

**ANDOVER TOWNSHIP COMMITTEE MEETING MINUTES**

**BOB SMITH, MAYOR  
GAIL PHOEBUS, DEPUTY MAYOR  
PHIL BOYCE  
MICHAEL LENSAK  
THOMAS WALSH**

**SPECIAL MEETING**

**JULY 17, 2009  
5:00 P.M.**

**CALL TO ORDER** The regular meeting of the Andover Township Committee was called to order at 5:09 P.M. by Mayor Smith, followed by a salute to the flag.

**ROLL CALL:** Present: Mr. Boyce, Mr. Lensak, Mr. Walsh,  
Ms. Phoebus, Mayor Smith  
Also present: Administrator Alfano, Attorney Semrau

**OPEN PUBLIC MEETING STATEMENT** Statement of compliance with Chapter 231, P. L. 1975 was made by Mayor Smith.

**APPROVAL OF AGENDA** Ms. Phoebus moved to approve the agenda, seconded by Mr. Walsh. Ms. Phoebus then made a motion to move Executive Session prior to the Public Portion of the meeting, seconded by Mr. Walsh.

Mayor Smith stated we don't know if formal action will be taken and as a courtesy to the public he preferred the agenda stay as is.

With the first motion on the table to approve the agenda as presented the roll call is:

Mr. Boyce - no	Mr. Lensak - no
Ms. Phoebus - no	Mr. Walsh - no
Mayor Smith - yes	

Ms. Phoebus restated her motion to have the Executive Session to be held first, seconded by Mr. Walsh. Mayor Smith again stated that as a courtesy to the public, they should be allowed to speak first. Roll call vote:

Mr. Boyce - yes	Mr. Lensak - yes
Ms. Phoebus - yes	Mr. Walsh - yes
Mayor Smith - no	

**EXECUTIVE SESSION**

**PERSONNEL MATTERS**

**J. Alfano, Administrator**

Ms. Phoebus moved to go into Executive Session at 5:12 P.M., seconded by Mr. Walsh. Attorney Semrau asked that this motion include that he be recognized and responsible to take the minutes of the Executive Session. Mr. Walsh amended the motion as stated, seconded by Mr. Boyce.

Mr. Boyce - yes	Mr. Lensak - yes
Ms. Phoebus - yes	Mr. Walsh - yes
Mayor Smith - no	

(See Insert Attached to These Minutes)

**REGULAR MEETING RESUMED**

Ms. Phoebus moved to conclude the executive session at 5:50 P.M., seconded by Mr. Walsh and carried unanimously.

Attorney Semrau stated there were questions by the general public and he explained this is a Special meeting and can be called for when three members of the Township Committee asked for such a meeting. The discussion listed was regarding a Personnel Matter and listed for discussion was Administrator Alfano. He explained that under the law Ms. Alfano has the right to have that discussion about her personnel in the public portion of the meeting or in the Executive Session. That is done because employees have rights to privacy and their election. If it is in the public portion, members of the governing body may say anything they want favorably, unfavorably and matters of opinion. Every employee has the right to have the discussion in Executive Session and more times than not, that is what occurs. In the case today, Ms. Alfano elected after receiving notice, and having an opportunity to think about it, to have that discussion in Executive Session.

Executive Session takes place without the public present. Unlike matters such as Contract Negotiations and Litigation, Personnel is considered most confidential to every employees' right privacy. When that election is made, the Township Committee can not have a discussion in the public portion of the meeting. Members of the public are always entitled to make comments about anything or anyone relating to the Township business.

Attorney Semrau stated that in this case the meeting was called to discuss Ms. Alfano from a Personnel issue. At the last meeting it was also listed on the agenda. At that time, there were only four members of the Township Committee present. It was the desire of the Township Committee to make sure he was included in a Personnel discussion, requesting this meeting to conclude that discussion.

He stated there is no action scheduled for this evening. There is nothing else anyone by law can say about Ms. Alfano or the discussion that just took place.

**REGULAR AGENDA**

**PUBLIC COMMENTS** Peter Spinney, 174 Andover-Sparta Road asked if a special meeting was called due to some sort of emergency. Attorney Semrau explained there is no action being taken and he held to his prior explanation. He asked why there is a special public meeting if no public can be made aware of what was discussed. Attorney Semrau stated every meeting where more than two members convene, it must be advertised and the public has a right to be heard. Mr. Spinney continued to voice his opinion on this matter as Attorney Semrau continued to explain the law as it pertains to this matter.

Stan Christodlous, 6 Wisteria Road asked why it was necessary to spend \$600 to \$700 for a special meeting and why it could not have been done at the next Regular meeting. Mr. Boyce stated that some members felt the matter was important enough and it could not wait until August 10<sup>th</sup>. Mr. Christodlous then remarked this discussion could not be held at the last meeting because Mr. Lensak wasn't present. He stated Mr. Lensak has been a member of the Township Committee for all of two days and doesn't understand how he could render a judgment on the Township Administrator or the position.

**PUBLIC COMMENTS (CONTINUED)** Attorney Semrau stated that it was the intent of the Township Committee to include Mr. Lensak as part of the discussion.

Mr. Christodlous then mentioned a rumor that one of two things is being discussed, terminating the Administrator or terminating the position. He asked if the rumor is true. Attorney Semrau remarked that he would have to advise the Township Committee that the issue is a Personnel Matter and discussion can not take place. He added that if there is a rumor, he hopes it didn't arrive from the Township Committee because it is privileged information.

He then asked if elimination of the position is being considered, which he feels is not a Personnel Matter. Attorney Semrau apologized and explained that an answer to his question would be considered a violation of a Personnel Matter. He then stated that no action could ever take place without the public's knowledge and they will have an opportunity to see what is being presented and comment.

Mr. Christodlous commented that he feels it is highly inappropriate to go into Executive Session, make a decision and then come out and listen to the public. Mr. Walsh replied by stating he feels it is highly inappropriate that Mr. Christodlous have any knowledge of what the Township Committee was discussing prior to this meeting. He added that he feels someone told him something that was going on or he assumed it. Mr. Christodlous stated that if the Township Committee is considering eliminating the position he finds that to be foolish. This Township needs an Administrator because there are too many issues that come up where an Administrator is required. He then stated that if the Township Committee were considering removing the Township Administrator he hoped that the proper performance reviews were conducted, that she be made aware of what the problems are and give the person several months to correct them.

Mayor Smith questioned Mr. Christodlous regarding his comment about hearing rumors and he stated that he believes the Township Committee is concerned that there could have been a violation of Executive Session. He asked Mr. Christodlous where he heard the rumor. He replied it did not come from any members of the Township Committee. Attorney Semrau commented again that the Township Committee is not at liberty to answer any questions regarding Executive Session, but the public can make any comments as they wish, but to ask a question when something is privileged there can be no answers.

Lois McCue, 125 Lake Iliff Road asked if Ms. Alfano could answer questions. Attorney Semrau stated it is within her right if she wishes, though he finds that it is not fair to ask questions about her Personnel discussion. Ms. Alfano stated she is a public servant so she agreed to answer questions. Ms. McCue asked if her job is being eliminated because of funding or if she is being eliminated because of performance. Ms. Alfano responded by saying they are all exploring options at this time, adding it is no secret that funding has been an issue. There are no decisions, only discussions.

Ms. McCue then asked the Township Committee why options were not considered before the budget was adopted. Mr. Walsh and Mr. Boyce both remarked that many options were considered at that time. Ms. Phoebus asked Ms. McCue what brought her to this evening's meeting. She read about the meeting in the newspaper. Mr. Walsh explained that discussions being held are revolving around next year's budget. She asked about the budget and if changes were made and she was told there were many cuts made over the past four years.

**PUBLIC COMMENTS (CONTINUED)** Ms. McCue stated that since we had a Township Administrator we are more aware of what is going on with this Committee and they have lived in town 53 years. She attributed this to Ms. Alfano. She complimented her on her openness, her availability, her presence and she feels it is something this community needs and she asked the Township Committee to think really hard before eliminating this position.

Alison Altenburg stated she learned from Mayor Smith and Ms. Alfano that opening a business in the township is possible and a good idea. She stated she had the support of the Committee. She stated that if the Committee is thinking about terminating her or the position she told them they would be mistaken.

Robyn Hattersley, 148 Limecrest Road stated she is present for Ms. Alfano adding that she believes she is the best Administrator we have ever had for the years she has worked for the Township. She spoke about the Township's history regarding past Administrators. She finishes by saying she wonders how the town would function without an Administrator. Attorney Semrau asked Ms. Hattersley that everything she said today about the job is it based on the conversation she heard today at the meeting and nothing she had heard before hand. Ms. Hattersley agreed.

Ben Bensley of Mountainside Drive stated that if the position was eliminated where would people go if they had questions or concerns. Attorney Semrau stressed again questions like these can not be answered by the Township Committee. He then complimented Ms. Alfano on a job well done for the Township.

Diane Gillespie, 115 Andover-Mohawk Road commented on the public turnout at this meeting. She then referred to her research regarding the Open Public Meetings Act and she found that the township is entitled to provide more information than just Personnel Matter. Attorney Semrau stated his concern over such a comment because in the time he has served Andover Township there has been a great attempt to give out more information to the public. But with respect to Personnel the law protects the employee and gives them the right to privacy. With regard to Executive Session minutes, he and the Clerk review the detailed Executive Session minutes for release to the public. When it comes to Personnel, not much can be written and those minutes are never released to the public.

Ms. Gillespie also commented on Ms. Alfano's performance, bringing a level of professionalism to this town and this building that was sorely lacking. She clarified that she is not saying people are not doing a good job but you can always do a job on two levels. She said Ms. Alfano did a great job renovating the space in the building into more efficient working areas, she likes all the new changes. She has always been helpful in a timely manner. She will always get back to her with an answer. She then stated if the money is needed, she suggested cutting back on the Township Committee's health benefits.

William Howell, 60 Ballantine Road stated Ms. Alfano went through a very long and arduous process to hire her and we would be wasting a great deal of effort in the past to start over. He stated it would be foolhardy to take such action.

Owen Grimes, 289 Route 206 expressed his support for Ms. Alfano in all the dealings she has had with him in her time here. He stated that she is the township and has been that to him. He asked for due consideration to those qualities.

Dan Freed, 85 Lawrence Road agreed with all those before him. Ms. Alfano has been very professional with a very difficult job.

**PUBLIC COMMENTS (CONTINUED)** Mr. Freed asked Mr. Walsh addressed a comment he made in the newspaper regarding the purpose of a Township Administrator. Mr. Walsh stated he still stands by the comment that an Administrator is a political position created by politicians to protect them.

Lois de Vries 85 Lawrence Road questioned Attorney Semrau about his statement that Executive Session minutes pertaining to Personnel Matters are never released to the public. She stated minutes regarding her matter were released to the public. Attorney Semrau stated the situation was quite different than this one. The discussion of May 27<sup>th</sup> was not along the lines of job performance or employee evaluation.

She then quoted Mr. Walsh on two points and she stated her distress that this meeting being called in the manner that it was. She asked Ms. Alfano if she has seen her written evaluations. She responded that she did not believe they are complete. Ms. de Vries then referenced an open complaint to the Labor Board against two members of this Committee and that complaint has not been resolved. Attorney Semrau stated that it is not appropriate to classify something of this nature and there are no complaints on file with the Labor Board with any in the Township. He stated he would never comment about any employee or employer complaints on file with the Labor Attorney. Ms. de Vries then stated her feeling is that anybody that sits on this Committee that has a complaint lodged against them with the Labor Attorney should not be evaluating Ms. Alfano or passing on whether she remains employed until such time the accusation is resolved.

She asked Ms. Alfano if she and Mr. Lensak have ever had a meeting on Township business. She replied, not a formal meeting. Ms. de Vries commented that she does not understand why this meeting had to be held to include Mr. Lensak since he has had no experience how would he be able to properly evaluate her. She then asked Attorney Semrau if it would be appropriate for Mr. Lensak to vote on this matter. He stated that any member of the Township Committee has the right to vote on any matter unless they have a conflict of interest. She then provided several examples as to why she feels the position of Administrator is needed.

Ms. Phoebus moved to close the public portion, seconded by Mr. Walsh and carried unanimously.

Ms. Alfano thanked everyone for being at the meeting and for all that was said. The comments made her feel that she has done the right thing for Andover Township. She stated that this position is an extension of the governing body and she has worked well with all of them. The fact the public is happy how the town is running is a reflection on everyone here. She stated that we will continue to do the right thing for the Township and this is a positive dialogue which they do not have to do. She stated her appreciation to the public and the Township Committee. Mayor Smith and Mr. Boyce thanked everyone for attending this meeting.

Hearing nothing further Mr. Walsh moved to close the public portion, seconded by Mr. Boyce and carried unanimously.

**ADJOURNMENT** No further business appearing before the Committee at this time, Ms. Phoebus moved the meeting be adjourned at 5:50 P.M., seconded by Mr. Walsh and carried unanimously.

Respectfully submitted,

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Robert O. Smith, Mayor

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Vita Thompson, R.M.C.  
Municipal Clerk

**TOWNSHIP OF ANDOVER**

**MOTION FOR EXECUTIVE SESSION**

**BE IT RESOLVED** by the Township Committee of the Township of Andover on the 17<sup>th</sup> day of July, 2009, that:

**1. Prior to the commencement of this Special Meeting, the Township Council shall meet in Executive Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12, sub-section (s):**

- ( ) b. (1) Confidential or excluded matters, by express provision of Federal law or State statute or rule of court.
- ( ) b. (2) A matter in which the release of information would impair a right to receive funds from the Government of the United States.
- ( ) b. (3) Material the disclosure of which constitutes an unwarranted invasion of individual privacy.
- ( ) b. (4) A collective bargaining agreement including negotiations.
- ( ) b. (5) Purchase, lease or acquisition of real property, setting of banking rates or investment of public funds, where it could adversely affect the public interest if disclosed.
- ( ) b. (6) Tactics and techniques utilized in protecting the safety and property of the public, if disclosure could impair such protection. Investigation of violations of the law.
- ( ) b. (7) Pending or anticipated litigation or contract negotiations other than in subsection b. (4) herein or matters falling within the attorney-client privilege.
  
- ( X ) a. (8) Personnel matters.
  - 1. *J. Alfano, Township Administrator***
  
- ( ) b. (9) Deliberations after a public hearing that may result in penalties.
  - 1. The time when the matter(s) discussed pursuant to Paragraph 1 hereof can be disclosed to the public is as soon as practicable after final resolution of the aforesaid matter(s).

Adopted: July 17, 2009

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Moved: Walsh    Seconded: Phoebus  
Voted Aye: Boyce, Lensak, Phoebus, Walsh, Smith  
Voted Nay: None  
Abstained: None  
Resolution adopted. July 17, 2009

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