 meetings, --

18 THE COURT: Right.

19 MR. JOHNSTON: -- the public sessions. And  
20 that's in the Libiscim matter. In that matter the  
21 Appellate Division held that word for word recitation  
22 of what goes on is not required. And that what the  
23 minute simply need to say is what took place and the  
24 action taken.

25 When reviewing the minutes -- and again, Your

1 Honor, it's hard from the Board's point of view to  
2 defend this motion based on the fact that no specific  
3 facts have been put before Your Honor. I mean, to ask  
4 Your Honor to use your time to look through all the  
5 minutes and then to kind of do the work on behalf of  
6 plaintiff is unreasonable.

7 But let's take one set of minutes in the  
8 complaint, and that's -- in my moving brief it's the  
9 minutes for the September 18th meeting, and it's on  
10 page 11. And this is just an example of, of minutes to  
11 executive sessions.

12 The statute requires -- the act requires that  
13 minutes state the time and place of the meeting, the  
14 members present, the subjects considered and the  
15 actions taken, if any, and the vote of members, if any.  
16 There is no specific statute on what's required of  
17 executive sessions minutes.

18 Here, in terms of the time and place, on the  
19 September 18th --

20 THE COURT: Which brief are you referring to

21  
22 MR. JOHNSTON: This is my moving brief. It's  
23 dated May 23.

24 THE COURT: Yes, I have that in front of me.  
25 Which page are you --

1 MR. JOHNSTON: Page 11.

2 THE COURT: Oh, page 11. I thought you said  
3 page six. Okay, sorry.

4 MR. JOHNSTON: Sorry.

5 THE COURT: Okay, go ahead.

6 MR. JOHNSTON: Okay. And in terms of  
7 complying with NJSA 10:4-14 in terms of the time and  
8 place, the minutes specify that. The minutes specify  
9 the time. In fact they specify the time in which the  
10 executive session concluded. They specify the  
11 particular members present. And when one of the  
12 members, the Boonton Township representative -- no, I'm  
13 sorry. When the discussion of the superintendent was  
14 discussed by the Board the minutes even reflect that  
15 the superintendent and the business administrator left  
16 the room.

17 The -- item A, athletic field use and  
18 potential land acquisition development, well if you  
19 look to Libiscim we ask does that statement say what  
20 took place, a discussion on that topic? Yes, it does.  
21 That is what took place. Land acquisition --

22 THE COURT: Does it say what final action was  
23 taken?

24 MR. JOHNSTON: The, the record revealed, Your  
25 Honor, and this is undisputed, that no action was taken

1 in executive session. So there's no actions to void  
2 that occurred in executive session. All actions were  
3 taken in public. And as to land acquisition  
4 development, that is a statutory exemption under the  
5 act.

6 Parental request for the children to remain  
7 in Mountain Lakes, well that is a privileged type of  
8 communication under the federal and state school laws  
9 and student privacy protections.

10 And so beyond --

11 THE COURT: How about a zero tolerance  
12 incident involving the Lake --

13 MR. JOHNSTON: Yes, and the record revealed  
14 that that related to student discipline. And that --

15 THE COURT: But it doesn't say -- see, that's  
16 their point. The point is why shouldn't there be  
17 something in the minutes that is more than just a  
18 cursory statement that somehow explains -- noting  
19 privacy interests, but somehow explains what is being  
20 said, and isn't there case law in that regard.

21 MR. JOHNSTON: Certainly plaintiffs has not  
22 produced case law in that regard. And there is no case  
23 law out there. --

24 THE COURT: That, that -- doesn't the Matawan  
25 (phonetic) case, talks about how, how the minutes

1 should be -- what should be in the minutes --

2 MR. JOHNSTON: Exactly. --

3 j THE COURT: -- that's (Indiscernible).

4 MR. JOHNSTON: -- And they said that the  
5 minutes need to discuss the subjects that -- the  
6 minutes need to discuss (Indiscernible) subjects  
7 discussed. And that's what occurs here.

8 THE COURT: Well it says a little bit more  
9 than that, doesn't it, I mean, in terms of what -- you  
10 don't have to be detailed. I mean, they say you don't  
11 have to be detailed. And I recognize that. After all,  
12 these are minutes of the Board of Education. But I  
13 think that the main premise of this complaint on behalf  
14 of the plaintiff is if you say, as your (Indiscernible)  
15 incident regarding a Lake (Indiscernible) student,  
16 there -- no one knows what that means.

17 MR. JOHNSTON: Well there's -- well certainly  
18 there's no law out there that requires that if someone  
19 reads the minutes they know precisely what --

20 THE COURT: No, I understand that. --

21 MR. JOHNSTON: -- occurred --

22 THE COURT: Yeah, but you got to have -- it's  
23 got to have some -- in other words, there's got to be  
24 some explanation, doesn't there, about exactly what,  
25 what is being stated in terms of, in terms of

1 explaining the minutes, at least some kind of  
2 indication as to what is meant by the minutes rather  
3 than just a zero tolerance incident?

4 MR. JOHNSTON: Well zero tolerance, that  
5 invokes student discipline. And the record reveals in  
6 the deposition of the board president that the Mountain  
7 Lakes community is such that it's a fine line the board  
8 members have to draw. How specific can you be without  
9 violating the student's privacy protections, privacy

10 interests. --

11 THE COURT: I guess --

12 MR. JOHNSTON: -- Sitting here now playing  
13 Monday morning quarterback, looking at it and having to  
14 decide well what, what occurred here, what information.  
15 Well yeah, but you know, information to one person may  
16 be sufficient and to another person it may not be  
17 sufficient. But in terms of having to discuss the  
18 subject matters, having to specify the subject matters  
19 discussed, it does that. And it does that right here.

20 There's no suggestion that improper actions  
21 occurred in executive. The, the Board -- this is our  
22 position -- the Board is required to discuss the  
23 subjects discussed. That's what this does. And, and  
24 to conclude that well more is needed -- plaintiff has  
25 ~~the burden to show that there is factual support in the~~

1 record to demonstrate that, that one of these  
2 conversations were held in private that should not have  
3 been held in private, or that there's some law that  
4 requires more, and there is none as to the reasonable,  
5 comprehensive understanding of the minutes.

6 As to the allegation that the minutes were  
7 not made promptly available, of course, plaintiff did  
8 not mention that the minutes to the regular board  
9 meetings are made available --

10 THE COURT: Yeah, (Indiscernible) --

11 MR. JOHNSTON: -- routinely, every two weeks.  
12 Executive session minutes, that's a different story.  
13 There's actually no law out there that says when you  
14 have to release minutes to executive sessions.  
15 Nonetheless, the Board has released those minutes.  
16 They did it after reviewing the propriety of releasing  
17 information in those minutes. And plaintiff cannot  
18 recall --

19 THE COURT: But you -- do you -- are you  
20 arguing to me that a year or two years later is  
21 appropriate to release the --

22 MR. JOHNSTON: Certainly not, but to that  
23 extent plaintiff sat on his rights to bring any kind of  
24 a challenge. We have a 45-day limitations rule under  
25 the, under the act. If he felt that executive session

1 minutes should have been released sooner then he should  
2 have brought an action. He's barred from challenging  
3 the minutes of the board meetings that occurred --

4 THE COURT: Well is he barred? I mean, --

5 MR. JOHNSTON: -- in July 2000 --

6 THE COURT: -- he's not barred because it's  
7 45 minutes after -- 45 days after the minutes are  
8 released to the public. --

9 MR. JOHNSTON: The, the --

10 THE COURT: -- I mean, that's what the,  
11 that's the statute says, so that's kind of circuitous  
12 argument, isn't it? I mean, he goes and says that  
13 there's no minutes. You finally release the minutes.  
14 And then after he gets the minutes, within 45 days he  
15 files a lawsuit.

16 MR. JOHNSTON: But he didn't ask, he didn't  
17 ask for the minutes. And --

18 THE COURT: Why should he have to? That's  
19 not his job. The Board had the job of releasing the  
20 minutes to the public. As a matter of fact, in the  
21 resolution that was cited by the plaintiff in his brief  
22 it talks about the fact that it will be released in 30  
23 days unless, unless a future date is necessary. I  
24 mean, you can redact whatever privacy information you  
25 release. I, I think that that's really the one problem

1 that the Board has here, which is the failure to  
2 release at all the executive session minutes.

3 MR. JOHNSTON: Well compliance with the Open  
4 Public Meetings Act, any borough administrator or  
5 school board administrator will tell you is a challenge  
6 and task. Here, remarkably, our position is Mountain  
7 Lakes certainly has complied with the requirements.  
8 Let's not look at what the intent of the law is in a  
9 vacuum. The record revealed that no one has ever  
10 requested these minutes. One person requested these  
11 minutes, and that's Mr. Kanter. Upon that request the  
12 minutes were made available. Mr. Kanter has no  
13 recollection, although he received the minutes in July  
14 of 2002, he has no recollection of when he requested  
15 the minutes.

16 But to say that they should have been made  
17 available, I mean, this is a theoretical exercise. No  
18 one, no one asked for them. Mr. Kanter didn't ask for  
19 them. But when he did ask for them they were made  
20 available. But Mr. Kanter can't remember when he did  
21 ask for them.

22 And, and so all this time goes by. No one is  
23 asking for the executive session minutes. And they --  
24 there's no evidence to suggest that they weren't  
25 maintained. And Mr. Kanter asks for them and says ah-

1 ha, you didn't release the ones to the meetings in  
2 2000. Say, I got you on this one. And that's not,  
3 that's not what the Sunshine Law is supposed to do.

4 In terms of -- Your Honor, I don't know if  
5 you want me to address the allegations as to the, the  
6 merit of the allegations concerning the public  
7 resolutions before going into private. It's our --  
8 certainly our position that that contention of  
9 plaintiff is completely meritless. First of all, it's  
10 time barred. And the -- for any board meeting that  
11 occurred before May 28th, it's time barred. And I don't  
12 think that plaintiff is prepared to argue that  
13 it's not.

14 Instead plaintiff -- well we have to infer  
15 facts plaintiff are relying on. But in the brief of  
16 plaintiffs he cites a meeting which occurred on June  
17 24th, but he cites the minutes to that meeting.  
18 There's no evidence in the record to suggest that that  
19 was a word for word recitation of what was actually  
20 said at that board meeting. There's no evidence to  
21 suggest that plaintiff was at that board meeting and  
22 heard what plaintiff is now claiming was said.

23 So, you know, saying a public resolution in  
24 public is different than what is stated in the minutes.  
25 And there's no evidence in the record to suggest that

1 it -- that the two are the same.

2 So you've, you've saw in our briefs often  
3 references to mere self-serving allegations aren't  
4 enough to sustain a claim. They're not enough to  
5 warrant summary judgement and they're not even enough  
6 to get the case to a fact finder. There has to be some  
7 facts in the record. It can't be conjecture. It can't  
8 be guessing. It can't be speculation --

9 THE COURT: You can't just give all these  
10 documents and say here, Judge, you look at them.

11 MR. JOHNSTON: Precisely, Your Honor. You  
12 can't rely on the, on the good will of the Court to  
13 ultimately come down in your favor unless you put hard  
14 facts before the Court for which defendant can respond  
15 to. They haven't done that.

16 THE COURT: Well let's stick to the, the two  
17 issues here with respect to the minute -- the specific  
18 minutes of June 24th '02, their timing, right? Let me  
19 get that here. This is on page six of plaintiff's  
20 i brief. Now that, that particular -- those particular  
21 minutes talk about the fact that what's going to be  
22 discussed on a confidential basis. And it just says  
23 legal personnel negotiations, right?

24 MR. JOHNSTON: Your Honor, --

25 THE COURT: Do you have that in front of you?

1 MR. JOHNSTON: Yes, that's June 24th, page  
2 two?  
3 THE COURT: It's page two what you're looking  
4 at. I'm looking at page six of the plaintiff's brief.  
5 MR. JOHNSTON: Oh.  
6 THE COURT: It's probably the same thing.  
7 MR. JOHNSTON: Okay. Okay, and which portion  
8 of the minutes is --  
9 THE COURT: It's the actual minutes, the --  
10 MR. JOHNSTON: Oh, the resolution.  
11 THE COURT: -- regular meeting -- which you  
12 just referred to on June 24th '02.  
13 MR. JOHNSTON: Okay.  
14 THE COURT: Caption "resolution".  
15 MR. JOHNSTON: Your Honor, this, this  
16 resolution has been provided to the Board. I mean, I  
17 haven't -- of course, it's the Board's resolution. I  
18 have -- this has been made part of the record. And the  
19 appendix, I don't know. I haven't seen this resolution  
20 before --  
21 THE COURT: I think it's in the appendix.  
22 MR. JOHNSTON: Okay. So this is -- okay.  
23 Now, now I understand. This was the resolution that  
24 was made in public to go into private. --  
25 THE COURT: Correct.

1 MR. JOHNSTON: -- Is that -- okay.  
2 MR. FINCHLER: That's correct.  
3 MR. JOHNSTON: Okay, okay.  
4 THE COURT: On June, on June 24th '02.  
5 MR. JOHNSTON: Okay.  
6 THE COURT: Okay? And this is one of the  
7 things that they're complaining of. And I take it your  
8 position is that they abandoned that relief and -- by  
9 not arguing it in their second amended complaint?  
10 MR. JOHNSTON: Yes, Your Honor.  
11 THE COURT: Okay. But let's just -- apart  
12 from that argument, let's just talk about this  
13 resolution, because it really focuses on two aspects of  
14 the (Indiscernible) complaint which was talked about.  
15 One is that it's not specific enough when it just says  
16 we're going into closed session, executive session on  
17 the legal personnel negotiations. It doesn't say, for  
18 example, on A versus B lawsuit, okay? And the other is  
19 that the matters that are discussed in executive  
20 session will be disclosed to the public within 30 days  
21 or appropriate future date. And of course, what  
22 i they're saying is that hasn't been the practice of the  
23 Board. They don't disclose their executive session  
24 minutes until somebody asks for them, and that's two  
25 years later or a year later. So those are the two

1 aspects that we're focusing on, in addition to the  
2 minutes themselves not being comprehensible by being --  
3 you know, the example that I gave you in the minutes  
4 about a zero tolerance incident involved -- involving  
5 the Lake Drive student, okay? So that's what they're  
6 really focusing on.

7 So I guess my first question to you is  
8 doesn't the Board, especially if they set that forth in  
9 their resolution, doesn't the Board itself have an  
10 obligation to make their executive session minutes  
11 available?

12 MR. JOHNSTON: I -- certainly they do. --

13 THE COURT: To the --

14 MR. JOHNSTON: -- One person --

15 THE COURT: -- public, I mean -- I shouldn't

16  
17 MR. JOHNSTON: -- to the pub --

18 THE COURT: -- say the public -- not when  
19 they're requested. I'm talking about --

20 MR. JOHNSTON: Well --

21 THE COURT: -- promptly make them available  
22 under the statute.

23 MR. JOHNSTON: Making them available, I -- if  
24 that means that you prepared them and you create a  
25 folder and you say these are executive session minutes

1 that are available to the public, you know, come and  
2 get them, but no one bothers to come and get them --  
3 THE COURT: Well it's the way you publish  
4 your regular minutes. You -- what you do is, as I  
5 understand it, is the next meeting you say here's the  
6 minutes from the previous meeting. So that every month  
7 -- and maybe you don't do it every two weeks, but every  
8 month shouldn't the Board be saying here's our minutes  
9 from the executive session?

10 MR. JOHNSTON: Those are discussed at board  
11 j meetings, the public minutes, to approve the minutes.  
12 I mean, that's why they're distributed that way.

13 THE COURT: Right.

14 MR. JOHNSTON: And minutes to executive  
15 session are approved in executive session. So in terms  
16 of making them available, I mean, it's a catchphrase in  
17 the act, but it's not clear how it can be implemented  
18 in real life.

19 THE COURT: Well does the statute make a  
20 distinction when it talks about minutes between  
21 executive session minutes and regular (Indiscernible)  
22 minutes?

23 MR. JOHNSTON: No, not as to the minutes  
24 themselves. --

25 THE COURT: Right.

1 MR. JOHNSTON: -- Obviously there's a  
2 distinction between executive sessions and public  
3 sessions.

4 THE COURT: There's no distinction, right?  
5 But shouldn't they be made available -- I mean,  
6 shouldn't the Board's obligation to do exactly what  
7 they do with the regular -- maybe they can't be  
8 available on a two weeks basis because there are  
9 privacy considerations and that likely can be redacted  
10 or whatever they need to do. But shouldn't they be  
11 available -- shouldn't the Board be saying these are  
12 our minutes, just like they do in a regular meeting  
13 when they move to approve the meeting minutes of the  
14 regular meetings from the previous meeting. And here  
15 they are, members of the public who are here.  
16 Shouldn't they be doing the same thing on a 30-day  
17 basis with the executive session minutes --

18 MR. JOHNSTON: Well --

19 THE COURT: -- and redacting what they need  
20 to redact?

21 MR. JOHNSTON: Sure, I -- I'm sure plaintiff  
22 would desire that. But to --

23 THE COURT: Forget plaintiff. I'm talking  
24 about the public at large. Shouldn't --

25 MR. JOHNSTON: Yeah, --

1 THE COURT: -- aren't they entitled to that?

2 MR. JOHNSTON: Absolutely. If they want to  
3 see the minutes they can ask for them and they can get  
4 them. I mean, in terms of requiring that the executive  
5 session minutes be standardized with the public  
6 minutes, there's, there's, there's no requirement of  
7 that in the act. Executive session minutes, by their  
8 very purpose of executive session, contains information  
9 that is sensitive.

10 An example is you specify the name of a  
11 candidate for superintendent. But a condition of the  
12 interview is that the candidate cannot have their name  
13 revealed because they're currently working for another  
14 school district. --

15 THE COURT: Right.

16 MR. JOHNSTON: Well if you reveal the minutes  
17 willy-nilly then the word gets out that this is the  
18 person who interviewed for the job. It even under  
19 (Indiscernible) job applicants' identities are  
20 protected from --

21 THE COURT: Yes.

22 MR. JOHNSTON: -- public disclosure.

23 THE COURT: And I understand that.

24 MR. JOHNSTON: And so executive session  
25 minutes are a different animal than public session

1 minutes.

2 THE COURT: Okay.

3 Do you want to respond?

4 MR. FINCHLER: Your Honor, I believe that  
5 anything I had would be unnecessary. It's clear that Your  
6 Honor understands our arguments. Whether, whether the  
7 Court agrees or disagrees with our arguments is not the  
8 point. The Court certainly understands it. So I don't  
9 believe there's anything I can add. I know that my client  
10 really would like about a minute --

11 THE COURT: Do you object to Mr. Kanter  
12 speaking?

13 MR. JOHNSTON: Yes, I do, Your Honor. Mr.  
14 Kanter is a party in this case. He had a chance to --

15 THE COURT: He's represented by counsel.

16 You're his -- he certainly -- I will give you  
17 the opportunity to speak to him if there's anything  
18 more to say on his behalf, but he's not representing  
19 himself in this.

20 MR. FINCHLER: I understand that, Your Honor.  
21 I explained to that to him beforehand. He just -- he  
22 wants to address the Court, whether it's considered part  
23 of the motion record or not. He, he kind of wanted  
24 to have, have a say in the case. He believes it's  
25 important --

1 THE COURT: Well, I do have --

2 MR. FINCHLER: He did submit a --

3 THE COURT: -- I have his certification --

4 MR. FINCHLER: He submitted an affidavit.

5 THE COURT: Right. And I've read his  
6 affidavit in that regard, the reasons why he brought  
7 the lawsuit. So I don't, I don't think we need to  
8 focus on that.

9 Well, it's true that (Indiscernible) raised  
10 by the defendant in, in (Indiscernible) here that  
11 technicalities for bringing a summary judgement in  
12 terms of laying out the specific facts and saying to  
13 the Court this is what -- it is an undisputed material  
14 fact that this is what you want to rule is not really  
15 laid out to me. It's basically -- there's  
16 (Indiscernible) to look at it and (Indiscernible)  
17 adequate, which I don't really think forms a basis for  
18 summary judgement in that regard.

19 However, there are specifics that have been  
20 called to my attention, maybe not in the proper form,  
21 but there are specifics that have been called to my  
22 attention which have to do -- and which are timely --  
23 which have to do with the June 24th '02 resolution and  
24 the issue regarding the distribution to the public,  
25 making available to the public the executive session

1 minutes in a timely fashion. It think those are the  
2 two issues that we need to focus on here.  
3 The other issues that are essentially raised  
4 I believe are time barred except for the adequate  
5 notice issue because they're saying that even  
6 substantive this time there aren't two papers utilized  
7 (Indiscernible) 48 hours (Indiscernible).  
8 You didn't really comment on that.  
9 MR. JOHNSTON: Your Honor, if I may comment  
10 on that.  
11 THE COURT: Sure.  
12 MR. JOHNSTON: And they reason why they  
13 didn't, they didn't -- they specified a date. The, the  
14 notice is in March, okay? They didn't specify any  
15 dates afterwards.  
16 THE COURT: Right.  
17 MR. JOHNSTON: There's nothing in the record.  
18 You need some facts to support a claim. --  
19 THE COURT: Yeah.  
20 MR. JOHNSTON: -- There's nothing that --  
21 THE COURT: Right.  
22 MR. JOHNSTON: -- that, that after May 28th  
23 publication was only given to one newspaper. I mean,  
24 to -- that it -- to suggest that is pure speculation.  
25 And to the extent they cite a fact, it's a time barred

1 date. And that's the March 2002 date.  
2 j THE COURT: And I've read his affidavit in  
3 that regard, the reasons why he brought the lawsuits.  
4 So I -- I don't think we need to focus on that.  
5 Look, it -- it -- it's true that, I think, as  
6 raised by the defendants from the Board of Education  
7 here that the technicalities of bringing a motion for  
8 summary judgment, in terms of laying out the specific  
9 facts and saying to the Court this is what is a  
10 undisputed material fact that this is what we want to  
11 rule. It's not really laid out to me, it's, basically,  
12 here's all the minutes. All you need to do is look at  
13 them, and you can see they're inadequate, which I don't  
14 think really forms the basis for summary judgment in  
15 that regard.  
16 l However, there are specifics that have been  
17 called to my attention, albeit maybe not in the proper  
18 form, but there are specifics that have been called to  
19 my attention which have to do -- which are timely --  
20 which have to do with June the 24th, '02 resolution and  
21 the issue regarding the distribution to the public on  
22 making available to the public the executive session  
23 minutes in a timely fashion.  
24 I think those are the two issues that we need  
25 to focus on. The -- the other issues that are

1 essentially raised, I believe, are time barred except  
2 for the adequate notice issue because they're saying  
3 that even subsequent to this time there weren't two  
4 papers utilized at 48 hours a day.

5 MR. FINCHLER: We didn't really comment on  
6 the --

7 MR. JOHNSTON: Your Honor, if I may comment  
8 on that.

9 THE COURT: Sure.

10 MR. JOHNSTON: And the reason why they didn't  
11 -- they didn't -- they specified a date. The -- the -  
12 the notices in -- in March. Okay. They didn't specify  
13 any dates afterwards.

14 THE COURT: Right.

15 MR. JOHNSTON: There's nothing in the record.  
16 You need some facts to support a claim. There's  
17 nothing that -- that -- that after May 28th,  
18 publication was only given to one newspaper. I mean to  
19 -- that -- to suggest that is pure speculation. And to  
20 the extent they cite a fact it's a time bar date and  
21 that's the March 2002 date.

22 THE COURT: I'm really focusing in that  
23 respect on the release of the time period of the  
24 release of the executive session as well as the  
25 language that has been utilized with respect to the

1 resolution and commencing in that regard.

2 And I think that first as to the timeliness  
3 of the minutes, that's the real -- what I consider the  
4 most serious issue here, which is that the Board of  
5 Education, the Court finds, must make available to the  
6 public the executive session minutes, and they have to  
7 do it promptly. They have to do it pursuant to the  
8 statute, recognizing the sensitivity of those minutes  
9 in terms of whether matters need to be redacted and  
10 that they cannot be released, for example, on a two-  
11 week basis, but they should be referred to and released  
12 and available to the public in that regard.

13 And it would appear to me that based upon the  
14 Board's own resolution of June 24th, '02, which I'll  
15 use as an example, that that should be done within a  
16 30-day period or a recitation by the Board as to why  
17 they can't do it within 30 days, because there are a  
18 specific -- the only thing that was discussed was a  
19 specific privacy concern and will not be able to be  
20 released until another 30 days or another 60 days. So  
21 that there needs to be compliance with the statute in  
22 that regard.

23 Secondly, as to the language and utilized  
24 generally in -- in terms, of again, focusing on this  
25 June 24th, '02 matter, with respect to the resolution.

1 When you're talking about going into executive session  
2 and you simply say "legal personnel negotiations", that  
3 is not specific enough in the Court's opinion. It has  
4 to be a little bit more detailed, again, recognizing  
5 the sensitivity here.

6 Now do I find that this is a major violation?  
7 No, I don't, because as pointed out by the Board's  
8 attorney, everything else is in compliant --  
9 essentially in compliance with the statute on the  
10 minutes resolution you have. It's really -- you're --  
11 you're nitpicking when you start getting down to very  
12 -- getting down to specifics. And I think there is a  
13 lot of truth to that. What somebody may find to be too  
14 broad, another person may not. But that's the job of  
15 the Court. The job of the Court is to say -- looking  
16 at the case law -- to say, look, when you say "legal  
17 personnel negotiations", that's not specific enough.  
18 You have to say something more. And it has to be in  
19 compliance with our case law that's interpreted in the  
20 statute in terms of giving a little bit more detail as  
21 to why you're going into executive session. And, of  
22 course, the minutes should be to the same effect as  
23 well, and we focused on an example here of September  
24 18th, 2000 minutes with respect to a zero tolerance  
25 incident involving a Lake Drive student was discussed.

1 And that's not specific enough in detail. There should  
2 be a little bit more in terms of talking about what is  
3 the -- what was the incident that they're talking  
4 about. Somebody had alcohol on Lake Drive, and what --  
5 what -- what's the incident. Now that doesn't reveal  
6 the person's name; that doesn't reveal the -- in great  
7 detail, except that really all it needs is another few  
8 words. And I think we should have compliance in that  
9 regard.

10 So those are the two main -- I think, other  
11 than those two aspects there are time bars here with  
12 respect to the other matters and I agree that the  
13 adequate notice issue was merely bringing up something  
14 that wasn't opined and -- excuse me -- raised in the  
15 pleadings in that regard.

16 So the question is, what relief should the  
17 Court give you. And in terms of relief that's being  
18 sought, the Court determines that the failure to  
19 release the executive session minutes is the most  
20 serious breach here and that -- that the Board should  
21 be enjoined in failing to that and should make the  
22 minutes available on a 30-day basis or explain why they  
23 cannot be available. And they should do that in a  
24 public meeting and announced that our executive session  
25 minutes from 30 days ago are being released, or our

1 executive session minutes are being released as  
2 redacted, or our executive session minutes are being  
3 released and/or approved in executive session, and here  
4 they are. And that, I think, is their obligation under  
5 the statute to do so. And so I think there ought to be  
6 i an order here to the effect granting relief in that  
7 regard. And what the Court is proposing in that regard  
8 is rather than monitor which, I think, is not required  
9 here because of the -- looking at all the surrounding  
10 circumstances as stated by the Board, we're not looking  
11 at the statute in a vacuum.

12 I take it the Court is -- your firm is the  
13 Board attorney?

14 MR. JOHNSTON: That's correct, Your honor.

15 THE COURT: So what the Court will require  
16 here is that the Board attorney itself monitored the  
17 situation with respect to the executive session  
18 minutes, and at least for the -- do the meetings occur  
19 on an every two-week basis? Is that what --

20 MR. JOHNSTON: That or absent a special  
21 meeting --

22 THE COURT: Session, except for the summer.

23 MR. JOHNSTON: Yeah. The summer, and  
24 normally there's one in either July or August. Yeah.

25 THE COURT: Yes.

1 MR. JOHNSTON: And then there's special ones,  
2 Your Honor.

3 THE COURT: Okay. So I think what ought to  
4 be done is the Board in turn should monitor the  
5 situation and provide to the Court and to plaintiff's  
6 counsel for the next six months the established  
7 procedure that these minutes are being released on that  
8 basis.

9 And in terms of the -- in terms of the  
10 resolutions and the minutes in that regard, the Board  
11 attorney should advise the Board that there has to be  
12 somewhat more detail in the claiming an incident.  
13 There only needs to be a few more words in terms of,  
14 and I'm going to use the example of zero tolerance  
15 incident involving a Lake Drive student.

16 There was a -- an incident involving zero  
17 tolerances based on X, Y, Z, whatever it was that took  
18 place on Lake Drive involving a Lake Drive student.  
19 Something along those lines. Okay? And I think that  
20 that will essentially solve this situation.

21 I recognize that Mr. Kanter has brought suits  
22 before. I recognize there was a 1986 settlement  
23 agreement in that regard. I recognize it was 17 years  
24 ago that settlement agreement. So I recognize that  
25 there have been problems in the past here. I don't

1 want Mr. Kanter to think that I haven't reviewed that  
2 or haven't reviewed all the papers in that regard. I  
3 have. I just don't find it to be as germane because it  
4 was 17 years ago as to the present makeup of the Board,  
5 and I must say that the Board generally -- generally,  
6 except for the executive session minutes, I find to be  
7 -- a release of those things -- I find it to be in  
8 I compliance. I don't find any bad faith here. I don't  
9 find that they haven't tried to do what they're doing.  
10 Yes, they should provide a little bit more detail, but  
11 it's really the release of the executive session  
12 minutes that are the real problem here.

13 And that's why I'm finding that we don't need  
14 a separate monitor. The Board's attorney can do this.  
15 They're officers of the Court. I'm requiring them to  
16 do it, and they can submit to me -- on an every two  
17 month basis over that six months -- submit to me a  
18 letter of compliance in that regard with respect to the  
19 executive session minutes.

20 So let me just repeat all this, because we're  
21 going to have an order prepared. Okay. Which is, the  
22 motion of the Board for a summary judgment is granted  
23 on the other issues. In other words, the other issues  
24 that were raised other than the executive session  
25 minutes and the specificity of resolutions and minutes.

1 So that the other claims of relief, the summary  
2 judgment motion, is granted by the Court and those  
3 matters are dismissed. So it was granted in part and  
4 not in part. Okay. Granted in part as to the  
5 dismissal of the other matters; denied as to the  
6 executive session minutes pending specificity --  
7 comprehensibility of the minutes and resolutions.

8 Which means, of course, that the cross-motion  
9 for summary -- or the other motion for summary judgment  
10 by Mr. Kanter is also granted in part and denied in  
11 part. Granted as to those two aspects; denied as to  
12 the rest of the relief.

13 And then the order should say that as to  
14 executive session minutes, the Board is enjoined from  
15 failing to release those minutes on a -- on a timely  
16 proper basis pursuant to the Sunshine Law, that they  
17 should be released and referred to in their open  
18 meeting on an every 30-day basis, or a statement made  
19 as to why they could not be released in that regard.

20 And further, the order should say the Board  
21 is -- is ordered to be more specific with respect to  
22 information as to why they are going into executive  
23 session and also in -- in their minutes and resolutions  
24 with respect to explanations of what was discussed.

25 And, finally, the third point is that the

1 Court -- the Court ordered that the Board of Education  
2 attorney provide to the Court for the next six months a  
3 letter of compliance with the Court's order on an every  
4 two-month basis on notice to plaintiff that they have  
5 made the arrangements for the release of the executive  
6 session minutes and that they are adding the detail as  
7 required by the Court.

8 Now so that's the order. Now I'm also going  
9 to give you some direction in this regard. I want Mr.  
10 Kanter and counsel to understand that when I say more  
11 detail, I am not asking for a great deal of detail here  
12 that they have to do. I am giving you the example of  
13 the zero tolerance incident. All that needed to be  
14 done with there was to say a zero tolerance incident  
15 involving alcohol or involving drugs, whatever it was,  
16 and -- what -- what specifically was involved was  
17 discussed and that's it. And I think that that makes  
18 it comprehensible under the statute because it's not  
19 just a general statement. And when you're talking  
20 about discussion when you say legal or you say  
21 negotiations or whatever, that you're a little bit more  
22 specific as to what those legalities are and  
23 negotiations without, of course, revealing the parties'  
24 names or anything like that. Essentially what we  
25 discussed.

1 And, of course, I recognize that there may be  
2 certain circumstances as pointed out by the Board's  
3 attorney, that even a general discussion might reveal  
4 the name of the party or people could understand it  
5 involves so-and-so or whatever. So I recognize that  
6 there may be circumstances where redaction would be  
7 appropriate. Okay. And I think that's the -- the best  
8 we can do under the circumstances, and I think really  
9 that's the goal of Mr. Kanter, I think, all along is to  
10 just ensure compliance with the Sunshine Law. And I  
11 don't think -- I think Mr. Kanter's right in one  
12 respect, that we cannot give him lip service. We have  
13 to do what the law requires. It has to be done by --  
14 by every Board of Education or every -- every  
15 government or local government institution. It doesn't  
16 mean the people are proceeding in bad faith. It  
17 doesn't mean that they're not trying to do everything  
18 that they're possibly doing. But there are certain  
19 requirements that go without saying, such as the  
20 minutes. Okay. So that's the decision here. All  
21 right?

22 MR. JOHNSTON: Thank you, Your Honor.  
23 (Proceedings concluded)

## CERTIFICATION

We, Cathy E. Betz and Mary Nelson, the assigned transcribers, do hereby certify that the foregoing transcript of proceedings in the Morris County Superior Court, Law Division, on July 11, 2003, on Videotape No. 7-11-1, Index Nos. 10:28 to 11:25, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



Cathy E. Betz, AOC #540



Mary Nelson, AOC #219  
METRO TRANSCRIPTS, L.L.C.

Dated: /2\_((1 (c7C-1,

## **EXHIBIT G**

**BOROUGH OF MOUNTAIN LAKES COUNCIL MEETING**  
**MONDAY AUGUST 27, 2007**  
**7:30 P.M.**  
**MINUTES**

**1. CALL TO ORDER; OPENING STATEMENT:** This meeting is being held in compliance with Public Law 1975, Chapter 231, Sections 4 and 13, as notice of this meeting and the agenda thereof had been reported to The Citizen and the Morris County Daily Record on January 3, 2007 and posted in the municipal building.

**2. ATTENDANCE AND FLAG SALUTE**

All Council members were present.

Also in attendance were Borough Manager Gary Webb, Special Counsel Fred Knapp, Borough Attorney Marty Murphy and Borough Clerk Christina Whitaker.

**3. EXECUTIVE SESSION – (Pursuant to the Open Public Meetings Act, P.L. 1975, Chapter 231)**  
Resolution 95-07

WHEREAS, the Borough Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey finds it necessary to discuss matters relating to,

- Police Contract Negotiations (Fred Knapp)
- Personnel/Gary Webb (Mr. Webb will discuss the matter in open session during his Manager's report.)

WHEREAS, the Borough Council believes it to be in the best interest of the public to discuss such matters in closed session.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Mountain Lakes, that it shall enter Executive Session to discuss only those matters mentioned above; the results of which will be disclosed when the matters are resolved and upon vote of the Governing Body to release the minutes.

Motion by Councilman Gormally, second by Councilman Shaw, to enter into Executive Session with all members in favor signifying by "Aye".

**4. COMMUNITY ANNOUNCEMENTS**

Mayor Jackson informed the Council and Public that the new rescue vehicle has arrived and is already being utilized by the Fire Department.

Councilman Shaw announced that Mountain Lakes hosted the Lakeland A's meet this year and that Mountain Lakes Swim team won both Hub's Lakes and Lakeland A's.

**5 PRESENTATION OF NEW RESCUE TRUCK**

The Fire Department had a fire call while waiting to present the new truck to the Council. It was presented later in the evening.

**6. PUBLIC COMMENT**

Mayor Jackson explained the Council's policy of limiting each speaker to 5 minutes and no yielding of time to another person.

Mayor Jackson read the following statement before opening the public comment portion of the meeting:

"Mr. Kanter has served a written notice of his intent to make a tort claim against the Borough of Mountain Lakes claiming that the Borough, its employees, and elected officials are engaged in conduct that he alleges is harassing. On the advice of

counsel any questions directed to us at this meeting by Mr. Kanter will be reviewed by our legal counsel; and if appropriate, will be responded to in writing. It is our considered judgment this procedure will minimize disruption and protect the interest of the public."

Fred Kanter - Hanover Road

Mr. Kanter referred to the discussion items on the agenda.

In reference to discussion Item A, he said that the Council could not legally regulate what a person could put in the windows of vehicles.

In reference to discussion Item B, Mr. Kanter said the Borough Manager has allowed realtors to place signs in town on weekends; however, signs were not permitted according to the Borough's code.

Mr. Kanter requested all forms of correspondence relating to street signs in the Borough. He also asked why Mr. Webb was allowed to make special arrangements for realtors signs.

**7. ORDINANCES**

**15-07**

**ORDINANCE AMENDING CHAPTER 237 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF MOUNTAIN LAKES TO PROVIDE FOR MANDATORY WATER CONNECTION AND AMENDING THE WATER CONSERVATION RESTRICTIONS.**

Following introduction, the above ordinance will be published in accordance with the law and a public hearing will be held on September 10, 2007

Motion to amend as discussed, by Councilman Urankar, second by Councilman Gormally, with all members in favor signifying by "Aye" by Roll Call vote.

Introduced: August 27, 2007

Adopted:

Council Member	By:	2 <sup>nd</sup>	Yes	No	Abstain	Absent	By	2 <sup>nd</sup>	Yes	No	Abstain	Abs
Gormally			X									
Emr			X									
Shaw			X									
Davis		X	X									
Wilson	X		X									
Urankar			X									
Jackson			X									

**8. DISCUSSION ITEMS**

**A. Vehicles Parked on Borough Property/For Sale**

Councilman Urankar said he would like Mr. Murphy to review the status of the law pertaining to signs on Borough property.

Councilman Shaw said he did not see vehicles parked in Borough lots with signs in their windows as being a serious problem for the Borough.

Mayor Jackson said he did not want the parking areas to become used car lots. Mr. Webb explained that the spaces are used also by individuals walking the Boulevard and for commuters using the buses.

Councilwoman Emr said her concern was not what was in the windows but the use of Borough property. She has heard complaints from some commuters. Councilman Urankar said the problem increases on weekends.

The Council deferred the matter at this time but asked that the situation be monitored.

**B. Curbs and Sidewalks**

The Council discussed the areas around the schools and the type of curbing now in place.

Most areas in the Borough have mountable curbing (slope curbing) or square curbing. A few places have Belgium Block.

Mr. Webb explained that some areas do not have any curbing. If curbs were installed they would have to meet the Residential Site Improvement Standard.

Councilman Shaw noted that curbing was not installed for aesthetic purposes but for proper drainage.

Councilwoman Emr and Councilman Urankar said they believed square curbing should be used near the schools.

The matter was referred to the Traffic and Safety Committee in order to identify which streets with sidewalks should have square curbing or another type.

#### C. Signs in Borough Right-of-Way

Councilwoman Emr said she had received several complaints from residents about the increase of signs placed in the Borough's right-of-way particularly on Morris Ave., Midvale Road, Boulevard, Glen Road and Lake Drive. Most of these signs are contractor or realtor signs.

The Borough's code states that the signs must be 10 feet from the property line. However, this may be causing confusion for homeowners.

Mr. Webb explained that the Construction Department will not issue a Certificate of Occupancy if contractor signs are still on the property.

It was the consensus of the majority of the Council that the matter does not pose a real problem for the Borough with better communication and education. Councilwoman Emr and Councilman Urankar disagreed.

#### D. Affirmative Marketing for COAH Units

Mr. Webb explained that the Borough was responsible for the affirmative marketing of the COAH units at Park Place. He has received a proposal from the Housing Partnership for Morris County which the developer finds acceptable.

The Council requested that Mr. Murphy draft an agreement between the Borough and Housing Partnership for Morris County.

An administrative housing officer will need to be appointed. Mr. Webb is presently serving in that capacity.

At 9:25 p.m. Mayor Jackson called for a 10-minute break for the Council to see the new fire truck. The Council returned to the meeting at 9:35 p.m.

### 9. \*RESOLUTIONS

R96-07 - 2007 Click It or Ticket Grant

R97-07 - Zeris Inn Expansion of Premise

R98-07 - 2007 Reduction of Speed Grant

R99-07 - Sidewalk/Diamond Construction/**pulled by Councilman Urankar**

R100-07 - Membership in NJ Firemen's Assoc./Michael Castellucci

R101-07 - Extension of Tax Bill

R102-07 - Union Center National Bank /**removed from the agenda**

R103-07 - Payment of Bills

R104-07 - Refund Happer

R105-07 - Refund Paret/**pulled by Councilman Urankar**

R106-07 - Refund Tarantola/**pulled by Councilman Urankar**

R107-07 - Refund Willke/**pulled by Councilman Urankar**

### 10. \*MINUTES

July 23, 2007

### 11. \*DEPARTMENT REPORTS

- A. Animal
- B. Health Officer
- C. Public Health Nurse
- D. Construction Official
- E. Police

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
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**R 99-07**

Councilman Urankar said he disagreed with the policy of using mountable (sloped) curbing around school areas. He suggested the Manager reconsider using sloped curbing on the remaining school areas to be constructed this year.

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Gormally			X			
Emr				X		
Shaw	X		X			
Davis		X	X			
Wilson			X			
Urankar				X		
Jackson			X			

**R 105-07    R106-07    R107-07**

Council Member	By:	2 <sup>nd</sup> :	Yes	No	Abstain	Absent
Gormally		X	X			
Emr			X			
Shaw			X			
Davis			X			
Wilson		X	X			
Urankar	X		X			
Jackson			X			

**12. ATTORNEY'S REPORT**

Unauthorized Newspaper Delivery – Model Ordinances

The Council discussed the three options presented by Mr. Murphy.

Councilman Gormally noted that enforcement could be a problem. He added that from a legal standpoint, there was a problem controlling distribution of media relative to constitution rights on free speech versus personal rights.

The Council authorized Mr. Murphy to draft an ordinance based on its discussion and the model ordinances, using an opt-out provision.

Resubmittal of Growth Share Ordinance

The Council discussed resubmitting a growth share ordinance to COAH. Mayor Jackson is in favor of adopting such an ordinance. However, Borough Planner Susan Kimball does not recommend the Borough adopt the ordinance. She is of the opinion that it would make the Borough responsible for building affordable housing.

Mr. Webb recommended that the Borough wait until COAH's 3<sup>rd</sup> round rules have

been settled.

### **13. MANAGER'S REPORT**

The Manager reviewed some of his report with the Council.

Mr. Webb informed the Council that he would be retiring at the end of December this year. Council members expressed their feelings on Mr. Webb's retirement and thanked him for all he has done for the Borough in the last eight years.

The Personnel Committee will meet to discuss how the Borough will proceed in hiring a new Manager.

### **14. COUNCIL REPORTS**

Planning Board Candidates

The Council discussed four candidates for the vacant position on the Planning Board. Motion by Councilman Shaw, second by Councilman Urankar, to appoint Ralph Loveys as full member to the Planning Board to replace Rob Pitcher, with all members in favor signifying by "Aye", with Councilwoman Emr and Mayor Jackson opposed.

Councilwoman Emr said that Lakes Management has received numerous complaints regarding the condition of the lakes. Since receiving the complaints, Allied Biological has treated the lakes.

The Facility Committee has met to discuss improvements to Borough Hall. It plans to meet twice a month in order to move the matter along. Councilman Urankar said that the Committee hopes to inform the residents monthly in the Home and School on its progress. Public information forums will be scheduled in the future.

### **15. ADJOURNMENT**

Motion by Councilman Shaw, second by Deputy Mayor Davis, to adjourn the meeting at 10:58 p.m. with all members in favor signifying by "Aye".

#### **Consent Agenda**

Attest:

\_\_\_\_\_  
Christina Whitaker, Borough Clerk

\_\_\_\_\_  
George B. Jackson, Mayor

**The Next meeting of the Borough Council will be held on September 10, 2007.**

## **EXHIBIT H**

**BOROUGH OF MOUNTAIN LAKES COUNCIL MEETING**  
**MONDAY, DECEMBER 11, 2006**  
**MINUTES**  
**7:30 p.m.**

**1. CALL TO ORDER; OPENING STATEMENT:** This meeting is being held in compliance with Public Law 1975, Chapter 231, Sections 4 and 13, as notice of this meeting and the agenda thereof had been reported to The Citizen and the Morris County Daily Record on January 4, 2006 and posted in the municipal building.

Mayor Shaw called the meeting to order at 7:30 p.m.

**2. ATTENDANCE AND FLAG SALUTE**

All Council members were present except for Councilwoman Wilson who was expected late. Also in attendance were Borough Manager Gary Webb, Borough Attorney Marty Murphy and Borough Clerk Christina Whitaker.

Municipal Prosecutor Brian Mason was in attendance for an Executive Session discussion.

**3. EXECUTIVE SESSION**

Resolution 148-06

WHEREAS, the Borough Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey finds it necessary to discuss matters relating to:

- Personnel/Brain Mason
- Personnel Reviews
- Contract Negotiations Rensselaer Grads, LLC
- Shared Services Negotiations

WHEREAS, the Borough Council believes it to be in the best interest of the public to discuss such matters in closed session.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Mountain Lakes, that it shall enter Executive Session to discuss only those matters mentioned above; the results of which will be disclosed when the matters are resolved and upon vote of the Governing Body to release the minutes.

Dated: December 11, 2007

\_\_\_\_\_  
Christina Whitaker, R.M.C.

\_\_\_\_\_  
Stephen H. Shaw, Mayor

Motion by Councilman Gormally, second by Councilwoman Davis at 7:33 p.m., to enter into Executive Session, with all members in favor signifying by "Aye" with no one opposed.

Motion by Councilman Urankar, second by Councilwoman Davis, to close the Executive Session and return to open session at 8:05 p.m., with all members in favor signifying by "Aye" with no one opposed.

# **EXHIBIT I**

**BOROUGH OF MOUNTAIN LAKES COUNCIL MEETING  
MONDAY, DECEMBER 11, 2006  
Executive Session  
MINUTES  
7:30 P.M.**

**PERSONNEL REVIEWS**

Mayor Shaw informed members of Council that the Deputy Mayor and he met with Borough Manager Gary Webb and Borough Clerk Christina Whitaker to discuss their evaluations. Both agreed that if they had any questions regarding individual comments they would go directly to the commentator.

Mr. Webb told the Mayor that he may be retiring in December 2007. He noted that the evaluation had nothing to do with his decision and explained his reasons. He will update the Council on his decision by July 1, 2007.

**CONTRACT NEGOTIATIONS RENSSELAER GRADS, LLC**

Mr. Webb explained that Mr. Dignes has been working with Boonton on obtaining water to the Fusee property.

Boonton has informed him that improvements and upgrades could cost \$200,000.

Due to the cost associated with the upgrades, Mr. Dignes may ask for relief from the Borough. The water main extension in the Borough was expected to cost about \$90,000 to \$100,000.

Councilman Gormally said that the Borough would be losing revenue if the water was supplied by Boonton.

However, under DEP regulations, the Borough does not have the capacity to provide the water.

**SHARED SERVICES NEGOTIATIONS**

Mr. Webb provided the Council with spreadsheets prepared by Boonton Township's Administrator and himself that showed salaries and operating expenses of both municipal courts. After reviewing the information, it was his recommendation that a merger of the two court systems would negatively impact the Borough's budget.

Councilman Urankar said he wanted additional review of the information along with a thorough analysis.

Councilman Loveys questioned how Mr. Webb could have come to his conclusion with only the preliminary numbers he reviewed.

Councilman Gormally said that a court's caseload does not necessarily equal bench time for the judge. He would like to see administrative reports on cases and trials, which would provide a clearer picture of the time spent by the judges and prosecutors in a court setting.

The consensus of the Council was to continue to look at shared services as a viable means of cutting Borough costs.

The Council closed the Executive Session and returned to the open portion of the meeting at 8:05 p.m.

The Council returned to Executive Session at 9:49 p.m. to discuss Municipal Prosecutor Brian Mason and his handling of recent legal issues.

## **EXHIBIT J**

Fred Snowflake 428 6666

Andrie Danie 627 0403

DRAFT

BOROUGH OF MOUNTAIN LAKES COUNCIL MEETING  
TUESDAY, OCTOBER 10, 2006  
EXECUTIVE SESSION  
MINUTES

**POTENTIAL LITIGATION-FRED KANTER**

Attorney Marty Murphy shared the outcome from his meeting with Police Chief Robert Tovo, Prosecutor Brian Mason and Borough Manager Gary Webb. He explained that Mr. Mason was debating over the issue of sufficient proof of evidence in order to uphold the conviction. Mr. Murphy said he made it clear to Mr. Mason the concerns of the governing body. In regard to the summons of no parking in the school zone, Mr. Mason is considering dismissing it, since signage was not posted on the streets at the time the summons was issued. Mr. Mason feels the strongest case against Mr. Kanter is the harassment charge, especially in regards to the Mayor and his family. However, he does have some concerns with the disruption of the public meeting in reference to NJ State statute. Mr. Murphy shared the State's reference to the "physical" aspects as it pertains to Mr. Kanter. He said he felt this was a material element of the offense and based on case law, and whether Mr. Kanter crossed the line at the Council meeting may be questionable. Mr. Mason will reevaluate this aspect. The governing body has asked that Mr. Mason take the time to listen to the meeting tapes and review minutes.

Mr. Murphy suggested amending the abandon vehicle ordinance to include a provision mandating that a vehicle have a valid license plate on it and be visible from the street.

Mr. Mason will evaluate the individual charges. He is aware that the governing body has concerns of moving forward on charges that lack the evidence to uphold a conviction.

The Council returned to the public portion of the meeting at 8:05 p.m.

The Council returned to Executive Session at 9:45 p.m.

The governing body has decided that the prosecutor should not pursue the charges against Mr. Kanter regarding parking in the school zone.

Mr. Webb said that the no parking areas in the Borough are posted except around the school. Letters have gone home with the students about the no parking issue. For the time being, the police are issuing warnings rather than tickets.

BOROUGH OF MOUNTAIN LAKES COUNCIL MEETING  
TUESDAY, OCTOBER 10, 2006  
EXECUTIVE SESSION  
MINUTES

POTENTIAL LITIGATION-FRED KANTER

[REDACTED]

[REDACTED]

[REDACTED]

The Council returned to the public portion of the meeting at 8:05 p.m.

The Council returned to Executive Session at 9:45 p.m.

[REDACTED]

**PBA 310 CONTRACT NEGOTIATIONS**

[REDACTED]

The Council returned to the public portion of the meeting at 10:20 p.m.

Attest:

\_\_\_\_\_  
Christina Whitaker, Clerk

\_\_\_\_\_  
Stephen H. Shaw, Mayor



I N D E X  
3/7/08 (Excerpt)

<u>ORDER TO SHOW CAUSE</u>	<u>Page</u>
<u>Court Decision</u>	3

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Court Decision

3

1           THE COURT: Let me rule on the matter now.  
 2 Much -- much of this is agreed to now that we've had  
 3 the colloquy on oral argument.

4           The parties have cited and the Court looks at  
 5 cases such as Matawan Regional Teachers Association at  
 6 212 N.J. Super. 329, a Law Division 1986 case, which  
 7 talked about factors of timeliness, and those factors  
 8 really guide us I think in terms of what has been the  
 9 prior experience in publication.

10           Here, we know as to the regular meetings'  
 11 minutes that the practice generally has been two  
 12 business days before. And what's the subject matter  
 13 and the importance of what's being discussed, well,  
 14 that's municipal minutes as to the meetings involving  
 15 the general public. What's the interval between  
 16 meetings? We know here it's semi-monthly, every two  
 17 weeks. So there's 10 or 11 days to prepare before the  
 18 release. And we know that the statute requires that  
 19 they be dealt with promptly in that regard.

20           So I think both sides generally agree that  
 21 the Town has looked to provide minutes of its regular  
 22 meetings at least two business days prior to the next  
 23 regularly scheduled meeting. Those are draft  
 24 unapproved versions. Of course, they are because  
 25 they're not approved until the Council votes on them

1 that particular night. So every minutes produced two  
2 business days before by definition are drafts and  
3 unapproved in that regard.

4 But they should be released two days before.  
5 That's what the Town has generally done. Two business  
6 days. Excuse me. And that would follow Matawan  
7 Regional Teachers Association factors.

8 The only issue is really should the Town now  
9 employ some type of backup plan since out of 21  
10 meetings, there were 4 meetings where those were not  
11 produced. And it would be good practice for the Town  
12 to do that. It makes sense. I agree that the statute  
13 talks about shall promptly be produced, and promptly  
14 we're saying here in Mountain Lakes means two business  
15 days before. So that being the case, the Town has to  
16 have a plan, I'll leave it to the Town to come up with  
17 the plan, as to if the Clerk's not available who will  
18 produce those minutes so that they're available two  
19 business days before.

20 Do I find as to the regular meetings that  
21 there was a violation of the Open Public Meetings Act  
22 by the Town? No. I think the Town was in substantial  
23 compliance as Mr. Oostdyk said. I think there were  
24 those circumstances where the minutes weren't produced  
25 within two business days of the next meeting. Here,

1 you have meetings that are not monthly. They're semi-  
2 monthly. So they're taking place at least every two  
3 weeks, and there are practicalities in that regard.

4 But where -- what should be done going  
5 forward is that there needs to be a plan in place to  
6 produce those minutes so that shall be produced  
7 promptly means exactly that as Mr. Finchler said not 80  
8 percent but 100 percent in that regard. That's what  
9 the statute is really looking to do in that regard.

10 But I don't find that there was any bad faith  
11 on the part of the Town in that respect, and they were  
12 essentially doing an insubstantial compliance with that  
13 -- with the general intent of the Open Public Meetings  
14 Act which takes me to the executive session minutes.

15 They're -- the Court has been informed prior  
16 to this hearing that corrective action has been taken,  
17 and really that's what the Open Public Meetings Act  
18 reviews require, corrective action unless there's some  
19 egregious bad faith in which case, you may be avoiding  
20 action that was taking place at a meeting. And that's  
21 not the case here. Nobody's asking for that. Mr.  
22 Kanter wasn't asking for that.

23 So the answer is that -- and -- and I do  
24 agree it was as a result of initiation of a member of  
25 the public that these corrective measures took place,

1 but that's what members of the public should be doing  
2 if they find that there are concerns in that regard.

3 And I -- the policy that has been put in  
4 place now by Mountain Lakes I think is a very  
5 aggressive policy. It's a very good policy. What  
6 they're basically saying is we will make sure that the  
7 nature of why we're going into executive session is not  
8 simply litigation or contract, it will have the  
9 description. In addition to that, if we redact  
10 minutes, we'll make sure we review them at the very  
11 next meeting in that regard to determine whether  
12 confidentiality continues to exist. And as we know,  
13 litigation, and Mr. Kanter recognizes this, can go on  
14 for -- it can be settled within a few months, or it can  
15 go on for years. So that periodic review will make  
16 that determination in that regard or a contract being  
17 negotiated in that regard as having been completed and  
18 minutes ready to be released in that respect.

19 The Court will not conduct an in camera  
20 review of all executive session minutes since January  
21 1, 2005. The record before the Town public meetings  
22 will indicate whether all those minutes had been  
23 reviewed. And the Court is saying they have to be  
24 reviewed, and the Town is saying they're going to  
25 review them if they haven't done it already pursuant to

1 their new policy. So I will not conduct an in camera  
2 review in that regard. I see no necessity to do that.

3 The five-minute rule is constitutionally and  
4 statutorily acceptable. Case law has so interpreted  
5 it, and it's up to the Council to put guidelines in  
6 that regard. And I agree that there should not be an  
7 aggregate of saying, well, if there's only speaker or  
8 two speakers, why can't we go 20 minutes as was what  
9 Mr. Kanter was suggesting rather than 5 minutes. I  
10 think that would be -- make things a little bit too  
11 unruly in terms of what -- what the Council needs to  
12 do. I think if the Council announces a policy saying,  
13 we will have public comment now, everybody gets five  
14 minutes to speak, and they enforce that, that's what's  
15 enforceable. There should be not -- there should not  
16 be an aggregate in that regard to determine whether,  
17 well, you let me speak for 15 minutes, and now -- 18  
18 minutes, and now the other person only has 2 minutes,  
19 and we're getting into I think too unruly a area in  
20 terms of trying to keep order.

21 So the Court does not find that there's any  
22 violation in that regard as well. Five minutes is --  
23 is acceptable.

24 In addition, as to the minutes of the October  
25 11, 2006, and December 11, 2006, it is a policy

1 decision under Payton v. New Jersey Turnpike that  
2 minutes can be modified and redacted, that you don't  
3 have to state all the reasons in that regard, that as  
4 Libraskind (phonetic) has said and the O'Shay  
5 (phonetic) case you're talking about policy decision --  
6 decisions in that respect in terms of what should be in  
7 or not in the minutes.

8 And we shouldn't lose sight that the Council  
9 was in executive session apparently, and unfortunately  
10 Mr. Kanter overheard some matters. We don't know what  
11 else was said in that regard. He overheard some  
12 portions but not everything. So we don't know what or  
13 was not said, and the minutes are comprehensible in  
14 going to what the litigation was about with Mr. Mason  
15 in that respect.

16 So I find no reasons to further sanitize  
17 those minutes as Mr. Kanter's indicated, and they are  
18 acceptable in that regard. And I find no violation in  
19 that respect.

20 Nor do I see a need for this Court to be  
21 supervising Mountain Lakes with respect to these  
22 issues. First of all, on the regular minutes, Mountain  
23 Lakes is doing essentially what they should be doing,  
24 two business days. Secondly, on the executive minutes,  
25 they put a whole new policy in place which any member

1 of the public will be able to monitor because executive  
2 session minutes will be referred to every two weeks in  
3 that regard so that there is no need for this Court to  
4 be involved in an ongoing basis or to appoint counsel  
5 to determine compliance with this new policy in that  
6 respect.

7 And the Court does not have the ability to  
8 order counsel fees under the Open Public Meetings Act,  
9 and why is that? Because in the Open Public Meetings  
10 Act, the intent of all of this is to avoid secrecy,  
11 have public meetings except for defined statutory  
12 exceptions. And if there are violations in that  
13 regard, if there was substantial compliance and not bad  
14 faith, what the Court does is take corrective action in  
15 that respect.

16 How is that brought to the attention of a  
17 court? It is brought to the attention of a court by  
18 members of the public initiating these kinds of  
19 requests in that regard.

20 I can't say here even if I had the ability to  
21 look at fees in that respect, I can't say in this  
22 particular matter that the Borough of Mountain Lakes  
23 somehow was acting in bad faith. And their only  
24 noncompliance if we're going to talk about  
25 noncompliance from a substantial basis was the

1 executive session minutes being reviewed in that  
2 respect and being clearly identified, and they on their  
3 own took that action, albeit after a brief was filed,  
4 but took that action before this hearing. So that  
5 issue is, in essence, moot before me because of the  
6 action that they did on their own. They didn't need a  
7 court to tell them, although I do agree that Mr. Kanter  
8 prompted this and that Mountain Lakes, aware of the  
9 decisions that I made in the Board of Education case  
10 probably anticipated that this is where we were going  
11 in that respect.

12 So that's the decision of the Court. There  
13 is an order here from Mr. Finchler. I'll ask counsel  
14 to just stay in court and try to mark up this order in  
15 terms of what the Court is -- is saying, and that is  
16 the plan as the employee under the regular minutes that  
17 Mountain Lakes has employed the following policy on  
18 executive minutes which is to be followed and that the  
19 five minute rules, that relief requested is denied as  
20 to any aggregate limitation as is the comprehensive  
21 minutes being sanitized, supervision, and counsel fees.

22 MR. FINCHLER: If it would acceptable to the  
23 Court, I'm sure counsel and I since we've -- we've  
24 gotten along well in the past and in the presence can  
25 sit down, take a look at this order, cross off which

1 hasn't been ordered --

2 THE COURT: Yeah.

3 MR. FINCHLER: -- agree which has been rather  
4 than having try to recite the new policies maybe append  
5 them to an order which I could then bring back and have  
6 a clean copy to the Court in --

7 THE COURT: That's fine.

8 MR. FINCHLER: -- in very short period of  
9 time?

10 MR. OOSTDYK: Absolutely.

11 THE COURT: Yeah. You can do that on -- on  
12 -- try to do it by consent. Okay?

13 MR. FINCHLER: Yes.

14 THE COURT: And submit it to the Court.  
15 Okay?

16 MR. FINCHLER: Absolutely.

17 MR. OOSTDYK: Thank you, Judge.

18 MR. FINCHLER: Thank you, Your Honor.

19 THE COURT: I thank you both for your  
20 comprehensive briefing on this, and I think the  
21 resolution is a sound resolution which will benefit  
22 everybody in the public. Okay?

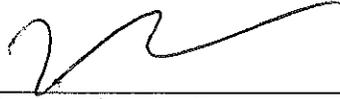
23 MR. OOSTDYK: Thank you, Your Honor.

24 (Requested excerpt concluded)

25 \* \* \* \* \*

## CERTIFICATION

I, Valerie Anderson, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Morris County Superior Court, Law Division, on March 7, 2008, on Videotape No. 3/7/08, Index Nos. from 14:32:18 to 14:45:42, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



Valerie Anderson, AOC #480  
METRO TRANSCRIPTS, L.L.C.

Date: 3/25/08