

John Paff

P.O. BOX 5424
SOMERSET, NEW JERSEY 08875-5424
E-MAIL - CJSC@POBOX.COM
APRIL 7, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Nancy Lottinville, Esq.
1 Riverfront Plaza
Newark, NJ 07102

(via Fax only to 973-639-6481)

RE: Highland Park Planning Board meeting minutes

Dear Ms. Lottinville:

I am informed that you are the attorney for the Highland Park Planning Board. Following this cover letter is a copy of a draft complaint I intend to file against your client.

At issue is the Planning Board's failure to comply with N.J.S.A. 10:4-14, which requires it to make its meeting minutes "promptly available to the public." As you can see from ¶ 4 of the draft complaint (and can verify by contacting the Clerk's office), minutes from Planning Board meetings held in September 2004 are still not publicly available.

I would rather avoid a lawsuit over this issue. If your client is willing to promise, by way of a letter from your office, that it will a) have copies of either draft or approved minutes for all its past public meetings publicly available by no later than Monday, April 25, 2005; and b) have copies of either draft or approved minutes for each future public meeting publicly available within two weeks after the meeting, I will not file the attached complaint.

I would like to hear from you in this regard by no later than Wednesday, April 13, 2005.

Thank you for your attention to these matters.

Sincerely,

/s/ John Paff

cc. Janet Potenza, Borough Clerk w/ enc.
(via Fax only to 732-777-6006)

THIS FAX CONSISTS OF FOUR (4) PAGES IN TOTAL

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4. On April 6, 2005, the Borough Clerk's office informed Plaintiff that minutes were not complete, and thus not available for Plaintiff's inspection and review, for the Defendant Planning Board's September 23, 2004, October 14, 2004, November 18, 2004, December 16, 2004, January 20, 2005, February 10, 2005, February 24, 2005, March 10, 2005 and March 31, 2005 meetings.

WHEREFORE, Plaintiff requests:

- A. An Order establishing a "proper standard for 'prompt availability' of minutes" for Defendant Planning Board similar to that Order given by the Court in Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., 212 N.J. Super. 328 (L.1986).
- B. An Order compelling Defendant Planning Board to make minutes for the meetings set forth in ¶ 4 above immediately available for public inspection.
- C. Injunctive relief to ensure the Defendant Planning Board's future compliance with the standard so established.
- D. Such other relief as this Court may deem just.
- E. Costs of suit.

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

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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.

VERIFICATION

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: April ____, 2005

John Paff
Plaintiff

State of _____

ss.

County of _____

On April ____, 2005, John Paff appeared before me, a Notary Public of the State of _____, and affixed his signature above in my presence.

(SEAL)

Gibbons, Del Deo, Dolan, Griffinger & Vecchione
Attorneys at Law
One Riverfront Plaza
Newark, NJ 07102-5496

(Nancy A. Lottinville, Associate, phone 973-596-4547 fax 973-639-6481)

April 13, 2005

VIA FACSIMILE 1-908-325-0129 AND REGULAR MAIL

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

Re: Highland Park Planning Board Meeting Minutes

Dear Mr. Paff

I am in receipt of your letter of dated April 7, 2005 and understand that you have also been in contact with Joan Hullings, the Planning Board Secretary, via e-mail to request copies of minutes of multiple meetings of the Planning Board ("Board").

Be advised that the 'Draft' minutes for the Board's September 23, 2004 and October 28, 2004 are available. Upon receipt of your payment of \$9.00 these minutes will be provided to you. Please advise Ms. Hullings regarding the manner in which you would like them to be delivered.

Be further advised that the Board Clerk is in the process of preparing the minutes of all subsequent meetings. As they become available, Ms. Hullings will advise you of copying costs and will provide them to you. All minutes prepared in "Draft" by the time of the Board's next meeting on April 21, 2005 will be reviewed, amended as determined necessary by the Board, and adopted. The Board will be happy to provide you with copies of the final adopted minutes upon your submission of the appropriate fee.

The Board has held multiple special meetings since September, 2004 with the result that the Board Clerk, whose position is a part time one, has been required to review the tapes of several extra meetings in order to prepare minutes. Additionally, several of these meetings concerned Needs Determination hearings for the "Raritan Avenue Needs Determination Study Area" which were both lengthy and quite complex. Accordingly, the Board has experienced an unusual delay in the preparation and adoption of its minutes

[*page 2] I understand that Ms. Hullings has offered to make arrangements for you to listen to the audio tapes of these meetings. Pending the preparation and adoption of all of the minutes you request, please avail yourself of this opportunity, at a time of your convenience. Please contact Ms. Hullings to make arrangements.

You cite Matawan Regional Teachers Ass'n v. Matawan Bd. of Education in your draft complaint. I respectfully suggest that it was decided on facts that are very distinguishable from the current situation. In Matawan, the trial court relied heavily on the fact that the Board of Education had a full time clerical staff when it interpreted the meaning of "prompt" imposed by the Open Public Meetings Act, N.J.S.A. 10:14-1 et seq., ("OPMA"). The Planning Board has no such full time staff In addition, the Planning Board has been required to hold an unusual number of meetings, at much more frequent intervals and on much more complex matters than the part time position of Board Clerk was expected to handle. Hence, all of these facts and circumstances have combined to create an unexpected and unavoidable delay.

Should you have a particular set of minutes that you wish to review or will suffer some prejudice without, please indicate the date or dates so that we can take the necessary steps to accommodate your needs. Rest assured that the Board is making every effort to produce and adopt the minutes you have requested as quickly as possible.

In view of this unusual situation, the Board's diligent efforts to correct it and in view of the Board's and Ms. Hullings efforts to accommodate your request for information, the Board hopes that you would refrain from instituting any needless and expensive litigation.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

/s/ Nancy A. Lottinville

cc: Alan Kluger, Chairman
Joan Hullings, Board Clerk

John Paff

P.O. BOX 5424
SOMERSET, NEW JERSEY 08875-5424
E-MAIL - CJSC@POBOX.COM
APRIL 13, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129

Nancy Lottinville, Esq.
1 Riverfront Plaza
Newark, NJ 07102

(via Fax only to 973-639-6481)

RE: Highland Park Planning Board meeting minutes

Dear Ms. Lottinville:

I am in receipt of yours of today's date. I will wait until your client's April 21, 2005 meeting before deciding whether or not to file the complaint.

Sincerely,

/s/ John Paff

cc. Joan Hullings, Planning Board Clerk
(via Fax only to 732-777-6006)

John Paff

P.O. BOX 5424

SOMERSET, NEW JERSEY 08875-5424

E-MAIL - CJSC@POBOX.COM

APRIL 22, 2005

TELEPHONE - 732-873-1251

FAX - 908-325-0129



Alan Kluger, Chairman
Highland Park Planning Board
P.O. Box 1330
Highland Park, NJ 08904-1330 (via Fax only to 732-777-6006)

Dear Chairman Kluger and Board members:

In follow-up to Thursday night's meeting, I suggest that the following language, or something like it, be added to the Planning Board's Rules and Regulations:

[Append to end of Art. 4.04] Draft minutes, marked as such, shall be available for public inspection and copying within two weeks after the meeting but at least three business days prior to the next meeting.

[New section] All public meetings shall be audio-taped and the tapes will be retained as public records for no less than five years.

I realize that audio-tape retention was not discussed at Thursday's meeting. Such a retention period, however, appears necessary if the Board implements its discussed plan to severely condense its meeting minutes. If the minutes are to be just a "table of contents," as suggested by Ms. Lottinville, then audio-tapes will be necessary for members of the public who wish to understand what occurred during a given meeting. My research reveals that the current audio-tape retention period is only one year¹ and I think that you will agree that this is insufficient.

Also, I wish to invite the Board's attention to Liebeskind v. Mayor and Mun. Council of Bayonne, 265 N.J. Super. 389, 394, 395 (App. Div. 1993). In this case, the Appellate Division affirmed a trial court's requirement that a public body disclose its meeting minutes within two weeks after each meeting and at least three business days before the next meeting. This is similar to the court's holding in Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., 212 N.J. Super. 328

¹ "Tape recordings of proceedings" shall be retained for "1 year or until summary of minutes is approved or transcript of meeting where an appeal has been taken, whichever is longer." Local Planning Boards and Boards of Adjustment Records Retention and Disposition Schedule, No. M-140000-001, Record Series No. 0008-0004. State of New Jersey, Division of Archives and Records Management.

(L.1986), the case that mentioned by Ms. Lottinville at Thursday's meeting.

I ask that you please distribute this letter to all members so as to satisfy the three-day written notice requirement of Art. 13.00 of the Board's Rules and Regulations. Such will allow these amendments to be discussed and perhaps adopted at the Board's May 26th meeting.

Thank you for your kind attention and cooperation.

Sincerely,

/s/ John Paff

cc. Nancy Lottinville, Esq. (*via Fax only to 973-639-6481*)