



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

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August 20, 2007

Hon. Richard J. DiLascio, Mayor
Township of Lyndhurst
367 Valley Brook Ave
Lyndhurst, NJ 07071

(via Fax only to 201-939-2305)

Dear Mayor DiLascio and Members of the Board of Commissioners:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, to complain about Board's nonpublic (i.e. executive or closed) meeting procedure.

Enclosed is a draft civil complaint against the Board. I request that you to consider this letter and enclosed draft complaint as "anticipated litigation . . . in which the [Board] 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.

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 Lyndhurst taxpayers. We would rather amicably resolve the concerns set forth in the enclosed complaint.

So that I know that my position is being taken seriously, I ask that you or your attorney relate the Board's position on this matter to me by fax to 908-325-0129 within three business days after the Board's next meeting. If I don't hear from you, I will assume that you are not willing to attempt to amicably resolve this matter and will file the complaint without further notice.

I appreciate your time and look forward to receiving your response.

Sincerely,

John Paff

cc. Gary Cucchiara, Esq., *(via PDF email attachment to gcucchiara@nakblaw.com)*

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

JOHN PAFF,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION, CIVIL PART
	:	BERGEN COUNTY
vs.	:	DOCKET NO.
	:	
LYNDHURST TOWNSHIP	:	Civil Action
BOARD OF COMMISSIONERS	:	
Defendant	:	COMPLAINT
	:	

Plaintiff John Paff, by way of complaint against the Lyndhurst Township Board of Commissioners (hereafter “Defendant Board”) states as follows:

COMMON ALLEGATIONS

1. Plaintiff John Paff is an individual who resides in Franklin Township, Somerset County, New Jersey.
2. Defendant Board is a public body as that term is defined by N.J.S.A. 10:4-8(a).
3. In response to a recent records request, Plaintiff received the following records from the Clerk of Defendant Board:

- Exhibit 1:** May 8, 2007 Executive Session Resolution
- Exhibits 2 – 3:** May 8, 2007 Executive Session Minutes
- Exhibit 4:** June 13, 2007 Executive Session Resolution
- Exhibits 5 – 6:** June 13, 2007 Executive Session Minutes

On August 20, 2007, Plaintiff, on his own behalf and as Chairman of the New Jersey Libertarian Party’s Open Government Advocacy Project, wrote to Defendant Board and its

attorney complaining about the Senator Byron M. Baer Open Public Meetings Act issues alleged in this complaint. The letter, without attachments, is attached as Exhibit 7.

4. Despite Plaintiff's August 20, 2007 letter (Exhibit 9), Defendant Board has [insert facts].

FIRST COUNT

(Matters privately discussed which are not listed on authorizing resolution)

5. The Executive Session Resolution (Exhibit 1) authorizing the May 8, 2007 nonpublic meeting lists the following as the general nature of the matters to be privately discussed: "Tax Appeals and litigation regarding liquor license Good Libations t/a Vibe Lounge and Sports Bar."

6. The May 8, 2007 Executive Session minutes (Exhibits 2 – 3), however, reflect that the Board also privately discussed a) the "Giametta v. Township of Lyndhurst lawsuit," b) the need for police department rules and regulation to be established by ordinance instead of by resolution and c) the inclusion of "equal opportunity employment language" in the Township's employment advertisements.

7. The Executive Session Resolution (Exhibit 4) authorizing the June 13, 2007 nonpublic meeting lists the following as the general nature of the matters to be privately discussed: "Policies regarding Practices and Procedures of the Police Department, Tax Appeals."

8. The June 13, 2007 Executive Session minutes (Exhibits 5 – 6), however, reflect that the Board also privately discussed a) the number "of hours a part-time employee needs to work," b) "the minimum number of hours an employee needs to work to qualify for benefits," c) the need for "accelerated tax sales," d), "bankruptcy sales for properties in the

Meadowlands,” e) the “Development and Reconstruction of Town Hall Parks” and details relating thereto and f) “the procedure to follow at the Vibe Lounge hearing.”

WHEREFORE, Plaintiff demands judgment:

A. Declaring that the Defendant Board violated the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., by failing or refusing to disclose within its May 8, 2007 and June 13, 2007 nonpublic meeting resolutions all of the issues privately discussed on those dates.

B. Enjoining Defendant Board from failing or refusing to disclose within its future nonpublic meeting resolutions any and all matters that will be discussed behind closed doors.

C. Awarding Plaintiff his costs of suit.

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

SECOND COUNT

(Improper Topics Discussed During Nonpublic Meetings)

9. During its May 8, 2007 nonpublic meeting (See Exhibits 2 and 3), Defendant Board privately discussed a) “that an Oprah [sic] Request” had been received asking for all correspondence among the Commissioners relating to the Vibe Lounge, b) the “posting and promotion of officers in the Police Department,” c) the fact that “correct form of rules and regulations regarding the police department” must be established by ordinance instead or resolution, d) that “many areas that do not apply to the Walsh Act Form of Government need to be revised,” e) that “the resolution for the hiring process” on the May 8, 2007 meeting agenda was “fashioned after the State Police’s guidelines,” and f) the need for “equal opportunity employment advertisements” to be included within employment advertisements.

10. During its June 13, 2007 nonpublic meeting (See Exhibits 3 and 4), Defendant Board privately discussed a) the fact that the “proper way to set up [police policies and practices] is ordinance,” b) that the new ordinance “does not require a written exam for promotion if the police officer has been in his position for at least five years,” c) that the police “roster will be temporarily expanded from 50 to 52,” d) “the number in each rank and how they will be eliminated,” e) the number of “hours a part-time employee needs to work,” f) “the minimum number of hours an employee needs to work to qualify for benefits,” g) whether or not the Township should bond if there were “substantial credits,” h) the desirability of “an accelerated tax sale,” i) “bankruptcy sales for properties in the Meadowlands,” j) the “Development and Reconstruction of Town Hall Parks,” k) that the “basketball courts [were] paid for by the Bergen County Grant funds [and] must be open to County residents, l) the need to decide on new improvements and the “gazebo relocation,” m) the need for “regular patrols” at the parks and n) that the Township “can not keep out non-residents.”

WHEREFORE, Plaintiff demands judgment:

E. Declaring that Defendant Board violated the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. by discussing the topics described in ¶¶ 9 and 10 without the public being present.

F. Enjoining Defendant Board, going forward, from discussing topics in nonpublic session unless they so qualify under N.J.S.A. 10:4-12(b) as narrowly construed.

G. Awarding Plaintiff his costs of suit.

H. 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.

Dated:

John Paff
Plaintiff

Draft

EXECUTIVE SESSION RESOLUTION

WHEREAS, the Open Public Meeting Act, P. L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body wishes to discuss:

Tax Appeals and litigation regarding liquor license Good Libations t/a Vibe Lounge and Sports Bar.

Minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW, THEREFORE BE IT RESOLVED that the public be excluded from this meeting.

Adopted: May 8, 2007

	Ayes	Nays	Absent	Abstain
Commissioner Abruscato	X			
Commissioner DiMaggio	X			
Commissioner Giangeruso	X			
Commissioner Haggerty	X			
Mayor DiLascio	X			

Minutes of an Executive Session of the Board of Commissioners of the Township of Lyndhurst on Tuesday, May 8, 2007. The meeting was called to order at 6:40 P.M. by Mayor Richard J. DiLascio.

PRESENT: Mayor Richard J. DiLascio

Commissioner Abruscato
Commissioner DiMaggio
Commissioner Giangeruso
Commissioner Haggerty
Gary Cucchiara, Township Attorney
Eric Bernstein, Labor Attorney Frank
DiMaria, Township Auditor Deborah
Ferrato, Treasurer, CFO Helen
Polito, Township Clerk

Gary Cucchiara began the meeting by speaking in reference to two tax appeals. First, was AnCorp. The assessment in 2006 was at 100% full market value, but was sold for less. They would like to lower the assessment to the sale price. Also, Safran Corporation had two properties on Rutherford Avenue. The 2004-2005 assessment was \$840,200.00 and in 2006-2007, it more than doubled in price to \$1,756,000.00. They want a reduction to \$1,600,000.00. A discussion ensued regarding the best way to finance for less impact on our budget. Gary Cucchiara and Deborah Ferrato will work together on the best process. A Motion by Commissioner Abruscato, seconded by Commissioner Haggerty to approve the two tax appeals subject to the manner in which the credits are being financed.

Vibe Lounge settlement request was received by Township Attorney. Request asked for us to drop the suspension without prejudice to give the owners more time to sell the business. They want to list the property for sale and have the buyer discuss the type of business with the governing body so that they can approve the new owners. If they are unable to locate a buyer the Board will have the right to reinstate the charges and the suspension will stay. Mayor DiLascio spoke for the Board of Commissioners saying that they would not dismiss the charges upon this letter of request for settlement. The hearing is set for Thursday and will continue. Gary Cucchiara stated that it could take a few sessions to get this settled because there are seven different charges and cross examination is allowed. Commissioner Abruscato asked if there was a possibility of a shutdown again at this session because last time, officers incurred \$3,000.00 in overtime and did not testify and would this happen again. Township Attorney said anything could happen but, he and Mayor DiLascio agreed that it was wise last time to shut down the hearing with the question that was raised because otherwise, if it was found to be justified, they could need to start the proceedings over and it would cost more.

Helen Polito stated that an Oprah Request for forward to all Commissioners asking if any correspondence had been made between anyone relating to the Vibe Lounge and any Commissioners had occurred. All said no correspondence had gone back and forth. Helen Polito said that she will respond in that way to the Oprah Request.

Labor Attorney, Eric Bernstein spoke on the Giametta v. Township of Lyndhurst lawsuit. Mr. Bernstein said he would prepare a resolution of discharge on approval of the concessions and the sign off on an agreement. Stipulations that were agreed upon by Officer Giametta was to plead guilty to one charge, take a one-year probation. Upon the probation period, if there are any further infractions, we can seek termination and a psychiatric exam would be necessary. Lastly, he would divest himself of the questionable property on Ridge Road. This was agreed to by the Board of Commissioners and the resolution will be drawn.

The posting and promotions of officers in the Police Department. There has *never* been a correct form of rules and regulations regarding the police department. Mr. Bernstein said this clearly has not been done by ordinance, but had been done by resolution and needs to be corrected. First, a review would need to be completed and that these changes would have to be brought before the Board of Commissioners. Many of the areas that do not apply to the Walsh Act Form of Government would need to be revised. Mayor DiLascio asked for an estimated time for this review and Eric Bernstein stated it would not take an exorbitant amount of time. The resolution for the hiring process on tonight's Agenda has been fashioned after the State Police guidelines, so questions can be answered about this procedure has been in play by the higher authority than the Township.

Mr. Bernstein spoke on Ordinance No. 2601 on the Agenda for second reading regarding publication of employment advertisements on the Internet. The postings on the website must have the equal opportunity employment language to comply with NAACP rules. We must be sure that all ads on the Internet conform to this law. Helen Polito stated that its one very short addition, standard language to the end of the ad.

Meeting was adjourned at 7:55 P.M.

Respectfully submitted,

Helen Polito, RMC
Township Clerk

EXECUTIVE SESSION RESOLUTION

WHEREAS, the Open Public Meeting Act, P. L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body wishes to discuss:

Benefits for Personnel

Minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW, THEREFORE BE IT RESOLVED that the public be excluded from this meeting.

Adopted: July 10, 2007

	Ayes	Nays	Absent	Abstain
Commissioner Abruscato	X			
Commissioner DiMaggio	X			
Commissioner Giangeruso	X			
Commissioner Haggerty	X			
Mayor DiLascio	X			

Minutes of a Closed Session of the Board of Commissioners of the Township of Lyndhurst on Tuesday, July 10, 2007. The meeting was called to order at 6:40 P.M. by Mayor Richard J. DiLascio.

PRESENT: Mayor Richard J. DiLascio
Commissioner Abruscato
Commissioner DiMaggio
Commissioner Giangeruso
Commissioner Haggerty
Richard DeAngelis, Township Attorney
Deborah Ferrato, Treasurer, CFO Helen
Polito, Township Clerk

A new police officer was hired into the department and it was questioned if transfer of time for his pension time, sick days and holiday pay would be carried over. Policy of transfer of these benefits for other non-union employees transferred to union positions and police officers transferred from other union pension jobs would need to be decided upon. Our Labor Attorney will be consulted and a written opinion be submitted for each scenario.

A Motion was made by Commissioner Abruscato, seconded by Commissioner Haggerty to adjourn at 6:55 P.M.

Ayes: Commissioner Abruscato	Nays: None
Commissioner DiMaggio	Absent: None
Commissioner Giangeruso	Abstain: None
Commissioner Haggerty	
Mayor DiLascio	

Respectfully submitted,

Helen Polito, RMC
Township Clerk

EXECUTIVE SESSION RESOLUTION

WHEREAS, the Open Public Meeting Act, P. L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Governing Body wishes to discuss:

Policies regarding Practices and Procedures of the Police Department, Tax Appeals.

Minutes will be kept and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes can be made public.

NOW, THEREFORE BE IT RESOLVED that the public be excluded from this meeting.

Adopted: June 13, 2007

	Ayes	Nays	Absent	Abstain
Commissioner Abruscato	X			
Commissioner DiMaggio	X			
Commissioner Giangeruso	X			
Commissioner Haggerty	X			
Mayor DiLascio	X			