

DATE: August 8, 2025

TO: Patrick Carrigg, Attorney for the South Orange Maplewood Board of Education

FROM: Paul Surovell, 101 Plymouth Avenue, Maplewood NJ 07040

**Complaint and Proposed Remedy re:
an Open Public Meetings Act Violation by
the South Orange Maplewood Board of Education.**

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Introduction

I have resided in Maplewood with my wife since May, 1977. Our daughter attended public schools here, my grandson recently graduated from South Mountain Annex, a step-grandson attends Columbia and plays on a varsity team. I have followed the South Orange Maplewood Board of Education (Board) efforts to develop Ritzer Field and have expressed my views on the project to Board members by email and at Board meetings as well as to members of the community. I have never missed a payment of my property taxes and I consider myself a stakeholder in this process.

Cause of Action

At the July 24, 2025 public meeting of the South Orange Maplewood Board of Education (BOE) both Superintendent Jason Bing and BOE president Nubia DuVal Wilson announced that prior to the meeting "all nine members" of the BOE had made the consequential "decision" by "consensus" to choose Plan D2.0 to develop Ritzer Field.¹ Neither the decision nor the "discussions" or "deliberations" around it cited by Bing and Wilson were made in public: a blatant violation of the Open Public Meetings Act (OPMA).² By meeting to deliberate on this decision behind closed doors (whether in-person or virtually) the BOE deprived the public of its right "to witness in full detail all phases of the deliberation, policy formulation, and decision making" that is required of public bodies under the OPMA.

The OPMA provides that "Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within 45 days after the action sought to be voided has been made public"³.

Venue: The Attorney of the BOE

I am submitting this **Complaint and Proposed Remedy** at this time, to you as BOE Attorney per BOE Policy 0169 that designates you as the party responsible to advise the BOE of a failure to comply with the OPMA. I am hoping that your intervention will obviate the need to file a complaint of OPMA violation by the BOE with the Superior Court.

The OPMA Violation

In the spring of 2025, the Superintendent of the South Orange Maplewood School District, Jason Bing initiated a process to develop Columbia High School's Ritzer field with artificial turf.⁴ The process required the BOE to choose one of four competing development Plans (A, B, C2.0, D2.0). Once a Plan was chosen the amount of funds required for that Plan would be codified in a Resolution by the BOE. The Resolution would then be submitted to the Board of School Estimate (BOSE) which would then decide whether to authorize the funding to carry out the Plan. The question of which Plan the BOE would choose was a highly contentious matter among different interest groups in the community.^{4a}

At the BOE's public meeting of July 24, 2025, both Superintendent Bing and BOE president Nubia DuVal Wilson, announced that the Board had, prior to the meeting, decided to choose Plan D2.0 by "consensus," through "discussions" and "deliberations" and that the financial cost of Plan D2.0 had been codified in Resolution 4832Z.⁵

However, neither the BOE's decision to choose Plan D2.0 nor the discussions or deliberations around that decision were conducted in public at any time, in any form, neither in-person, online, or on conference call. The BOE had acted in blatant violation of the Open Public Meetings Act (OPMA) which mandates:

"the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies"⁶

The BOE's non-public actions also violated Board Policy 0169:

"The Board of Education is a public body as defined in the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and the Board and its members are required to comply with the provisions of this Act. It is the right of the public to be present at meetings of public bodies and to witness in full all phases of the deliberations, policy formulation, and decision-making. Board members acknowledge certain discussions between Board members, other than during a Board meeting, may be subject to the provisions of the Open Public Meetings Act."⁷

At the July 24th meeting, both Superintendent Bing and Board president Wilson described in detail the non-public actions that all nine members of the Board had taken "behind the scenes" in deciding on Plan D2.0:

Superintendent Bing:

"though not seen in public uh those who are former B board members or who realize how the board process works 95% of the work a board does uh is done via the committee process uh as it should be as per New Jersey school boards association uh so for many months weeks days and hours have gone into the decision-m uh process to arrive uh at the resolution that is currently on the board agenda it has been a process of discussion and deliberation where in different viewpoints were considered until a shared understanding and then a decision was achieved. I do want to shout out the board uh for their work collaboratively. Um it was exemplar everybody listened to other people's opinions uh though not everybody got what they wanted. We were able to come to a consensus uh and put our kids first. Uh with that being said, I want to share that decision regarding the future of community's athletic facilities. the selection of a turf surface for a new multi-purpose field in the form of plan D 2.0."⁸

BOE president Wilson:

"I'm proud of the ongoing discussions and collaborations that have transpired among the nine board members and with the district leadership behind the scenes to review the plans for Ritzer. As a team, we came to a consensus by focusing on a number of key issues"⁹

To reiterate, none of the "discussions," "collaborations," "deliberation," "shared understanding," "people's opinions," or "consensus" cited by Superintendent Bing and BOE president Wilson took place in public. As Bing admitted, these communications were "not seen in public". Wilson noted they took place "behind the scenes". The BOE's violation of OPMA and its own Policy 0169 could not have been more clear.

OPMA, Quorums and Rolling Quorums

The OPMA applies only to meetings of public bodies when a quorum exists, so "committees" of the BOE when four or less members are in attendance do not constitute a quorum of the full Board and do not have to be held in public. Thus, Superintendent Bing was correct to observe that BOE "committee meetings" generally do not have to be held in public.

However, to be clear, this complaint does not allege that BOE "committee meetings" violated the OPMA. The allegations of this complaint are directed at the non-public decision by the "consensus" of "all nine members" of the BOE -- a quorum -- to choose Plan D2.0.

It is worth noting here, BOE Policy 0169's warning to Board members against conducting deliberations via email, text or chat:

"Written letters, internet (chat) discussions, e-mails, text messages, and supporting documents regarding the school district's public business written by Board members to other Board members shall not replace deliberations that would prevent the public from witnessing in full detail all phases of the Board's deliberations, policy formulation, and decision-making process in accordance with the intent of the Open Public Meetings Act."

"Internet (chat) discussions and text messages between Board members regarding the school district's public business shall not include multiple Board members with the potential that a quorum of the Board may be involved, or become involved, in such discussion."¹⁰

The New Jersey School Board Association Legal Department in its guidelines for compliance with OPMA quotes two NJ county prosecutor offices as follows:

" 'Rolling' email conversations must also be avoided. "¹¹

Diligent, a leading advisory firm for board management writes:

"a rolling quorum occurs when a quorum is achieved without all the members needed being present in the same room at the same time. They might discuss public business by email or phone call over several days. This practice unequivocally puts its practitioners in violation of public meeting laws"¹²

Proposed Remedy for the OPMA Violation

In the seminal court decision on the OPMA, Polillo v. Deane, the New Jersey Supreme Court invalidated a decision made by an Atlantic City commission because some of its meetings and discussions were not held in public. However, the Court said the commission could correct its violation by "proceeding de novo at a public meeting in conformity with the statute". The Court also said, in greater detail:

"the Commission is directed to embark again upon its task . . . In so doing, it may in its sound discretion utilize so much of the testimony and evidence which it acquired in the course of its original effort as it deems necessary and appropriate. However, any decision in that regard must be arrived at in a manner in strict conformity with the Open Public Meetings Law so that the public may be fully apprised by adequate notice and a publicized agenda exactly what prior meetings and what aspects of the existing Commission record are sought to be so utilized. The Commission may hold additional meetings for the purpose of either supplanting or supplementing its prior efforts, again in strict compliance with the Open Public Meetings Law."¹³

The Polillo v Deane case was decided in 1977, but a year ago (July 16, 2024) in an Appellate Court ruling on an OPMA case, the Court said:

"Polillo's almost fifty-year old standard remains sound."¹⁴

Requests:

(1) To remedy the BOE violation cited above, I'm asking you first to apprise the BOE members of their obligations under Policy 0169 to assure that future violations of OPMA do not occur. When I addressed the Board in Public Speaks at the July 24, 2025 meeting, I voiced my objection to the Board having made its decision to choose Plan D2.0 "in secret". The Board president interjected that it was "based on our policies"¹⁵. So perhaps a training session on OPMA for the entire Board is indicated.

(2) Second, I'm asking the BOE to follow the steps outlined in Polillo v Deane. Those steps would include (a) invalidating the BOE's non-public decision to choose Plan D2.0 that violated the OPMA, and (b) "embarking again on the task" "de novo" of choosing a Plan to develop Ritzer Field -- but this time with all discussions and deliberations in conducted in public, in full compliance with the OPMA.

(3) Third, I'm, asking the BOE to release to the community all communications that are "governmental records and are subject to public access" -- per BOE Policy 0169 -- between and among BOE members and the Administration, as well as with any experts relevant to the deliberations that led to the non-public BOE decision to choose Plan D2.0. Specifically, communications between the June 26, 2025 BOE meeting when the original four Plan options were announced and July 24, 2025 when the non-public decision to choose Plan D2.0 by the BOE was announced. This request follows the spirit of the Court order in Polillo v Deane that allowed the Commission to "utilize so much of the testimony and evidence which it acquired in the course of its original effort as it deems necessary and appropriate".¹⁶ Disclosure of this information would enable community members to understand how the decision behind closed doors was reached and thus to more effectively participate in a "de novo" public process in compliance with OPMA to choose a Plan to develop Ritzer Field.

I am not making this request for communications and information under the Open Public Records Act, but as part of a voluntary remedy to correct the BOE's failure to comply with OPMA in its non-public discussions, deliberations and decision to choose Plan D2.0.

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Finally, thank you for taking the time to read through this document. It does not make me happy to submit a complaint against the BOE, but in our political and social lives, there are few matters more important than open government. In the prescient words of the OPMA:

"the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process"

If you choose to reply, please contact me by phone or email. However, I ask you to be cognizant of the 45-day deadline from July 24, 2025, should I find it necessary to pursue this matter in Superior Court. Since I'm not an attorney and would be acting pro-se, I would need some extra time to prepare, so I will have to reduce that to a 35-day deadline, which would be August 28, 2025. However, I think the issues I have raised are crystal clear and the remedy suggested is common practice, so I sincerely hope that this matter can be resolved through your role

under Policy 0169 in accordance with the remedy in Polillo v Deane, amicably, expeditiously and without involving the Superior Court or any appellate levels.

Yours truly,

_____/s/ Paul R. Surovell _____

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FOOTNOTES:

(1) Youtube transcript of July 24, 2025 BOE meeting:

https://www.youtube.com/live/3ZdHNs_7-eM?t=3s

at 1:48:23 and 2:01:53

(2) Superintendent Bing introduced four options for development of Ritzer Field at the BOSE meeting of June 16, 2025. The next BOE meetings were held on June 26, 2025, July 9, 2025 and July 23, 2025.

There were brief comments about the Ritzer options by two BOE members at the June 16th BOSE meeting. There were no discussions of the Ritzer project by BOE members at any of the subsequent three public BOE meetings.

Meeting videos:

June 16th: <https://www.youtube.com/watch?v=jg3wpTFq3XE&t=0s>

June 26th:

https://www.youtube.com/watch?v=r9u_XCV8XaM&list=PLtHuBTwkzeV0ZQfpxWuBb6RaAKJ6wuhx_&index=4

July 9th: <https://www.youtube.com/watch?v=odizqYWm8e8&t=3s>

July 23rd: <https://www.youtube.com/watch?v=VgdEeAgl0Nc>

(3) OPMA Text:

https://nj.gov/njoem/serc/pdf/Open_Public_Meetings_Act_N.J.S.A._10_4-6-21.pdf

(4) See <https://villagegreennj.com/recreation/school-district-puts-forward-4-options-for-ritzer-field-town-leaders-prefer-plan-d/>

(4a) See <https://villagegreennj.com/schools-kids/commenters-ask-board-of-ed-to-abandon-artificial-turf-plans-for-ritzer-field/>

and <https://villagegreennj.com/environment/full-turf-or-no-turf-officials-focus-on-ritzer-field-hybrid-plans/>

(5) See footnote (1) and <https://somsd.schoolboard.net/sites/nj.somsd.schoolboard.net/files/C.%20%204832A-Z%20FINANCIALS%20%281%29.pdf>

(6) See footnote (3)

(7) Text of BOE Policy 0169
<https://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?policyid=0169&id=ec383bd3811249869634a09869e432ef>

(8) See footnote (1)

(9) See footnote (1)

(10) See footnote (7)

(11) <https://www.njsba.org/services/legal/topical-school-law-resources/open-public-meetings-act-and-technology/>

(12) <https://www.diligent.com/resources/blog/municipal-boards-avoid-rolling-quorums-and-follow-open-meeting-laws?>

(13) See <https://law.justia.com/cases/new-jersey/supreme-court/1977/74-n-j-562-0.html>

and <https://www.nytimes.com/1977/10/20/archives/jersey-high-court-tells-officials-to-observe-sunshine-law-strictly.html>

(14) <https://cases.justia.com/new-jersey/appellate-division-unpublished/2024-a-1020-22.pdf?ts=1721143126>

(15) Youtube transcript of July 24, 2025 BOE meeting:
https://www.youtube.com/live/3ZdHNs_7-eM?t=3s at 2:34:45

(16) See footnote (13)