

## **Council debates just how far to open up the closed session door**

**Kevin Lechiski/Warren Reporter September 04, 2008 14:59PM**

WASHINGTON -- When it comes to just how much public information Borough Council should make available from its closed sessions, officials said they have to carefully walk a tightrope between ensuring maximum transparency in government while at the same time insuring the municipality doesn't put itself at legal risk.

One such issue is whether council should conduct and file voice recordings of its non-public closed sessions, which state law allows municipal governing bodies to convene in matters related to litigation, negotiations and personnel.

After arguing the pros and cons during the Aug. 19 meeting, council decided against recording the closed sessions. Dissenting were Councilman Andrew Turner and Deputy Mayor David Higgins, who raised the proposal to voice record closed sessions, also commonly referred to as executive sessions.

While certain issues can be debated in closed sessions, any formal votes must be taken in public session, which officials cited as part of the reason against recording council's closed sessions. Municipalities are also required to publicly release the written minutes of closed sessions once the matters discussed are resolved.

Council decided against voice recording the closed sessions after receiving advice from Borough Attorney Richard Cushing, who said he believed such action would be a "major mistake." Cushing noted that another New Jersey municipality he represents almost lost a multimillion dollar lawsuit filed by a developer as a result of one statement made during a voice-recorded closed session.

Cushing said the purpose of closed sessions is for governing bodies "to share ideas. Not all of them are good, but it's important for ideas to bounce back and forth to reach a consensus." Cushing raised concerns that if closed sessions are recorded, officials may be apprehensive to bring their ideas to the table, knowing the information could potentially be used against them. Cushing noted that many sensitive issues are often broached in closed session, such as litigation and personnel issues.

"If someone had a real bad idea in a closed session, the tape could be requested by an attorney and used against you," he said. "Something could be taken out of context, and you could have what you really meant be distorted."

Councilwoman Heather Oakley agreed with Cushing's overall assessment. "The purpose is to bounce ideas, before making a decision in public," she said.

Councilman Charles "Terry" Housel said having voice recordings of closed sessions on file would "only be there to basically hurt us. You can talk freely now. If it's taped, you have to worry that something can be taken out of context and used against you."

Higgins, who was in favor of recording the closed sessions, stated, "If there's nothing to hide, you should be able to tape it."

Turner said he believed taping closed sessions could work to the borough's advantage, including being able to hold accountable any professionals who give the council bad advice. "We want to keep everyone honest," he said.

In a separate yet related action, Borough Council earlier in the year adopted a measure that did increase certain public information related to closed sessions.

On May 6, council unanimously agreed to establish a new resolution format that provides more detailed reasons as to why a non-public closed session is needed. Council's decision came in response to a letter from John Paff of the New Jersey Libertarian Party, who claimed the closed session resolution format the borough previously used may not have passed legal muster, by only listing litigation, personnel and negotiations as reasons for a closed session, without providing further detail.

Borough officials were receptive to Paff's idea of providing as much public detail as possible before going into a closed session, without negatively impacting the borough's position or strategies on issues related to litigation, negotiations or personnel.

A legal opinion -- issued on behalf of the borough in response to Paff's letter -- concluded the format of the resolution council had previously used until this May to approve a closed session was "deficient" in that it did not include information on when and how the information of the closed session will be made available to the public, and was "more general" in its description of topics than what has been described as "good practice."

While the law firm's legal opinion notes the borough's now-defunct resolution format "may be sufficient to survive a legal challenge, the borough could resolve any doubt by adding some descriptive information such as identifying the litigation by party name, the type of contract under negotiation, or the general type of personnel matter."