

John Paff

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September 5, 2006

Fax – 908-325-0129

Hon. Mark K. Bryant, Mayor, and
Lawnside Borough Council Members
4 Douglas Ave
Lawnside, NJ 08045 *(via Fax to 856-546-3232 and regular mail)*

Dear Mayor Bryant and Council Members:

I am an open government advocate who seeks to bring public bodies throughout New Jersey into better compliance with the Open Public Meetings Act, Open Public Records Act and other open-government statutes and regulations. Enclosed please find the following:

1. An article published in the April 8, 2006 Courier-Post. (2 pages)
2. New Jersey Attorney General Formal Opinion (F.O. No. 1, 1998). (3 pages)
3. My completed Request for Access to Government Records form. (3 pages)

In the Courier-Post article, Borough officials acknowledged that Lawnside “does not keep a written record of what happens during closed sessions held by the borough council.” Willa Coletrane, president of Citizens for a Better Lawnside, in my conversation with her yesterday, informed me that even at the present time the Borough Council still does not maintain minutes or other written records of its closed sessions.

If Ms. Coletrane is correct, then the Borough Council is violating the law. The enclosed Attorney General Opinion makes it abundantly clear that “minutes of closed or executive sessions of public bodies must be made and maintained.”

Your response to the enclosed request for public records will reveal whether or not the Borough is abiding by the Attorney General Opinion and other provisions of the Open Public Meetings Act. If the Borough is not in compliance, I am fully prepared, if necessary, to file a civil action, pursuant to N.J.S.A. 10:4-16, to insure the Borough’s future compliance with the Act.

Please address the issues raised in this letter at your September 6, 2006 meeting. I look forward to hearing from you.

Respectfully,



John Paff

Records error threatens plan Minutes of Lawnside caucus at issue

Date: April 8, 2006
Author: JASON LAUGHLIN
Courier-Post (Cherry Hill, NJ)

LAWNSIDE – Failure to keep proper records could threaten a controversial redevelopment plan that might lead to the taking of 17 homes here.

Both a borough solicitor and the borough administrator acknowledged Lawnside does not keep a written record of what happens during closed sessions held by the borough council. That's illegal, state law says.

Government bodies are required to maintain minutes, an official written record, even during closed sessions, public records expert Tom Cafferty said. The written record doesn't have to be made public until the issue that led to the closed session is resolved, but the record must exist, said Cafferty, who also has represented the Courier-Post in legal matters.

Questions about closed session minutes arose due to residents' fears that external forces could be influencing council members' decision making. Lawnside homeowner Willa Coletrane and others requested the closed session minutes through the Open Public Records Act after attending several public hearings to learn more about the redevelopment plan, only to see borough officials go into closed session when the topic came up.

"If it's a public meeting why the hell did the public have to leave?" Coletrane asked.

Borough Solicitor Allen Zeller replied on Feb. 28 to the request by saying, "please be advised that discussions held in closed session are not recorded nor are formal minutes taken."

Assertions by Zeller and borough administrator Jessie Harris contradict statements made by Mayor Mark Bryant, who said earlier this week the borough council does keep closed session records.

He also said closed session records from Lawnside have withstood legal challenges in the past.

The oversight could end up stalling or even derailing the redevelopment project. The plan could bring homes and businesses to 120 acres of largely undeveloped property off Oak Avenue, but could also displace several longtime residents.

"If (the minutes) are not available it's going to create a lack of a record and a problem," said lawyer Jeff Baron, currently in litigation over a Camden redevelopment plan that's been held up over legal technicalities. "I don't think it makes any difference whether it's intentional or not."

In Camden, questions about conflicts of interest and procedural errors have snagged the Cramer Hill redevelopment plan that includes razing 1,200 homes and generated neighborhood opposition.

How the lack of closed session minutes could affect the case depends on whether attorneys choose to bring it up in litigation, and how serious a judge feels the oversight is, Baron said. In some cases, judges have invalidated decisions made in nonrecorded closed sessions. Others have made the public body repeat the process, with proper minutes being taken, he said.

Though Lawnside comprises only 1.4 square miles, borough officials have a web of connections that extend to the highest levels of power in the state. Councilman Walter Lacey is a member of the Delaware River Port Authority's board of commissioners. The DRPA has publicly expressed interest in developing a PATCO station adjacent to the redevelopment zone under discussion.

Mayor Mark Bryant's brother, Wayne Bryant, D-Lawnside, is both a borough solicitor and an influential state senator.

The revelation that closed sessions are not being recorded has fueled residents' fears that back door dealings are driving the redevelopment plan.

The borough is currently debating which contractors will be hired to develop the 120-acre plot.

The zone includes 17 homes and there's a possibility the borough could approve a developer's plan that would force homeowners to move through eminent domain.

"If there's not a paper trail then we don't know what the hell went on in that room, what they were discussing," said Coletrane, who stands to lose her home depending on what kind of redevelopment plan the borough adopts. "Regardless whether they were doing something proper, improper, whatever may be the case, they should have taken minutes. That's the law."

Contact Jason Laughlin at (856) 486-2476 or jlaughlin@courierpostonline.com

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
P O B O X 1 1 2
TRENTON, NJ 08625-0112

CHRISTINE TODD WHITMAN
Governor

PETER VERNIERO
Attorney General

JEFFREY J. MILLER
*Assistant Attorney General
Director*

Telephone (609)292-3212
Facsimile (009)777-3120

October 15, 1998

Stephen B. Sasala, Acting Director
Division of Local Government Services
Department of Community Affairs
101 South Broad Street
P.O. Box 800
Trenton, New Jersey 08625-0800

Re: FORMAL OPINION NO. 1 - 1998

Minutes of Closed Sessions of Public Bodies

Dear Acting Director Sasala:

Recently, it has been brought to our attention that there may be some confusion over the requirements of the Open Public Meetings Act with regard to the keeping of minutes of closed session. The Attorney General is issuing this Formal Opinion in order to resolve any uncertainty surrounding the dictates of the law in this area.

The Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., sets standards for all public bodies for the preparation of minutes of meetings.

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the action 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 [N.J.S.A. 10:4-12]. [N.J.S.A. 10:4-14].

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Construction of any statute necessarily begins with consideration of its plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992); Kirmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987). Such language should be given its ordinary meaning, absent a legislative intent to the contrary. Town of Morristown v. Woman's Club, 124 N.J. 605, 610 (1991).

The language of N.J.S.A. 10:4-14 plainly states that a public body as defined in the Act shall keep minutes of "all its meetings." (Emphasis added). No distinction is made between those meetings or parts of meetings held in public session and those meetings or parts of meetings held in closed or executive session. Thus, it has been our longstanding construction of the Act that minutes of closed sessions must be made and maintained.

This view is confirmed by reference to N.J.S.A. 10:4-13. That statutory section dictates the procedure for a public body to go into closed session. It specifically requires that the public body first adopt a resolution (a) stating the general nature of the subject to be discussed in private, and (b) stating as precisely as possible, the time when and circumstances under which the closed session discussion can be disclosed to the public. Thus, N.J.S.A. 10:4-13 contemplates that minutes of discussions in closed session will be kept and considered for public release at some future date.

The Supreme Court of New Jersey has further confirmed the view that closed session minutes must be kept. In South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493 (1991), the Court expressly noted that the Open Public Meetings Act specifically requires that the public body "maintain 'reasonably comprehensible minutes' of all meetings including executive sessions...." Thus, the law unambiguously requires minutes of closed or executive sessions to be made and maintained.

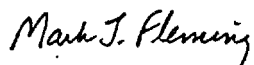
N.J.S.A. 10:4-14 requires that the minutes of any meeting be "reasonably comprehensible and, at a minimum, contain information showing "the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law." The Supreme Court has construed this statutory provision as requiring "sufficient facts and information to permit the public to understand and appraise the reasonableness of the public body's determination." South Jersey Publishing Co., supra, 124 N.J. at 493. However, it is clear that such minutes do not need to be a verbatim transcript of the discussion.

For the above-stated reasons, we reaffirm our clear understanding that minutes of closed or executive sessions of public bodies must be made and maintained. We can express no general opinion as to when such minutes must be disclosed because that fact-sensitive issue must be determined on a case-by-case basis consistent with applicable law.

We would ask that you take whatever steps you deem appropriate to circulate this Formal Opinion- to county and Municipal government officials. Thank you for your attention to this important issue.

Sincerely yours,

PETER VERNIERO
Attorney General of New Jersey



Mark J. Fleming
Assistant Attorney General

MJF/fd

Borough of Lawnside

MUNICIPAL BUILDING
4 DOUGLAS AVENUE
LAWNSIDE, NEW JERSEY 08045

REQUEST FOR ACCESS TO GOVERNMENT RECORDS

FOR MUNICIPAL USE ONLY

Date Received: _____ Date of Response: _____

SEE INSTRUCTIONS ON THE OTHER SIDE

Name: _____

Address: _____

Telephone (Day): _____ Listed _____ Unlisted _____

Information Requested:

Copy of Minutes [specify board or entity, date, topic or other identifying information]

Copy of Ordinance or Resolution [specify date, number, or other identifying information]

Police Accident Report Fee: _____
Identify Accident: _____

Other [specify] _____

License Information [Specify] _____

Information on a Specific Property Address _____
Block _____ Lot _____

Municipal Lien Search Fee: _____ \$ 10.00
Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in *N.J.S.A.* 54:5-11, et seq.

List of Property Owners within 200' Fee: _____
As provided in *N.J.S.A.* 40:55D-12, the fee is the greater of \$.25 per name or \$10.00

A request for access to or for a copy of Government Records should be submitted on this form which has been adopted by the Municipal Clerk as the Custodian of Records. Some records will be immediately available during normal business hours. Some records will require time to compile and to make the copies requested, but will normally be available during normal business hours and within seven (7) business days. If any document or copy which has been requested is not a public record or cannot be provided within the seven (7) business days, you will be provided with a response with that information within the seven (7) business days. Some records requested have specific fees or other response times established by statute. There is no fee involved in simply inspecting a document during normal business hours. This request may be filed electronically. In general:

- Immediate access is ordinarily available for to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information. Minutes of public meetings will be generally available immediately after the minutes have been approved.
- Records which are not readily available or which will require a search of records will be made available as soon as possible and the applicant will be provided with an interim report within seven [7] business days indicating the time which will be required to provide the records.
- Except as otherwise provided by law or regulation, the fee assessed for the duplication of a printed record shall be: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page; for a police accident report there is an additional fee when the request is not made in person of \$5.00 for the first 3 pages and \$1.00 for each additional page, as provided by *N.J.S.A. 39:4-131*.
- Where a request is for a copy in a format other than a photocopy, reasonable efforts will be made to provide the information in the format requested. The cost will be based on the costs of producing the format requested.
- Where a legal determination must be made as to whether records are "public records" as provided by law, the request will be reviewed by the Municipal Attorney.

The term "public records" generally includes those records determined to be public in accordance with *N.J.S.A. 47:1A-1*. The term does not include employee personnel files, police investigation records, public assistance files or other matters in which there is a right of privacy or confidentiality or inter-agency or intra-agency advisory, consultative, or deliberative material or other material which is specifically exempted by law.

The Applicant hereby acknowledges receipt of a copy of this form with the date on which the information is expected to be available and the estimated cost. The applicant hereby certifies that he or she has not been convicted of any indictable offense under the laws of this State, any other state or the United States and is not seeking government records containing personal information pertaining the victim or the victim's family as provided by *N.J.S.A. 47:1A-1 et seq.*

This form, when signed by the municipal official shall constitute a receipt for any deposit received.

The information requested will be ready on _____

Estimated Number of Pages _____

Estimated Cost _____

Deposit _____
 [required where the anticipated cost of reproduction exceeds \$5.00]

 Applicant

 Municipal Official

Date: _____

Date: _____

Borough of Lawnside

1. Any and all resolutions passed during 2006 by the Borough Council, in accordance with N.J.S.A. 10:4-13¹, authorizing the exclusion of the public from any Borough Council meetings.
2. Any and all resolutions passed during 2006 by any Borough Redevelopment Agency² or Housing Authority³, in accordance with N.J.S.A. 10:4-13, authorizing the exclusion of the public from any Redevelopment Agency and/or Housing Authority meetings.
3. Any and all minutes recorded or notes taken at any and all of the closed or executive sessions⁴ that were authorized by the resolutions that are responsive to Nos. 1 and 2 above.
4. To the extent that the requested records are not duplicative of those requested in No. 3 above, any and all minutes recorded or notes taken at any and all closed or executive sessions held during 2006 by the Borough Council and by any Redevelopment Agency or Housing Authority.
5. The public meeting minutes from any meeting of any public body within the Borough, including the Borough Council and any Redevelopment Agency or Housing Authority, that was held on August 22, 2006.
6. Any and all notices sent to newspapers in order to advertise the August 22, 2006 meeting described by No. 5 above.
7. The public meeting minutes from any "caucus," "regular," "special" or other Borough Council meetings that were held in May of 2006.
8. An April 8, 2006 Courier-Post article stated that Borough Solicitor Allen Zeller wrote a memo or letter on or about February 28, 2006 that stated in part that "please be advised that discussions held in closed session are not recorded nor are formal minutes taken." I request a copy of that memo or letter.

The above records are requested under the Open Public Records Act, the Open Public Meetings Act and the common law.

¹ N.J.S.A. 10:4-13 states: "**Closed meetings; resolution to conduct.** No public body shall exclude the public from any meeting to discuss any matter described in [N.J.S.A. 10:4-12] until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted: a. Stating the general nature of the subject to be discussed; and b. Stating 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."

² Established in accordance with N.J.S.A. 40A:12A-11.

³ Established in accordance with N.J.S.A. 40A:12A-17.

⁴ i.e. those meetings from which the public was excluded.

Zeller & Bryant, Attorneys at Law, LLP

ALLEN S. ZELLER
WAYNE R. BRYANT
MATTHEW B. WIELICZKO
JAMES W. BURNS
ERIC J. RISO

LAWRENCE M. AGUNSDAY
FRANCIS J. FALKENSTEIN
DEENA M. GREBLE
ANGELA B. KOSAR
SANDRA J. ROSS
MICHAEL A. WEINER
DEAN R. WITTMAN
STANLEY G. WOJCULEWSKI

September 11, 2006

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. John Paff
P.O. Box 5424
Somerset, New Jersey 08875

**RE: Request for Access to Municipal
Records Our File No.: 2470-1**

Dear Mr. Paff:

Please be advised that I represent the Borough of Lawnside. I have been provided with a copy of your letter of September 5, 2006 which included a Request for Public Records and which was received by the Borough Clerk on September 5, 2006. Specifically, as I understand your Request, you attached a sheet listing eight (8) items to be produced. The Request, however, was not signed nor was a deposit for the cost of the requested records submitted.

Please accept this letter as the formal response on behalf of the Borough to this Request. Please be advised that the documents requested by you as they relate to closed of executive sessions are not being supplied because the documents are not public records as provided by law and are exempt from access pursuant to N.J.S.A. 47:1A-1, et seq. as well as other statutes and regulations including the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. Specifically, your Request in Paragraph 3 seeks minutes recorded or notes taken at all of the closed or executive sessions of the Borough in 2006. These records are exempt for the reasons stated herein. Paragraph 4 requests all minutes recorded or notes taken at closed or executive sessions held during 2006 by Borough Council or any Redevelopment Agency or Housing Authority. These records are also exempt for the reasons set forth herein.

WOODCREST PAVILION
TEN MELROSE AVENUE
SUITE 400
CHERRY HILL, NJ 08003
856-428.6600
FAX 856.428.6314

Mr. John Paff
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In accordance with the Open Public Meetings Act, prior to holding a closed or executive session which would exclude the public, as required by N.J.S.A. 10:4-12B, a motion is made specifying the purpose for the closed session and the nature of the matters that will be discussed at that portion of the meeting at which the public is excluded. For example, if the motion to convene a closed session is intended to discuss personnel matters, pending an anticipated litigation or matters falling within the attorney/client privilege, that information is provided during the public session prior to a vote on the motion. As well, after the conclusion of the closed session, upon returning to open session, a motion is made and voted upon to return to open session and an announcement is then made that no formal action was taken in the closed session.

The public portion of the Borough meetings are recorded and minutes of the meetings are maintained in accordance with the law, including N.J.S.A. 10:4-14. However, the discussions held in closed session are not recorded nor is there a verbatim transcript made of those discussions. Minutes of the closed session are maintained, again as required by law, but as I indicated in my letter to Ms. Woods (a copy of which you requested in your Paragraph 8 and which will be supplied), the closed session minutes are not as "formal" as are the open session meeting minutes.

As indicated, your Request for Public Records has not been signed or certified as required nor has the required deposit for these documents been paid. Upon receipt of the signed Request and the deposit, the information requested in Paragraphs 1, 2, 5, 6, 7 and 8 will be provided to you. Accordingly, please sign and certify your Request and provide a deposit in the amount of \$20.00 made payable to the "Borough of Lawnside." This represents a deposit for the first ten (10) pages at \$.75 per page; \$.50 per page for the next ten (10) pages and \$.25 for each page thereafter.

Please be advised that you have right to appeal the decision that the documents requested are not public record. You may appeal this decision to the Government Records Council or to the New Jersey Superior Court as provided by N.J.S.A. 47:1A-1, et seq. Specifically, N.J.S.A. 47:1A-6 provides that you may institute a proceeding to challenge this decision in the Superior Court of New Jersey, Camden County or, pursuant to N.J.S.A.

Mr. John Paff
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47:1A-7, you may file a complaint with the Government
Records Council which is a part of the New Jersey
Department of Community Affairs, P.O. Box 800, Trenton, New
Jersey 08625.

Very truly yours,
/s/ Allen S. Zeller

ASZ:kn

enc.

cc: Mayor Mark K. Bryant
Borough Council of Lawnside
Jessie Harris, Borough Administrator
Sylvia Vannockay, Borough Clerk

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Lawnside threatened with lawsuit

By JASON LAUGHLIN
Courier-Post Staff

LAWNSIDE

A Somerset Libertarian has threatened to sue Lawnside if it doesn't demonstrate compliance with state laws requiring minutes to be kept during closed sessions.

But local officials contend they are complying with the law.

John Paff, 49, has sued several other municipalities throughout the state for what he believes was failure to comply with open records laws. Paff did not attend Wednesday's borough council meeting here but a letter from him was read into the record by local resident Tony Ellsley.

Paff, a member of the Libertarian Party, said he is acting independently of any political group.
Published: September 07, 2006 3:10AM