

John Paff

Telephone – 732-873-1251

P.O. Box 5424
Somerset, New Jersey 08875-5424
E-mail – CJSC@pobox.com
April 23, 2007

Fax – 908-325-0129

Hon. Leo J. McCabe, Mayor and Council Members
Borough of Glassboro
1 S Main St
Glassboro, NJ 08028

RE: **Notice of Intent to Sue**

Dear Mayor McCabe and Members of the Borough Council:

I am an open government advocate acting both individually and on behalf of the New Jersey Libertarian Party. Enclosed is a draft civil complaint against the Borough alleging various violations of the Open Public Meetings Act.

Please consider this letter and enclosed draft complaint “anticipated litigation . . . in which the [Borough Council] may become a party” and discuss it, in accordance with N.J.S.A. 10:4-12(b)(7), during a closed session at your next meeting, which I believe will be held on May 8, 2007.

While I stand ready to file the complaint in the Superior Court if necessary, neither the Libertarian Party nor I wish to impose litigation costs upon Borough taxpayers. We would rather engage in a dialogue with you so that the concerns set forth in the enclosed complaint can be amicably resolved.

So that I know that my position is being taken seriously, I ask that Mr. Scaffidi, who is receiving a copy of this letter, or someone else on the Council’s behalf, relate the Council’s position on this matter to me by fax to 908-325-0129 within a few days after the May 8, 2007 meeting. If I don’t hear from you, I will assume that you are not willing to engage in a dialogue and will file the complaint without further notice.

Thank you for your attention to this matter.

Sincerely,



John Paff

cc. Timothy D. Scaffidi, Esq., Borough Solicitor (*via Fax to 856-853-9085*)
Chairman, New Jersey Libertarian Party (*via PDF email attachment*)
(*all with enclosures*)

John Paff
P.O. Box 5424
Somerset, NJ 08875-5424
Tel. 732-873-1251
Fax: 908-325-0129
Email: paff@pobox.com

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	GLOUCESTER COUNTY
vs.	:	DOCKET NO.
	:	
GLASSBORO BOROUGH COUNCIL	:	Civil Action
Defendant	:	COMPLAINT
	:	

Plaintiff John Paff, by way of complaint against the Glassboro Borough Council (hereafter "Defendant Council) states as follows:

DRAFT
PARTIES

1. Plaintiff John Paff is an individual who resides in Franklin Township, Somerset County, New Jersey.
2. Defendant Council is a public body as that term is defined by N.J.S.A. 10:4-8(a).

FIRST COUNT
(Insufficient Closed Session Resolutions)

1. In response to Plaintiff's record request, the Glassboro Borough Clerk provided Plaintiff with Borough Council Resolutions 293-05, 136-06 and 150-06. Copies of these three resolutions, consisting of two pages each, are attached as Exhibits 1 through 6.

2. These resolutions purportedly authorized, in accordance with N.J.S.A. 10:4-13, the exclusion of the public from Defendant Council's meetings of November 22, 2005, April 25, 2006 and May 9, 2006, respectively.

3. At its March 27, 2007 meeting, Defendant Council passed Resolution 127-07 which purportedly authorized the exclusion of the public from that meeting.

4. Each of the four resolutions referenced above provide the following as the "general nature" of the topics to be discussed outside of public view: "The general nature of the subject to be discussed at said closed shall be possible/pending litigation, personnel matters, possible purchase of real estate and/or contractual negotiations."

5. On information and belief, Resolutions 293-05, 136-06, 150-06 and 127-07 are typical and representative of the manner in which Defendant Council purports to comply with N.J.S.A. 10:4-13.

6. Resolutions 293-05, 136-06, 150-06 and 127-07 not meet the requirements of either N.J.S.A. 10:4-13

WHEREFORE, Plaintiff demands judgment:

A. Declaring that Resolutions 293-05, 136-06, 150-06 and 127-07 do not satisfy the requirements of N.J.S.A. 10:4-13.

B. Declaring and setting forth the minimum amount of detail and specificity that N.J.S.A. 10:4-13 requires Defendant Council to include within resolutions that authorize its future nonpublic meetings.

C. Enjoining Defendant from excluding the public from any future meeting unless a resolution that meets the requirements and declarations contained in ¶ B above is previously passed during a public meeting.

D. Awarding Plaintiff his costs of suit.

E. Such other relief as the Court deems equitable and just.

**SECOND COUNT
(Improper Closed Session Topics and Insufficient Minutes)**

1. In response to Plaintiff's record request, the Glassboro Borough Clerk provided Plaintiff with minutes of Defendant Council's nonpublic meetings held on November 22, 2005 and May 9, 2006. Copies of these two sets of minutes, consisting of one page each, are attached as Exhibits 7 through 8.

2. The substantive content of the two sets of minutes consists of three brief statements:

- a. "There was a discussion about the car wash on Warrick Avenue." (November 22, 2005)
- b. "There was a discussion about the letter from Jingoli Associates being forwarded to selected residents." (November 22, 2005)
- c. "There was a discussion regarding the need for a Zoning Officer." (May 9, 2006)

3. Neither the November 22, 2005 nor the May 9, 2006 nonpublic meeting minutes reveal the "time and place" of or "the members present" at those meetings, as required by N.J.S.A. 10:4.14.

4. Neither the November 22, 2005 nor the May 9, 2006 nonpublic meeting minutes are “reasonably comprehensible” as required by N.J.S.A. 10:4.14.

5. On information and belief, discussing: a) “the car wash on Warrick Avenue,” b) “the letter from Jingoli Associates,” and c) the Borough’s “need for a Zoning Officer” are not within any of the categories of topics that N.J.S.A. 10:4-12(b) permits a public body to privately discuss.

WHEREFORE, Plaintiff demands judgment:

A. Declaring that the November 22, 2005 and May 9, 2006 nonpublic meeting minutes are not compliant with N.J.S.A. 10:4-14.

B. Declaring and setting forth the information and amount of specificity that Defendant Council must include within its nonpublic meeting minutes in order for those minutes to comply with N.J.S.A. 10:4-14.

C. Enjoining Defendant Council from recording minutes of its future nonpublic meetings unless they meet the requirements of ¶ B above.

D. Declaring that the topics discussed during the November 22, 2005 and May 9, 2006 nonpublic meetings are not within any of the categories of topics that N.J.S.A. 10:4-12(b) permits Defendant Council to privately discuss.

E. Enjoining Defendant Council from discussing matters during its future nonpublic meetings unless they are within the categories of topics set forth in N.J.S.A. 10:4-12(b).

F. Awarding Plaintiff his costs of suit.

G. Such other relief as the Court deems equitable and just.

Certification Of No Other Actions

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Respectfully submitted,

Dated: May ____, 2007

John Paff
Plaintiff

Draft

ADOPTED

NOV 22 2005

RESOLUTION R: 293 -05

**RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO**

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

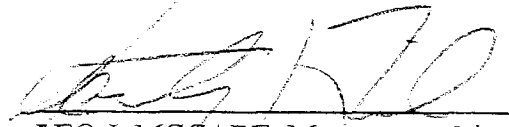
SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about November 22, 2005.

SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be possible/pending litigation, personnel matters, possible purchase of real estate and/or contractual negotiations.

SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro held on November 22, 2005 at Glassboro, in the County of Gloucester and State of New Jersey.

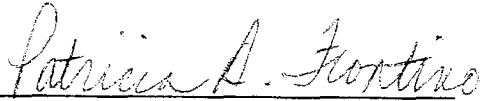
BOROUGH OF GLASSBORO



LEO J. MCCABE, Mayor and/or

ANTHONY J. FIOLA, Acting Mayor

Attest:



Patricia A. Frontino, Borough Clerk

ADOPTED
APR 25 2006

RESOLUTION R: 136 -06

**RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO**

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about April 25, 2006.

SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be possible/pending litigation, personnel matters, possible purchase of real estate and/or contractual negotiations.

SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro held on April 25, 2006 at Glassboro, in the County of Gloucester and State of New Jersey.

BOROUGH OF GLASSBORO



LEO J. MCCABE, Mayor

Attest:



PATRICIA A. FRONTINO, Borough Clerk

ADOPTED

MAY - 9 2006

RESOLUTION R: 150 -06

RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

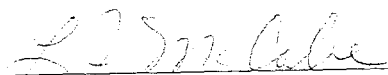
SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about May 9, 2006.

SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be possible/pending litigation, personnel matters, possible purchase of real estate and/or contractual negotiations.

SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro held on May 9, 2006 at Glassboro, in the County of Gloucester and State of New Jersey.

BOROUGH OF GLASSBORO


LEO J. MCCABE, Mayor

Attest:


PATRICIA A. FRONTINO, Borough Clerk

**WORK SESSION MINUTES
EXECUTIVE SESSION**

NOVEMBER 22, 2005

There was a discussion about the car wash on Warrick Avenue.

There was a discussion about the letter from Jingoli Associates being forwarded to select residents.

A motion was made by Mr. Fiola, seconded by Ms. Simpson, to close the Closed Executive Meeting and proceed to the Public Meeting.

Motion carried

Respectfully Submitted,

Patricia A. Frontino
Borough Clerk

SINCE THESE MINUTES ARE NOT A VERBATIM TRANSCRIPT, THIS HAS BEEN A CONDENSED TRANSCRIPT OF THE MEETING.

**WORK SESSION MINUTES
EXECUTIVE SESSION
MAY 9, 2006**

There was a discussion regarding the need for a Zoning Officer

A motion was made by Mr. Malandro, seconded by Mr. Cabezas to close the Closed Executive Meeting and proceed to the Public Meeting.

Motion carried

Respectfully Submitted,

Patricia A. Frontino
Borough Clerk

SINCE THESE MINUTES ARE NOT A VERBATIM TRANSCRIPT, THIS HAS BEEN A CONDENSED TRANSCRIPT OF THE MEETING.

LAW OFFICE OF TIMOTHY D. SCAFFIDI

Timothy D. Scaffidi*
Anthony J. Zappasodi

*Admitted in NJ & PA



28 Cooper Street
Woodbury, NJ 08096
Tel: (856) 848-2950
Fax: (856) 853-9085

June 13, 2007

Via Fax and Regular Mail

Mr. John Paff
P.O. Box 5424
Somerset, NJ 08875-5424

RE: Borough of Glassboro

Dear Mr. Paff:

Unfortunately, I was not able to confirm an agreeable date and time.

To help reschedule, I am faxing a calendar for the remainder of June as well as July 2007 to indicate available dates by you, the Clerk, Administrator and I for a conference call.

As an aside and as I am sure you are familiar with attorney responses, I make the following comments without prejudice to my client's rights and without an admission or acknowledgment of any responsibility to your claims. The Borough of Glassboro has considered your letter and has, since receipt of same, reviewed it's closed session resolutions and is now providing more specific subject matter description of the topic(s) to be discussed in closed session. Also, I know the Clerk has now included all governing body members present on the executive closed session minutes.

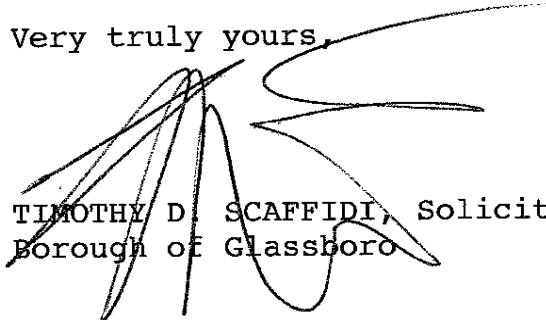
I believe the only real disagreement between us may be the extent (i.e. content of the minutes) of the meetings where I do not agree with you. I believe the content meets the statutory requirements but we can certainly discuss same and explore your understanding and/or examples you may want me to look at in response.

Mr. John Paff
Page Two
June 13, 2007

By copy of this correspondence, I am asking the Borough Clerk to copy and mail to you some of our recent closed session resolutions (i.e. since receipt of your letter dated April 23, 2007) and closed minutes for your review.

I am sure we will be able to work out an agreeable time for a conference call.

Very truly yours,



TIMOTHY D. SCAFFIDI, Solicitor
Borough of Glassboro

TDS:cb

Enclosure

cc: Joseph A. Brigandi, Jr., Borough Administrator (w/enc.)
Patricia Frontino, RMC (w/enc.)

From: "Patricia Frontino" <patfrontino@boroughofglassboro.org>
To: <CJSC@pobox.com>
Cc: <joeb@boroughofglassboro.org ...snip... debbie.schlosser@verizon.net>
Subject: Closed Executive Session Resolutions & Minutes

Dear Mr. Paff,

Per Mr. Scaffidi's request, attached you will find Resolutions and Minutes for Executive Closed Sessions. The meeting of May 8th, 2007 Minutes have been approved. For the meeting of May 22, 2007, this item is on the Agenda for the June 26th Council Meeting. Likewise, the May 29th, 2007 Minutes will be on the Agenda for the July 5th Meeting. We are on a summer schedule, therefore we only meet once per month.

Thank you,

Pat

Patricia A. Frontino, RMC
Borough Clerk
1 South Main Street
Glassboro, NJ 08028
 (856) 881-9230 X 116
 (856) 881-4248
 glassboroonline.com

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[173-07.doc](#)



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RESOLUTION R: 172 - 07

**RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO**

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about May 8, 2007.

SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be Review proposed Water Supply Agreement with Monroe Twp. MUA and Discuss ABC License Hearing-Barco.

SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro held on May 8, 2007 at Glassboro, in the County of Gloucester and State of New Jersey.

BOROUGH OF GLASSBORO

LEO J. MCCABE, Mayor

Attest:

PATRICIA A. FRONTINO, Municipal Clerk

RESOLUTION R: 173 - 07

**RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO**

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about May 22, 2007.

SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be to discuss COAH Camelot Litigation, Master Redeveloper Contract Negotiation and Library Assessment and Needs Study RFQ's.

SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro held
on May 22, 2007 at Glassboro, in the County of Gloucester and State of New Jersey.

BOROUGH OF GLASSBORO

LEO J. MCCABE, Mayor

Attest:

PATRICIA A. FRONTINO, Municipal Clerk

RESOLUTION R: 187 - 07

**RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO**

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about May 29, 2007.

SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be contractual negotiations-Lease Agreement between the Borough of Glassboro and the School Board, NJDOT-Memorandum of Agreement Route 322 and Whitney Avenue, Master Redevelopers Agreement and A-Z Maintenance; Litigation-Down on Main Street.

SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro held on May 29, 2007 at Glassboro, in the County of Gloucester and State of New Jersey.

BOROUGH OF GLASSBORO

LEO J. MCCABE, Mayor

Attest:

PATRICIA A. FRONTINO, Municipal Clerk

BOROUGH OF GLASSBORO
CLOSED EXECUTIVE SESSION MINUTES
MAY 8, 2007

Upon a motion by Mr. Fiola, seconded by Ms. Simpson, and unanimously passed to approve the following Resolution R: 172-07 Resolution Authorizing a Closed Meeting of the Mayor and Council of the Borough of Glassboro entered Closed Session 7:50 p.m. for the purpose of Discussing proposed Water Supply Agreement with Monroe Township MUA and to Discuss ABC License Hearing for Barco.

RESOLUTION R: 172 - 07

**RESOLUTION AUTHORIZING A CLOSED MEETING OF
THE MAYOR AND COUNCIL OF THE BOROUGH OF GLASSBORO**

BE IT RESOLVED by the Mayor and Council of the Borough of Glassboro, in the County of Gloucester and State of New Jersey as follows:

WHEREAS, the Open Public Meetings Act of the State of New Jersey generally requires that all meetings of public bodies be open to the public; and

WHEREAS, said Act so provides that a public body may exclude the public from meetings at which it was to discuss various specific subjects, as enumerated in said Act.

NOW THEREFORE, BE IT RESOLVED by Mayor and Council of the Borough of Glassboro, pursuant to the Open Public Meetings Act of the State of New Jersey, as follows:

- SECTION 1. The Mayor and Council of the Borough of Glassboro shall hold a closed meeting, to which the public shall not be admitted on or about May 8, 2007.
- SECTION 2. The general nature of the subject to be discussed at said closed meeting shall be Review proposed Water Supply Agreement with Monroe Twp. MUA and Discuss ABC License Hearing-Barco.
- SECTION 3. The minutes of said closed meeting shall be disclosed to the public, as far as can be determined at this time, when the aforementioned matters have been resolved.

The following were present: Mayor McCabe, Mr. Fiola, Ms. Simpson, Mr. Cossabone, Mr. Cabezas, Mr. Brigandi, Mr. Scaffidi, Ms. Myers and Mr. Sawyer.

Mr. Scaffidi stated that the Deputy Attorney General has a tentative settlement with the ABC regarding the violations for underage drinking at Down on Main Street/Barco. Terms were discussed and Mr. Scaffidi indicated the Borough could settle under the same conditions or continue on with a hearing. No action was taken.

Insufficient time permitted the completion of business. A motion was made by Mr. Fiola seconded by Ms. Simpson, to close the Closed Executive Meeting at 8:00 p.m., proceed to the Regular Council Meeting and resume the Closed Executive Session at the conclusion of business of the Regular Council Meeting.

Motion carried

Upon conclusion of the Regular Council Meeting, a motion was made by Ms. Simpson, seconded by Mr. Fiola, and unanimously passed at 8:25 p.m., to return to Closed Executive Session.

Mr. Cossabone abstained and left the meeting.

The following were present: Mayor McCabe, Mr. Fiola, Ms. Simpson, Mr. Cabezas, Mr. Brigandi, Mr. Scaffidi, Ms. Myers, Mr. Sawyer and Mr. Brunermer.

Mr. Brunermer stated that Monroe Township needs additional water. He summarized the terms of the Agreement that Monroe Township is requesting. Questions of the Governing Body were addressed by Mr. Brunermer. No action was taken.

Upon no further discussion, a motion was made Ms. Simpson, seconded by Mr. Fiola, to close the Closed Executive Session and adjourn the Regular Council Meeting.

Motion carried

Respectfully Submitted,

Patricia A. Frontino
Borough Clerk

**SINCE THESE MINUTES ARE NOT A VERBATIM TRANSCRIPT, THIS HAS BEEN A
CONDENSED TRANSCRIPT OF THE MEETING.**

6/20/2007 3:10 PM

John Paff

P.O. Box 5424
Somerset, New Jersey 08875-5424
E-mail – CJSC@pobox.com
June 20, 2007

Telephone – 732-873-1251

Fax – 908-325-0129

Timothy D. Scaffidi, Esq.
28 Cooper St
Woodbury, NJ 08096

(via Fax to 856-853-9085)

Dear Mr. Scaffidi:

Today, Borough Clerk Patricia A. Frontino emailed me resolutions authorizing the Borough Council's May 8, 2007, May 22, 2007 and May 29, 2007 executive sessions and the minutes of May 8, 2007 session. I have no quarrel with the form and content of the resolutions and minutes, and I appreciate the Council's cooperation.

In her email that accompanied these records, however, the Clerk apparently takes the position that the May 22, 2007 and May 29, 2007 executive session minutes must remain totally suppressed unless and until they are "approved" at a future Borough Council meeting. A copy of the Clerk's email and the records she sent me can be found at on-line at www.lpcnj.org/OGTF/Glassboro.pdf

I believe that the Clerk may be relying on the Government Records Council's decision in Dina Parave-Fogg v. Lower Alloways Creek Township (GRC Complaint No. 2006-51) holding that unapproved meeting minutes constitute inter-agency, intra-agency, advisory, consultative or deliberative material and are presumed to be exempt from disclosure unless the requestor demonstrates an overriding need for the record.

Enclosed, however, is a copy of Judge John A. O'Shaughnessy's May 8, 2007 Order in O'Shea and Paff v. Kearny Board of Education, Docket No. HUD-L-856-07, that requires that Board, going forward, to "grant access to the minutes of public meetings no later than three business days prior to the next meeting." Accordingly, the court's decision, which was based upon the Open Public *Meetings* Act (specifically N.J.S.A. 10:4-14) and not the Open Public *Records* Act, supersedes¹ the Council's decision in Parave-Fogg by requiring public meeting minutes to be made publicly available **prior** to the meeting at which they could first be "approved."

Judge O'Shaughnessy's ruling, of course, deals with public session minutes, and the minutes at issue here are from nonpublic sessions. But, I believe an argument can be made that the nonexempt portions of executive session minutes can and should, like

¹ I'm not suggesting that the Superior Court overruled the Government Records Council (GRC). The GRC, which is statutorily authorized to enforce the Open Public Records Act (OPRA), and not the Open Public Meetings Act (OPMA), simply held that nothing in OPRA mandated the release of meeting minutes prior to approval. The Court, however, which has jurisdiction over both the OPRA and the OPMA found that the OPMA required disclosure of minutes prior to their approval despite any contrary based upon the OPRA.

public meeting minutes, be publicly disclosed prior to any formal "approval" by the Council. Such would increase the public's ability to effectively participate in Borough affairs by informing them, prior to the next meeting, of the matters discussed privately by the Council at the previous meeting.

Please inform me as to whether your client maintains that it is lawful for the nonexempt portions of nonpublic meeting minutes to be withheld from the public unless and until they are "approved" at a subsequent Council meeting.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a large, sweeping flourish extending to the left.

John Paff

cc. Patricia A. Frontino, RMC, via email, with enclosure

#1
4/27/07

FILED

MAY 08 2007

JOHNA 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,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION, CIVIL PART
vs.	:	HUDSON COUNTY
	:	DOCKET NO. <u>L856-07</u>
KEARNY BOARD OF EDUCATION, Defendant.	:	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 reasons set forth on the record on April 27, 2007, and for good cause appearing,

IT IS on 8th 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;

Denied

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;

Denied

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

** Denied 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.*