

# John Paff

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Luis A. Valentin, Prosecutor  
Monmouth County Prosecutor's Office  
71 Monument Park  
Freehold, NJ 07728-1261

RE: Howell Township Council - Open Public Meetings Act

Dear Prosecutor Valentin:

I write both personally and in my capacity as the New Jersey Libertarian Party's "Open Government Advocate."<sup>1</sup> I believe that the Howell Township Council has violated the Open Public Meetings Act and ask that you investigate and take whatever action you deem appropriate.<sup>2</sup> Attached are the following, numbered exhibits:

1. Page from Council's January 17, 2006 public meeting minutes
2. Blank Executive Session Resolution
3. Council's January 17, 2006 nonpublic meeting minutes

**Point 1: Motions and resolutions not compliant with N.J.S.A. 10:4-13.**

Page 1 from the January 17, 2006 public minutes (Exhibit 1) and the blank form of "Executive Session Resolution" (Exhibit 2) were both provided to me by the Township Clerk in response to my request for "[t]he resolutions, as required by N.J.S.A. 10:4-13, that authorized [the January 17, 2006] nonpublic meeting."

Since Exhibit 2 is undated, unsigned and contains an unfilled blank, it is not responsive to my request. Accordingly, the only document that is responsive to my request for the resolution that authorized the January 17, 2006 closed session is the page from the public minutes (Exhibit 1). That exhibit shows that the purpose of the nonpublic session was "for issues relating to attorney client privelage [sic], personnel, contract negotiations, litigation and acquisition of property." This motion violates N.J.S.A. 10:4-13 in two ways.

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<sup>1</sup> The New Jersey Libertarian Party (NJLP) is a longtime advocate of open and transparent government. The NJLP's platform, which can be found at [www.njlp.org](http://www.njlp.org), states: "We support the public policy behind the Open Public Meetings Act (NJSA 10:4-6) and the Right to Know Law (NJSA 47:1A-1). We note, however, that in actual practice, some individuals in government are reluctant to comply with these laws. We believe that those individuals should be held personally liable for attorney's fees and costs incurred in enforcing the law."

<sup>2</sup> The Open Public Meetings Act, N.J.S.A. 10:4-17, empowers your office to enforce monetary penalties against officials who knowingly violate the Act. Or, perhaps you may wish to correspond with the Council and work with it so that it complies with the Act in the future. If you decide to take no action, I specifically reserve my right to enforce the Council's future compliance through the civil remedies provided by N.J.S.A. 10:4-16.

First, N.J.S.A. 10:4-13(b) requires the resolution (or motion) to state "as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public." Since Exhibit 1 contains no such language, it does not conform to the statute's requirements.

Second, N.J.S.A. 10:4-13(a) requires the motion to inform the public of the "general nature" of the matters to be privately discussed. Exhibit 1's vague description tells the public nothing<sup>3</sup>. Rather, it "merely recites the litany of exceptions which would allow it to proceed in closed session. No attempt is made to indicate which one or ones of these exceptions are relevant to a particular closed-session proceeding." Council of N.J. State College Locals v. Trenton State College Bd. of Trustees, 284 N.J. Super. 108, 113 (Law. Div. 1995).

**Point 2: Unauthorized topics privately discussed.**

It is not clear why some of the topics discussed privately on January 17, 2006 could not have been discussed publicly. Why, for example, was a general policy matter, such as whether and how the Township should regulate rodeos discussed outside of public view? It is not clear which N.J.S.A. 10:4-12(b) exception the Township relied upon to discuss that topic privately. Similarly, it is not clear why Township Attorney Gannon privately informed the Council that Farmingdale "passed a resolution opposing redistricting."

N.J.S.A. 10:4-12(b) permits a public body "to exclude the public **only** from that portion of a meeting at which the public body discusses" one or more the listed exceptions. (Emphasis added). Further, the Act is to be strictly construed against closure and in favor of governmental bodies conducting their business in public. Hartz Mountain Industries, Inc. v. New Jersey Sports and Exposition Authority, 369 N.J. Super. 179, 186 (App. Div.), certif. denied, 182 N.J. 147 (2004).

Thank you for your attention to this matter. I look forward to learning the results of your investigation and what action, if any, that you have elected to take.

Sincerely,



John Paff

cc. Hon. Mayor and Council of Howell Township (with all enclosures)

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<sup>3</sup> To paraphrase the Mississippi Supreme Court, by announcing only "litigation" or "personnel matters" as reasons for going into executive session, the Township Council has said nothing. "It might as well have stated to the audience, 'Ladies and gentlemen, we are going into executive session,' and stopped there." Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 114 (MS 1989).

*Meeting Called to Order*

Mayor Di Bella called this meeting to order at 7:14 PM.

*Opening Statement and Roll Call*

Deputy Township Clerk Wollman read the opening statement. Roll Call: Present: Mayor Joseph M. Di Bella, Councilwoman Cynthia Schomaker, Deputy Mayor Peter Tobasco (8:05 PM), Councilman Juan Malave (7:25 PM), Councilman Robert F. Walsh. Also present: Township Engineer William Nunziato, Township Attorney Thomas Gannon, Deputy Township Clerk Penny Wollman. Absent: Township Manager/Clerk Bruce Davis.

*Executive Session*

There is a need to go into executive session for issues relating to attorney client privilege, personnel, contract negotiations, litigation and acquisition of property. The Township Council will reconvene in public session thereafter. Councilwoman Schmaker made a motion, seconded by Councilman Walsh. Roll Call: Ayes: Mrs. Schomaker, Mr. Walsh and Mayor Di Bella.

Meeting reconvened at 8:32 PM. Pledge of Allegiance. Moment of silence to recognize soldiers overseas.

*5. Acceptance of Minutes of Previous Meetings*

November 22, 2005 -	Public Participation Meeting + Executive Session
November 29, 2005 -	Regular Meeting + Executive Session
December 6, 2005 -	Workshop Meeting + Executive Session
December 13, 2005 -	Public Participation Meeting
December 20, 2005 -	Regular Meeting + Executive Session
December 22, 2005 -	Special Meeting

Deputy Mayor Tobasco made a motion to accept the above referenced minutes, seconded by Councilwoman Schomaker. Roll call: Ayes: Mr. Malave, Mrs. Schomaker, Mr. Tobasco, Mr. Walsh, and Mayor Di Bella.

*Reports of Township Officials*

*Mayor Di Bella* read into the record a prepared statement regarding 3 residents that have filed Notice to recall him as Mayor. To the Residents of Howell: Earlier today I was contacted by the Howell Township Clerk informing me that three residents filed a petition to "recall" me as your Mayor. I have enormous respect for the laws of our State, our great democracy and the will of the people. However, while I respect the "recall" process, I know that this particular action is completely politically motivated and designed to embarrass Howell Township and me personally.

Please know this; I will not be intimidated or bullied by special interests or those who have ambitions to hurt our community through malicious and "trumped up" politically charged

**EXECUTIVE SESSION RESOLUTION**

WHEREAS, Title 10 Chapter 4 Section 13 of the New Jersey Revised Statutes require that the public shall not be excluded from any meetings of a public body unless a resolution authorizing such exclusion is adopted at a public meeting; and

WHEREAS, the Township Council of the Township of Howell has determined that such a closed meeting is required to discuss certain matters which are exempted from consideration with the public in attendance under New Jersey Revised Statutes 10:4-12, namely,

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**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Howell that the public shall be excluded from the next portion of this meeting and that the Township Council (will or will not) reconvene in public session thereafter.

**BE IT FURTHER RESOLVED** that minutes will be kept of the meeting in closed session and the time and the circumstances under which the discussion conducted in closed Session can be disclosed to the public cannot be determined at this time.

**Present:** Mayor Joseph M. Di Bella, Deputy Mayor Peter Tobasco (8:05 PM), Councilman Juan Malave (7:25 PM), Councilwoman Cynthia Schomaker, Councilman Robert F. Walsh, Township Attorney Tom Gannon, Deputy Township Clerk Penny Wollman. Absent: Township Manager/Clerk Bruce Davis

#### RODEO GUIDELINES

*Also present for this portion of Executive Session was Land Use Director Vito Marinaccio.*

*Discussion.* Land Use Director Vito Marinaccio advised the governing body that the Riataman Ranch went before the Monmouth County Agricultural Board for an information meeting regarding regulations for rodeos. The Board's Attorney strongly suggested that the Township address this matter at a local level instead of a hearing before the Agricultural Board.

*Action To Be Taken.* Mr. Marinaccio requested a meeting with Township Attorney Tom Gannon, Fire and Health Departments, and Chris Hill, Police Department to come up with a permit process that would be required before the rodeo season starts. Mayor Di Bella stated Councilwoman Schomaker and Councilman Walsh will meet with Mr. Marinaccio and Mr. Gannon within the next 30 days.

#### ELON V HOWELL TOWNSHIP

*Also present for this portion of Executive Session were COAH Attorney Tina Bombacci, COAH Planner Joe Layton, Township Planner Chuck Newcomb.*

*Discussion.* Professionals present discussed the hearing on Elon's motion for reconsideration on the six acre zoning case, decision on the builder's remedy claim in the six acre zoning case and spoke of settling with Elon.

*Action To Be Taken.* Mayor Di Bella requested Ms. Bombacci contact Elon for price for property. Council agreed that Councilwoman Schomaker will be liaison on this matter and report back to Council.

#### FREEHOLD REGIONAL SCHOOL DISTRICT CASE

*Discussion.* Township Attorney Gannon reported that Farmingdale had passed a resolution opposing redistricting. Currently Mr. Gannon will prepare a document to submit as a legal challenge to oppose the Board of Education Commissioner.

*Action To Be Taken.* No action to be taken by the governing body this evening.

#### MRRSA APPOINTMENT

*Discussion.* Township Attorney Gannon read from his correspondence on this matter dated January 16, 2006 on legal opinion of appointment to MRRSA. Council discussed the fact that current MRRSA representative Mindy Factor Spano does not live in the Township anymore and requested that Mr. Gannon ask her to resign. Mr. Gannon stated that the Township will need to have a residency requirement and would have to change ordinance.

*Action To Be Taken.* MRRSA Appointment to fill upcoming vacancy to be made in public session this evening.

TOWNSHIP COUNCIL REGULAR MEETING  
EXECUTIVE SESSION

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Motion to adjourn, moved by Councilwoman Schomaker, seconded by Councilman Walsh. All a<sup>y</sup>e. Meeting adjourned at 8:20 PM

Respectfully submitted,

  
/s/ Penny A. Wollman

Deputy Township Clerk  
Township of Howell