

Libertarian Party of Central New Jersey

John T. Paff, Secretary
P.O. Box 11853
New Brunswick, NJ 08906-1853
February 22, 2005

Christopher Shea, Commander
Special Investigations Unit
Somerset County Prosecutors Office
40 North Bridge St
Somerville, NJ 08876-2111 (via Fax and mail)

RE: Bound Brook Borough - Open Public Meetings Act violations

Dear Detective Sergeant Shea:

The Libertarian Party of Central New Jersey has created an Open Government Task Force of which I am the chairman. The Task Force's goal is to bring all local government agencies in our tri-county area (Somerset, Middlesex and Union Counties) into full compliance with the Open Public Meetings Act, Open Public Records Act and other open-government statutes and regulations.

The SCPO website shows that "sunshine law violations" are within your Unit's area of responsibility. Accordingly, we bring two such violations involving Bound Brook Borough to your attention.

I. Failure to Maintain Executive Session Meeting Minutes.

There is no question that the Open Public Meetings Act requires the Borough Council to keep minutes of its executive or closed sessions and make them promptly available to the public. South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493 (1991). Yet, in his February 18, 2005 letter (attached as Exhibit A), Bound Brook Borough Attorney C. Douglas Reina candidly admits that minutes from the Council's August 3, 2003, February 3, 2004 and May 11, 2004 closed sessions cannot be located and that

Mr. Brodbeck, the now retired long term clerk of the Borough . . . advised that he had no notes of those meetings so that it would be impossible to reconstruct minutes of same.

Since Mr. Brodbeck was a "long term clerk¹" it is likely that the absence of executive session minutes is not confined to the three requested meeting dates. Rather, we are concerned that the Council's failure to record minutes of its closed sessions was consistent throughout Mr. Brodbeck's tenure.

At this point, the damage has already been done and Bound Brook citizens have forever been "foreclosed [their] right to obtain material and information vital to [their] ability to evaluate the wisdom of governmental action" that took place during the Borough Council's unrecorded closed sessions. Id. at 494. Nonetheless, we ask that you at least correspond with the Borough on this matter so as to document this violation and decrease the likelihood of its reoccurrence.

II. Quorum Gathering in Private at Unadvertised Meetings.

Enclosed as Exhibit B is my December 30, 2004 letter inquiring about private, unadvertised gatherings of a quorum of the Bound Brook Planning Board during meetings of the Borough's Redevelopment Advisory Committee. In his February 18, 2005 letter, Mr. Reina does not dispute my letter's factual underpinnings. Rather, he concludes, apparently, that the situation described does not violate the Open Public Meetings Act.

I respectfully disagree with Mr. Reina. If a quorum of the Planning Board was meeting unannounced and privately at an area restaurant to discuss Borough business, such would undoubtedly violate the Open Public Meetings Act. For the quorum to instead meet within the framework of an advisory committee does not change this outcome. To hold otherwise would permit any governmental body, the Bound Brook Borough Council for instance, to create an advisory committee consisting of the council members plus one or more additional persons, and then meet within the framework of that committee in nonpublic, unadvertised meetings. Such mischief could not have been within the Legislature's intent.

We ask that you consider this question and inform us of your findings and conclusions.

Thank you for your attention to these matters.

Sincerely,

John Paff
Task Force Chairman

¹ Press reports indicate that he has been the Bound Brook Borough Clerk since at least 1996 ("Rebel borough won't adjust tax bill" Star-Ledger (Newark, NJ), July 14, 1996)

ABRAMS, GRAN, HENDRICKS, REJNA & ROSENBERG
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February 18, 2005

Mr. John Paff
P.O. Box 5424
Somerset, NJ 08873

Re: Requests for Information Borough of Bound Brook

Dear Mr. Paff:

I have been given materials for the first time with respect to your several requests and asked to respond thereto. I am advised that yesterday the Borough Clerk's Office forwarded to you an excerpt from the minutes of the meeting at which a motion was made, seconded, and carried creating a Redevelopment Advisory Committee. No other document relating to its creation has been located.

It is my understanding that you have requested any minutes or reconstructed versions of same covering executive sessions of the governing body held on August 3, 2003, February 3, 2004, and May 11, 2004. Having been unable to locate any minutes of those sessions, I instructed the Deputy Clerk of the Borough to contact Mr. Brodbeck, the now retired long term clerk of the Borough who was the clerk on the relevant dates. Yesterday when reached Mr. Brodbeck advised that he had no notes of those meetings so that it would be impossible to reconstruct minutes of same. I might indicate that the governing body did not take any actions during executive sessions and that it appeared that Mr. Brodbeck was keeping minutes during such sessions.

With respect to your letter of December 30, 2004 addressed to Robert Fazen, Chairman of the Bound Brook Planning Board, there is no record of any correspondence of any kind relating to same.

With respect to the substance of that letter, please be advised that the meetings to which you refer were not meetings of the planning board or of any subsidiary committee thereof. In fact, I doubt that Mr. Fazen would even have been aware that the meetings were being held. The meetings were that of a subcommittee of the Redevelopment Advisory Committee addressing matters which were not within the parameters of any function of the

Planning Board. Coincidentally, the members of that subcommittee were also members of the planning board. The Redevelopment Advisory Committee is no more than its name implies, advisory in nature. It can make no decision which in any way binds the Borough, it has no budget, and it cannot obligate the Borough in any financial manner. Under these circumstances in my opinion it is not a public body subject to the mandates of the Open Public Meetings Law. Moreover, the attendees at the referenced meetings would not have constituted a quorum of the Redevelopment Advisory Committee. That committee had invited proposals from redevelopers for 2 projects and the meetings were designed for the subcommittee to interview prospective redevelopers, report back to the Redevelopment Advisory Committee as a whole, which in turn was expected to report to the Mayor and Council. The planning board played no part in this process.

I fully understand your frustration in connection with your requests of the Borough. I trust that at this stage you have received either all documents requested or a response that no such document exists. If not please contact me directly. I can only attribute the lack of response and/or existence of records to the turnover in personnel during the time period involved commencing with the unfortunate illness of Mr. Brodbeck, followed by his office being staffed on a temporary basis by 2 part time persons while an experienced permanent replacement was sought. I have discussed with the Borough's new, full time Administrator the need for an efficient, responsive procedure for document requests. I am confident that same will be implemented forthwith. Further, at its last meeting the governing body authorized the offering of employment to an experienced person as full time Borough Clerk. This should further serve to facilitate a better procedure.

Once again if there are any issues outstanding with the Borough please advise.

Very truly yours,

/s/ C. Douglas Reina, Borough Attorney
Borough of Bound Brook

VIA FACSIMILE (908) 325-0129 and Regular Mail

Copies to: Fran Snyder, Esq., VIA FACSIMILE (609) 292-6292 and Regular Mail
John J. Kennedy, Administrator
Robert Fazen, Planning Board Chairman

Libertarian Party of Central New Jersey

John T. Paff, Secretary
P.O. Box 11853
New Brunswick, NJ 08906-1853
December 30, 2004

Robert Fazen, Chairman
Bound Brook Planning Board
230 Hamilton Street
Bound Brook, NJ 08805 (via Fax only 732-356-8990)

Dear Mr. Fazen:

Borough resident Linda Brnicevic informs me that the following were among those present at the October 19, 2004, December 1, 2004 and December 2, 2004 meetings of the Redevelopment Advisory Committee (RAC): Hal Dietrich, Richard Shive, Phyllis Pournaras, Ron Fasanello and Jeffrey Thompson. Ms. Brnicevic further informs me that the public was excluded from at least some portions of these meeting and that all five of those mentioned above presently serve as either regular or alternate members of the Borough's Planning Board.

If Ms. Brnicevic's information is correct, it would appear that those gatherings violated the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

N.J.S.A. 40:55D-23.1 states in part

Alternate members [of the Planning Board] may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class. Participation of alternate members shall not be deemed to increase the size of the planning board established by ordinance of the governing body pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23). A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

Since Planning Board alternate members are allowed to "participate" in all cases and vote whenever there is an "absence or disqualification" of a regular member, the

alternates apparently count toward the quorum. Since five members of the nine-member Planning Board were simultaneously present, and since the business of the RAC is intertwined with that of the Planning Board, it further appears that these three gatherings are within the Act's definition of "meeting¹."

Accordingly, the Act was violated unless adequate public notice of the three meetings was given². And, even if such notice was given, the quorum of the Planning Board present cannot exclude the public from its meetings unless the subjects of the closed meetings conform to one of the exceptions set forth in N.J.S.A. 10:4-12(b) and unless a proper resolution, conforming to N.J.S.A. 10:4-13, was previously passed at a public meeting for which adequate notice was given. Ms. Brnicevic informs me that no documents are on file evidencing that adequate notice was given for these three Planning Board meetings or that the Planning Board passed resolutions authorizing the exclusion of the public from those meetings.

Would you please inform me whether the factual bases underlying this letter (i.e. who was present at the three meetings, the official status of those in attendance and the nonexistence of the required resolutions and notices) are correct? If so, would you ask the Planning Board's attorney to express his or her opinion on the legal conclusions I have drawn regarding the legality of the three meetings?

Thank you for your attention to these matters. I look forward to hearing from you.

Sincerely,

John T. Paff
Task Force Chairman

cc. Linda Brnicevic

¹ "'Meeting' means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering." N.J.S.A. 10:4-8(b).

² Subject to certain exceptions, "no public body shall hold a meeting unless adequate notice thereof has been provided to the public." N.J.S.A. 10:4-9.

Libertarian Party of Central New Jersey

John T. Paff, Secretary
P.O. Box 11853
New Brunswick, NJ 08906-1853
April 1, 2005

Wayne J. Forrest, Prosecutor
Somerset County Prosecutors Office
40 North Bridge St
Somerville, NJ 08876-2111

RE: Bound Brook Borough - Open Public Meetings Act violations

Dear Prosecutor Forrest:

We ask for a reply to our February 22, 2005 letter to your Special Investigations Unit, copy enclosed.

I have twice left follow-up voicemails for Detective Sergeant Brian Hoey¹ (phonetic)—on March 23, 2005 and March 28, 2005—but have yet to receive an acknowledgement or a reply.

As you know, absent filing a Superior Court action, private citizens and organizations have no way of enforcing the Open Public Meetings Act. See N.J.S.A. 10:4-17. This lack of an enforcement mechanism underscores the importance of your office's willingness to act upon "Sunshine Law" violations.

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

Sincerely,

John Paff
Secretary

¹ When I telephoned on March 23rd and asked for Detective Sergeant Christopher Shea—our letter's intended recipient—I was told by the recipient that he was now "at the police academy" and that Detective Sergeant Hoey (phonetic) was receiving calls for the Special Investigations Unit.

SOMERSET COUNTY PROSECUTOR'S OFFICE
40 NORTH BRIDGE STREET
P.O. BOX 3000
SOMERVILLE, NEW JERSEY 08876-1262
WAYNE J. FORREST, PROSECUTOR
TELEPHONE: 908-231-7100
FAX: 908-526-2668
WWW.SCPO.NET

May 3, 2005

John T. Paff
P.O. Box 5424
Somerset, NJ 08875

Re: Borough of Bound Brook, NJ (Case No. 0504-0420)

Dear Mr. Paff:

This is to inform you that the Somerset County Prosecutor's Office has looked into your complaints regarding the alleged violations of the Open Public Meetings Act by the Borough of Bound Brook. And subsequently these issues have been addressed with C. Douglas Reina, Borough Attorney.

In response to the first complaint (Failure to Maintain Executive Session Meeting Minutes) Mr. Reina advised that the Borough was still unable to locate any notes and/or minutes for the executive sessions conducted on August 3, 2003, February 3, 2004 and May 11, 2004. Mr. Reina indicated that it is the Administrator/Clerk's responsibility to take notes and maintain the minutes for these meetings. However, Thomas R Brodbeck, the Clerk at the time of these meetings, failed to maintain these notes and therefore they were unable to reconstruct the minutes to same.

Since Mr. Brodbeck's departure, the Borough has hired a new Administrator/Clerk, Donna Marie Godleski. Mr. Reina has assured us that Ms. Godleski and her staff will take all necessary steps to ensure compliance to the Open Meetings Act.

In response to the second complaint (Quorum Gathering in Private at Unadvertised Meetings) Mr. Reina stated that the meetings, which you referred to, were of a subcommittee of the Redevelopment Advisory Committee (RAC). He stated that the RAC is only "advisory" in nature and it cannot commit the Borough in any financial matter.

Our legal staff agrees with Mr. Reina and noted N.J.S.A. 10:4-7:

The legislature, therefore, declares it is the understanding and the intention of the legislature that in order to be covered by the provisions of this act (Open Public Meetings) a public body must be organized by law and be collectively empowered

as a multi-member voting body to spend public funds or affect persons' rights; that, therefore, informal or purely advisory bodies with no effective authority are not covered, nor the groupings composed of a public official with subordinates or advisors, who are not empowered to act by votes such as a mayor or the governor meeting with department heads or cabinet members...

It would appear from this exemption portion of the statute that a subcommittee of an advisory committee does not qualify as a public body as contemplated by the Open Public Meetings Act.

Therefore, based upon the aforementioned circumstances, this matter will be closed. On behalf of Prosecutor Wayne J. Forrest, we appreciate you bringing this matter to our attention

Respectfully,

/s/ Detective Sergeant Brian Hoey
Special Investigations Unit

Libertarian Party of Central New Jersey

*John T. Paff, Chair
Open Government Task Force
P.O. Box 11853
New Brunswick, NJ 08906-1853
Phone: 732-873-1251
June 14, 2005*

Lieutenant Buckman
Somerset County Prosecutors Office
40 N Bridge St
Somerville, NJ 08876-2111 (via hand delivery)

RE: Bound Brook Borough - Open Public Meetings Act violations

Dear Lieutenant Buckman:

This letter is in response to your request, during our telephone conversation last week, that I restate and clarify the Libertarian Party's complaint against the Bound Brook Planning Board.

I am informed by Linda Brnicevic, a Bound Brook resident, of the following factual matters:

1. That the following people were among those in attendance at each of the Redevelopment Advisory Committee's (RAC) meetings of October 19, 2004, December 1, 2004 and December 2, 2004: Hal Dietrich, Richard Shive, Phyllis Pournaras, Ron Fasanello and Jeffrey Thompson. All five are members of the RAC.
2. All five of these attendees were either regular or alternate members of the Planning Board on the three meeting dates.
3. No advance, public notice was given of any Planning Board meetings held on those three dates.

Assuming the truth of these factual matters, I assert the following:

1. Five Planning Board members, regardless of whether they are regular or alternate members, constitute a quorum of the Planning Board. (See my December 30, 2004 letter to Robert Fazen.)

2. Since those five members are an "effective majority" of the Planning Board, their gathering together, regardless of whether the gathering is done under the auspices of the RAC or otherwise, constitutes a "meeting" of the Planning Board unless there is no "intent, on the part of the members of [Planning Board] present, to discuss or act as a unit upon the specific public business of [the Planning Board.]" N.J.S.A. 10:4-8(b).
3. An argument that these gatherings do not constitute Planning Board meetings because they were not "attended by, or open to, all of the members of" the Planning Board (see N.J.S.A. 10:4-8(b)) fails because it is illegal for the Planning Board to "fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act." N.J.S.A. 10:4-11.
4. It is not reasonable to burden a member of the public with proving the "intent" of the Planning Board members who met together outside public view. Rather, given that a) these gatherings of the Planning Board quorum were not "chance encounters," N.J.S.A. 10:4-12, and b) Borough business was presumably discussed at the gatherings, it should be inferred that the five Planning Board members met with the intent to discuss or act as a unit upon Planning Board business.
5. Since the gathering of the five Planning Board members is considered a "meeting" under the Open Public Meetings Act, then "adequate notice" of that meeting, as defined by N.J.S.A. 10:4-8(d), was required.
6. Since "adequate notice" was not given, the gathering of a Planning Board quorum on the three cited dates violated the Open Public Meetings Act.

Also, it simply defies logic that it would be permissible under the Open Public Meetings Act for a public body to conduct secret meetings simply by creating an advisory committee and then staffing it with a quorum of the public body.

Thank you for your consideration. We look forward to hearing from you.

Sincerely,

John Paff
Task Force Chairman



SOMERSET COUNTY PROSECUTOR'S OFFICE

40 NORTH BRIDGE STREET

P. O. BOX 3000

SOMERVILLE, NEW JERSEY 08876-1262

WAYNE J. FORREST

PROSECUTOR

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WWW.SCPO.NET

October 7, 2005

John T. Paff

P.O. Box 11853

New Brunswick, NJ 08906-1853

Re: Borough of Bound Brook, Open Public Meetings Act

Dear Mr. Paff:

As you are aware, this Office has been involved in an investigation concerning allegations that the Borough of Bound Brook violated the Open Public Meetings Act as it applies to the Redevelopment Advisory Committee and its subcommittee.

Our investigation has concluded that five people on the subcommittee did meet and that they represented three Planning Board members and two alternate members of the Planning Board for a total of five Planning Board members. This subcommittee of five people was part of the Redevelopment Advisory Committee which has approximately seventeen members. The Planning Board consists of nine Planning Board members as well as two alternate members and an alternate for the Mayor.

The purpose of the Open Public Meetings Act is to give full access to all Public Meetings of certain governmental bodies and to protect against secrecy in public affairs. Lakewood Citizens for Integrity in Government, Inc. v. Lakewood Township Committee, 306 N.J. Super 500 (Law Div. 1997); Hartz Mountain Industries, Inc. v. New Jersey Sports and Exposition Authority, 369 N.J. Super 175 (App. Div. 2004) certif. den. 182 N.J. 147 (2004).

To be covered by the provisions of the act, a public body must be organized by law and empowered to spend public funds or affect persons' rights. The subcommittee and Redevelopment Advisory Committee itself are advisory in nature and it is our understanding that they can make no decision which in any way binds the Borough. Neither appears to squarely fit within the definition of a public body. Neither the subcommittee nor the advisory committee has a budget and neither can obligate the Borough in any financial or contractual matter where the Open Public Meetings Act would apply.

While on its face, the Open Public Meetings Act does not appear to apply to a meeting of the subcommittee, that does not end the inquiry. The question then becomes was the establishment of the Redevelopment Advisory Committee or its subcommittee and the meeting of those members intended to circumvent the Open Public Meetings Act. If that is the case, the public would be entitled to have any action taken during such meetings deemed a nullity and to have a transcript of any of the meetings made available to it. See, Allan-Deane Corporation v. the Township of Bedminster, 153 N.J. Super 114 (App. Div. 1977).

While it does not appear that these meetings were designed to circumvent the Act, by the nature of the structures of the subcommittee, Redevelopment Advisory Committee and Planning Board, there does exist the potential for an appearance of impropriety. Five people that met as the subcommittee are also on the nine member Planning Board. It is possible therefore, that these same five people may ultimately vote on a developer's concept in their capacity as Planning Board members when they were also initially recommending that same developer and concept in their capacity as Redevelopment Advisory Committee members.

Although you have taken the position that it should be inferred that the three Planning Board members and two alternate members met with the intent to discuss or act as a unit upon Planning Board business, this Office finds insufficient evidence to make that specific inference. In light of the opinion of the Borough Attorney that the Open Public Meetings Act does not apply and the fact that the subcommittee of the advisory committee is without the power to financially bind the Borough, it does not appear that any potential violation of the act was done knowingly by the members of the subcommittee. See, Woodcock v. Calibrese, 148 N.J. Super 526(N.J. Dist. Ct. 1977).

While it cannot be said that the meeting of the subcommittee is definitively covered by the Open Public Meetings Act, in light of the broad public policy as set forth in the Act, a court could find that these meetings did constitute "meetings" as defined by the Act. If a court so found, adequate notice would have been required to be given in that these meetings did not meet the criteria for exclusion of the public as contained in N.J.S.A. 10:4-12.

This Office has therefore sent a letter to the Borough Attorney for Bound Brook advising him that the meetings of the subcommittee, as constituted, may present an appearance of impropriety, that future decisions by the Planning Board concerning the redevelopment of Bound Brook may be jeopardized as a result of those meetings not being open to the public and that the Borough should consider in consultation with its attorney the concerns of this Office as noted above. This matter will be closed with the transmittal of this letter and a letter to the Bound Brook Borough Attorney. On behalf of Prosecutor Wayne J. Forrest we appreciate your bringing this important matter to our attention.

Very truly yours,

WAYNE J. FORREST
PROSECUTOR

By: 

Thomas J.
Chirichella Assistant
Prosecutor



The Star-Ledger

Minutes of executive sessions missing

Officials in Bound Brook say they can't find records from 2003 and 2004

Tuesday, April 26, 2005

BY JOE TYRRELL
Star-Ledger Staff

What the Bound Brook Borough Council knew or did about treatment of Hispanics or Police Chief Kenneth Henderson is unclear, since minutes of council executive sessions in recent years are missing.

While government bodies can discuss some matters privately, they are supposed to vote on and release minutes once they act on the subjects considered.

But in response to requests for the records, officials of the scandal-plagued borough said they cannot find minutes from meetings in 2003 and 2004.

Resident Linda Brnicevic said she's been trying to get closed-session minutes for years, since the borough began devising redevelopment plans for the downtown in the wake of the devastating floods of Hurricane Floyd in September 1999.

Not only are the council records missing, but the redevelopment advisory committee has been holding closed meetings at a local club even though a quorum of planning board members serves on the group, Brnicevic said.

"Here we are 5 1/2 years after the floods, and we still have no idea what's going on, what our future is," she said.

In that time, there have been some sudden events.

In March 2004, Bound Brook agreed to pay \$455,000, hire a bilingual coordinator, end late-night housing inspections and amend the redevelopment plan, all to settle a complaint by the U.S. Department of Justice that the borough discriminated against Hispanics.

In October, the Somerset County Prosecutor's Office arrested Henderson at Cafe Imperial, charging that the police chief tipped off the restaurant about a raid by the state Division of Alcoholic Beverage Control.

John Paff, who heads an open government task force for the Libertarian Party, made a presentation last year to the council. Brnicevic approached him afterward, and Paff decided to ask for minutes of several Bound Brook meetings.

One of the closed sessions, on Feb. 3, 2004, came less than five weeks before borough officials signed the Department of Justice agreement. Another session, on May 11, occurred shortly before the prosecutor's office began investigating Henderson, a frequent sparring partner of Mayor Frank Ryan.

But Borough Attorney C. Douglas Reina told Paff the council minutes may not exist. In 2003, former borough Clerk/Administrator Thomas Brodbeck had serious health problems and eventually retired, Reina said yesterday.

While Brodbeck "appeared to take minutes" in the closed session, they are not at borough hall, according to Reina. Contacted at home, Brodbeck told the attorney "he had no notes of those meetings so it would

be impossible to reconstruct minutes."

"The council took no action in the closed sessions," Reina said, which would have violated the Open Public Meetings Act, commonly called the Sunshine Law. For some meetings, Brodbeck was replaced by fill-ins who may or may not have taken notes, he said.

Nothing sinister is happening, Reina said, "I can only attribute the lack of response and/or existence of records to the turnover in personnel." Council members apparently were unaware of the missing minutes, and never asked for them to vote to make them public, Reina said.

"Absolutely, we're keeping minutes of all meetings, closed and open" now, said John Kennedy, the current clerk/administrator.

But that does not appear to be true for all borough business, Brnicevic said. In October, she stopped at the Elks Club and saw five borough planning board members at an advisory committee meeting with a builder now in line for a redevelopment project.

Although Brnicevic had dropped by socially, unaware of the meeting, officials "came up to me and said, 'You know better, Linda, you can't be here,'" she said.

For a quorum of a public board to hold an unadvertised, private meeting with a developer "undoubtedly" violates the Sunshine Law, Paff said.

Reina disagreed. The planning board members "are wearing different hats" on the advisory group, which has no power, he said. "It would be just as though all of the council members had kids in recreation, and they met with other parents."

"The planning board wouldn't vote on the whole redevelopment plan," Reina said. "It might vote on a redevelopment project."

Joe Tyrrell covers Hunterdon and Somerset counties. He can be reached at jtyrrell@starledger.com or (908) 782-8326.

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Courier News, April 27, 2005

**Bound Brook accused of withholding council proceedings
Council says records the Open Government Task Force is seeking don't exist.**

By GREG MARANO
Staff Writer

BOUND BROOK -- The Libertarian Party of Central New Jersey has asked the Somerset County Prosecutor's Office to investigate the borough for not keeping records of some of the council's closed sessions.

John Paff, chairman of the party's Open Government Task Force, said the borough was unable to fulfill his requests for executive session minutes -- which cover issues including personnel or legal matters and are to be made public once the issue discussed in the meeting is resolved -- of council meetings Aug. 3, 2003, and Feb. 3 and May 11, 2004.

The reason the borough gave: The records don't exist.

"I'm asking for them to enforce the Open Public Meetings act," Paff said.

State statute designates a \$100 fine for the first violation of open public meetings regulations and from \$100 to \$500 for subsequent violations.

"We are presently looking into what they reported," said Somerset County Prosecutor Wayne J. Forrest, though he would not say whether an official criminal investigation has been opened.

"Anytime anybody brings anything to our attention, we try to make that determination, if it is or is not a crime," Forrest said.

In the complaint, Paff wrote, "The damage has already been done" but asks the prosecutor's office to "at least correspond with the Borough on this matter so as to document this violation and decrease the likelihood of its reoccurrence."

Borough officials attribute the gap in records to the turnover in personnel, specifically the position of borough clerk, which Tom Brodbeck vacated for medical reasons in June 2003.

In a letter to Paff dated Feb. 18, Bound Brook Borough attorney Doug Reina wrote:

"Having been unable to locate any minutes of those sessions, I instructed the Deputy Clerk of the Borough to contact Mr. Brodbeck,

the now retired longterm clerk of the Borough who was the clerk on the relevant dates. Yesterday when reached, Mr. Brodbeck advised that he had no notes of those meetings so that it would be impossible to reconstruct minutes of same. I might indicate that the governing body did not take any actions during executive sessions and that it appeared that Mr. Brodbeck was keeping minutes during such sessions."

Reina also wrote that he has discussed the need for an efficient, responsive procedure for document requests with John Kennedy, the borough's full-time administrator since October 2004.

But Paff does not accept that explanation.

"There's always finger-pointing and this 'my dog ate my homework' stuff," Paff said. "You've got a borough attorney in Bound Brook. ... He's supposed to be the one on top of this. Didn't it occur to him that, 'Why are there no meetings of the executive session being brought up for approval by the council?' "

The complaint also calls into question the practice of a quorum of the Planning Board meeting regularly as the redevelopment advisory committee.

"If you're doing township business, and you're sitting as a body doing township business ... the Planning Board still has to give notice," Paff said. "This isn't some chance encounter like they're meeting at a baseball game."

In his letter to Paff, Reina also addressed this allegation.

He wrote that since the advisory committee has no power to spend money or oblige the borough on any financial matter -- and because the meetings Paff cited were merely of a subcommittee of the advisory committee and did not constitute a quorum of the whole advisory committee -- these meetings were not subject to the Open Public Meetings Law.

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Greg Marano can be reached at (908) 707-3148 or gmarano@c-n.com.



The Star-Ledger

Prosecutor will not sanction Bound Brook board

Investigators still checking allegations of Sunshine Law violations by borough planners

Tuesday, June 07, 2005

BY JOE TYRRELL
Star-Ledger Staff

Bound Brook officials who failed to keep minutes of closed-session borough council meetings will not face sanctions after the Somerset County Prosecutor's Office received assurances that the problem has been remedied for future meetings, authorities said yesterday.

The prosecutor's office, however, is still looking into whether members of the borough planning board met to discuss municipal business in private, which would violate the state's Open Public Meetings Act, Prosecutor Wayne Forrest said yesterday.

The investigation was launched after John Paff, a local member of the Libertarian Party, reported that the borough council had no minutes of closed sessions from 2003 and 2004. The state's so-called Sunshine Laws require that those records be kept and later made available to the public.

In a letter last month to Paff, Detective Sgt. Brian Hoey from the prosecutor's office said borough officials have offered assurances that they "will take all necessary steps to ensure compliance" with the Open Public Meetings Act regulations on closed-session minutes.

Borough attorney C. Douglas Reina confirmed that the minutes could not be found. He said former Borough Clerk/Administrator Thomas Brodbeck was ill and eventually retired during the period for which minutes are missing.

Paff had sought the records to determine if there were closed-door discussions concerning ongoing redevelopment proposals or borough Police Chief Kenneth Henderson, who currently is suspended while awaiting trial on numerous misconduct charges.

Paff said he accepts the outcome of the investigation, but was disappointed that the prosecutor's office did not "at least slap the wrist of the borough attorney and past council members for not noticing (the violation) for several years."

Hoey's letter also indicates that the borough redevelopment advisory committee did not violate the state's Sunshine Law when it held private subcommittee meetings. Hoey determined that the statute only covers boards and committees organized by law and "empowered to spend public funds or affect persons' rights."

Paff said that part of the investigation missed his point. He said the problem is that the subcommittee includes enough members of the borough planning board to constitute a quorum, and contends that the planning board is meeting under the advisory committee name in private and without public scrutiny.

"It would be clearly unlawful, for instance, for a quorum of the planning board to meet in the back room of Joe's Bar & Grill to discuss municipal business," Paff said. "I don't see how such a private gathering becomes lawful just because the planning board quorum meets under the auspices of an advisory committee."

Forrest said his office's response to Paff only covered the legal responsibility of the advisory group, and did not include the concerns about the planning board quorum. He said that issue would require further investigation by his office to determine if a Sunshine Law violation occurred.

"It unfortunately was not brought to us that that scenario ever occurred," Forrest said. "We'll look into it."

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COURIER NEWS
BRIDGEWATER, NEW JERSEY
June 14, 2005

Bound Brook committee back under county probe

by GREG MARANO
Staff Writer

BOUND BROOK -- The Somerset County Prosecutor's Office has investigated at least two allegations the borough violated the Open Public Meetings Act but has closed the inquiry without pressing charges.

However, Somerset County Prosecutor Wayne J. Forrest has confirmed his office is looking into another matter brought to his attention by John Paff, chairman of the Central New Jersey Libertarian Party's open government task force.

Paff said Forrest is re-examining an allegation involving the Bound Brook Redevelopment Advisory Committee.

Forrest said that matter is already closed and that his office is investigating a more recent matter that Paff brought to his attention regarding the Borough Council and the Redevelopment Advisory Committee. Forrest would provide no further details.

Paff, however, said there is no new matter.

In a February letter to the prosecutor's office, Paff asked for an investigation into the borough's Redevelopment Advisory Committee meetings. Paff wrote that because the Redevelopment Advisory Committee allegedly was holding private, unadvertised meetings and because its members make up a quorum of the Planning Board, the alleged sessions amounted to illegal meetings of the Planning Board. If true, that would violate New Jersey's Open Public Meetings Act.

The prosecutor's office disagreed.

Borough attorney Doug Reina cited a statute saying the Open Public Meetings Act only applies to public bodies with the power to spend public money or to affect a person's rights. Therefore, he said, advisory bodies such as the Redevelopment Advisory Committee aren't included in the statute. In a May 3 letter to Paff, Detective Sgt. Brian Hoey wrote that the prosecutor's office agreed with Reina's assessment of the situation.

"It would appear from this exemption portion of the statute that a subcommittee of an advisory committee does not qualify as a public body as contemplated by the Open Public Meetings Act," Hoey wrote, though his letter made no reference to the fact that the committee members who were meeting also constituted a quorum of the Planning Board.

Also in his February letter, Paff asked the prosecutor to investigate the Borough Council's

alleged failure to keep minutes of executive session meetings on Aug. 3, 2003, and Feb. 3 and May 11, 2004.

In his May 3 letter to Paff, Hoey wrote that he had discussed the complaints with Reina. Borough officials attribute the gap in records to a turnover in personnel, specifically the position of borough clerk, which Tom Brodbeck vacated for medical reasons in June 2003.

"Mr. Reina has assured us that (new clerk Donna Marie) Godleski and her staff will take all necessary steps to ensure compliance with the Open Meetings Act," Hoey wrote in his letter to Paff.

Paff, however, said he is unsatisfied.

"I was hoping, however, that the SCPO (Somerset County Prosecutor's Office) would have at least slapped the wrists of the borough attorney and the past council members for not noticing - - for several years -- that no closed session minutes were being approved during the public Council meetings," Paff wrote in an e-mail to the Courier News.

In his February letter to the prosecutor's office on this matter, Paff had asked investigators "at least correspond with the borough on this matter so as to document this violation and decrease the likelihood of its reoccurrence."

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