PREPARED BY THE COURT

JOHN STEVEN WOERNER, ANNE PANCOAST and MAUREEN P. DOUGHERTY, **Plaintiffs,**	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY**
v.	**Docket No. ATL-L-6154-10**
THOMAS D. HILTNER, in his capacity as the CLERK of the City of Margate City, the CITY of MARGATE CITY and COMMISSIONERS of the CITY of MARGATE CITY, **Defendants.**	**Civil Action** **FINAL JUDGMENT GRANTING SUMMARY JUDGMENT TO DEFENDANTS AND DENYING PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT**

THIS MATTER, having been opened to the Court by Mary C. Siracusa, Esquire, attorney for Defendants, Thomas D. Hiltner, in his capacity as Clerk for the City of Margate, the City of Margate and the Commissioners of the City of Margate, by way of a Motion for Summary Judgment seeking an Order declaring that N.J.S.A. 40:74-5 is the law controlling in this matter; that Ordinance No. 2010-27 shall become effective immediately; that Plaintiff's Petition to submit Ordinance No. 2010-27 to referendum is insufficient and defective and of no force and effect; that the City Clerk acted properly and lawfully in certifying that Plaintiff's Petition was insufficient and defective; and dismissing Plaintiff's complaint with prejudice; and Plaintiffs having filed opposition to the motion by their attorneys Maureen Dougherty, Esquire and Christian M. Scheuerman, Esquire (The Benari Law Firm, P.C.), and the Court having reviewed all pleadings filed herein and having heard oral argument on December 17, 2010, and for the reasons set forth in a written Memorandum of Decision dated December 21, 2010,

IT IS on this **21st** day of **December, 2010**:

1. **ORDERED** that the City of Margate has standing before this Court; and it is further

2. **ORDERED** that N.J.S.A. 40:74-5 is the law controlling in this matter; and it is further

3. **ORDERED** that Ordinance No. 2010-27 shall become effective immediately; and it is further

4. **ORDERED** that Plaintiff's Petition to submit Ordinance No. 2010-27 to referendum is insufficient and defective as a matter of law and of no force and effect; and it is further

5. **ORDERED** that the City Clerk acted properly and lawfully in certifying that Plaintiff's Petition was insufficient and defective; and it is further

6. **ORDERED** that Plaintiff's Complaint in Lieu of Prerogative Writs is DISMISSED with prejudice.

7. Plaintiff's Cross-Motion for summary Judgment is **DENIED**.

8. This Order constitutes a Final Judgment for purposes of appeal.

VALERIE H. ARMSTRONG, A.J.S.C.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

VALERIE H. ARMSTRONG, A.J.S.C.

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MEMORANDUM OF DECISION PURSUANT TO RULE 1:6-2(f)

CASE:	**John Steven Woerner, Anne Pancoast & Maureen P. Dougherty, Esq. v. Thomas Hiltner, the City of Margate et al.**
DOCKET #:	**ATL-L-6154-10**
DATE:	**December 21, 2010**
MOTION:	**Summary Judgment, Cross-Motion for Summary Judgment**
MOVANTS:	**Maureen P. Dougherty, Esq. & Christian M. Scheuerman, Esq.,-For Plaintiffs** **Mary C. Siracusa, Esq.-For Defendant**
PAPERS REVIEWED:	**Notices of Motions, Certifications, Briefs**

Valerie H. Armstrong, A.J.S.C.

I. Facts and Procedural Background

The instant matter originally came before this court by way of a Complaint in Lieu of Prerogative Writs filed by Plaintiffs, John Steven Woerner, Anne Pancoast and Maureen P. Dougherty, Esq. ("Plaintiffs"). The undisputed material facts are as follows: On September 2, 2010, the City of Margate ("City") enacted Ordinance No. 2010-27 (the "Ordinance") entitled,

> "BOND ORDINANCE OF THE CITY OF MARGATE CITY IN THE COUNTY OF ATLANTIC, NEW JERSEY AUTHORIZING A CAPITAL PROJECT

RELATING TO ADDITIONS AND ALTERATIONS TO FIRE STATION NO. 2, AND APPROPRIATING $2,300,000 FOR SAID PURPOSE, AUTHORIZING THE ISSUANCE OF $2,185,000 PRINCIPAL AMOUNT OF OBLIGATION OF THE CITY TO FINANCE SAID PURPOSE; AND PROVIDING FOR OTHER MATTERS RELATING THERETO."

As the title of the Ordinance indicates, the purpose was to authorize the issuance of bonds to the public in order to raise capital to make significant improvements and renovations to the municipal firehouse located in the City at 405 North Brunswick Drive. By the terms of the Ordinance, the City appropriated $2,300,000 for the purpose of paying the costs of the project, of which amount the sum of $115,000 was appropriated from the City's Capital Improvement Fund with the remainder appropriated from the proceeds of the obligations authorized to be issued pursuant to Section 5 of the state Local Bond Law, N.J.S.A. 40A:2-1 *et seq.* The substance or the propriety of the ordinance is not at issue in this action.

On September 8, 2010 the City published notice of the adoption of the Ordinance in the Press of Atlantic City. On September 27, 2010, a referendum committee consisting of Plaintiffs filed a Petition protesting the adoption of the Ordinance. The Petition, totaling 118 pages, was received by the Clerk of the City, Thomas D. Hiltner ("Hiltner") on that date. The Petition was filed within 20 days of the publication of the Ordinance's final passage pursuant to N.J.S.A. 40:49-27 (the "Debt-authorization referendum procedure" of the Home Rule Act, N.J.S.A. 40:42-1 *et seq.*).

After reviewing the Petition, Hiltner issued his Certification to Plaintiff Woerner on October 7, 2010. Hiltner certified that 381 signatures were necessary to meet the

requirement of N.J.S.A. 40:49-27 for 15% of the number of votes cast at the most recent General Election, and that 680 of the Petition's 847 signatures were valid signatures.[1]

Although Hiltner certified that the Petition contained well in excess of the required number of signatures, he declared the Petition defective with the following explanation:

5. The City of Margate has adopted the Commission Form of Government. The law regulating Commission Forms...can be found at N.J.S.A. 40:70-1 et seq. [Walsh Act]. N.J.S.A. 40:74-5 is the law governing referenda in Commission Form of Government municipalities and it specifically excludes ordinances authorizing an improvement or the incurring of an indebtedness from the referenda process.

6. Ordinance 2010-27 authorizes improvement to Firehouse No. 2 and the indebtedness to pay for the improvements.

7. Based on the opinion and advice of Margate City Solicitor Mary Siracusa, the petition submitted to me on September 27, 2010 pursuant to N.J.S.A. 40:49-27 is not a proper matter for referendum because it is inconsistent with the provisions of the Commission Form of Government Law, specifically N.J.S.A. 40:74-5.

8. For all of the foregoing reasons, I hereby certify to the Board of Commissioners of the City of Margate that the Petition is insufficient and defective.

The Plaintiffs argue that 1) Hiltner's action declaring the petition defective was *ultra vires* because the petition conformed to all of the procedural requirements of N.J.S.A. 40:49-27; 2) Hiltner's rejection of the petition constituted illegal, arbitrary and capricious action; and 3) the City Solicitor's position that the Walsh Act exempted ordinances authorizing improvements and the incurring of indebtedness is incorrect as a matter of law because N.J.S.A. 40:29-27 of the Home Rule Act applies to all

[1] The Clerk's Certification offered no explanation why his count of 847 signatures differed from Plaintiffs' count of 870, but such discrepancy is not at issue in this case.

municipalities, no matter the form of government, and authorizes referenda and the procedure for such referenda for ordinances authorizing the incurring of indebtedness such as the Ordinance at issue here.

On November 15, 2010, the City filed a motion for summary judgment for an order declaring that the Ordinance is not subject to referendum pursuant to N.J.S.A. 40:74-5 and that N.J.S.A. 40:49-27 is not applicable to municipalities such as the City of Margate which have adopted the Walsh Act, N.J.S.A. 40:74-1 *et seq*. Plaintiffs filed a cross-motion for summary judgment on December 7, 2010 for an order: 1) declaring Home Rule Act sections N.J.S.A. 40:49-27, -27(a), -27(b), and 27(c) to be the applicable law concerning Plaintiff's petition challenging the Ordinance; 2) declaring the Petition to be in compliance with the statutory requirements; 3) declaring the Ordinance to be inoperative in accordance with the provisions of N.J.S.A. 40:49-27; and 4) ordering Hiltner to schedule the Ordinance for referendum on the November 2011 General Election ballot. Oral Argument on the motion was held on December 17, 2010.

The standards for summary judgment are set forth in R. 4:46-2. Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, demonstrate that there are no genuine issues of material fact and that the moving party is entitled to judgment or order as a matter of law. Brill v. Guardian Life Insurance Co. 142 N.J. 520, 523 (1995); Piccone v. Stiles, 329 N.J. Super. 191, 194-5 (App. Div. 2000). The material facts in this matter are undisputed and the question to be decided, whether the City's Ordinance is subject to petition and referendum under either the Walsh Act or the Home Rule Act, is purely a question of law. Thus, this matter is ripe for summary judgment.

Discussion

The City of Margate is governed by a three-person commission form of government provided for under the "Commission Form of Government Law" also known as the "Walsh Act". The Walsh Act is found at Chapters 70 to 76 of N.J.S.A. 40:70-1 *et seq.*

N.J.S.A. 40:74-5, entitled, "Remonstrance against ordinance; petition; reconsideration; referendum; vote required for adoption" governs referenda under the Walsh Act and states as follows:

> **If within 20 days after final passage of an ordinance, except ordinances**, or any portion thereof, fixing the salaries, wages or compensation of the employees of the municipality, as defined in section 3 of the New Jersey Employer-Employee Relations Act, P.L.1941, c. 100 (C. 34:13A-3), **or ordinances authorizing an improvement or the incurring of an indebtedness, other than for current expenses, where other requirements are made by law,** or ordinances which by their terms or by law cannot become effective in the municipality unless submitted to the voters, or which by its terms authorizes a referendum in the municipality concerning the subject matter thereof, **a petition signed by electors of the municipality equal in number to at least 15% of the entire vote cast at the last preceding general election at which members of the General Assembly were elected protesting against the passage of such ordinance**, be presented to the board, it shall thereupon be suspended from going into operation and the board of commissioners shall reconsider the ordinance within 20 days of the presentation of the petition to the board. If the ordinance is not entirely repealed, the board shall submit it, in the manner provided in paragraph b. of R.S. 40:74-14 and R.S. 40:74-15 to R.S. 40:74-18 to the vote of the electors of the municipality. The ordinance shall be submitted either at the next general election or regular municipal election, whichever shall first occur, not less than 40 days from the final date for withdrawal of the petition as provided for in this section, except that if no such election is to be held within 90 days of that date, a special municipal election shall be called for that purpose, and be held not less than 40 nor more than 60 days from the final date for withdrawal of the petition as provided for in this section. An ordinance so submitted shall not become operative unless a majority of the qualified electors voting on the ordinance shall vote in favor thereof.

The names and addresses of five voters, designated as the Committee of the

Petitioners, shall be included in the petition. If within 10 days after final adverse action by the board or after the expiration of the time allowed for board action, as the case may be, a written request, signed by at least four of the five members of the Committee of the Petitioners, is filed with the municipal clerk requesting that the petition be withdrawn, the petition shall have no effect. (Emphasis added).

By contrast, the New Jersey Home Rule Act, N.J.S.A. 40:42-1 *et seq.*, which is a body of laws dealing with all municipalities generally, contains N.J.S.A. 40:49-27 ("Debt-authorization referendum procedure"), which states as follows:

> **Any ordinance authorizing the incurring of any indebtedness, except for current expenses, shall become operative 20 days after the publication thereof after its final passage, unless within those 20 days a protest against the incurring of such indebtedness shall be filed in the office of the municipal clerk, by a petition signed by registered voters of the municipality equal in number to at least 15% of the number of votes cast in the municipality at the most recent general election at which members of the General Assembly were elected,** in which case such ordinance shall remain inoperative until a proposition for the ratification thereof shall be adopted, at an election to be held for that purpose, by a majority of the qualified voters of the municipality voting on the proposition, subject to the provisions of R.S. 40:49-10 to 40:49-12.
>
> A petition circulated pursuant to this section shall be subject to the provisions of sections 2 through 5 of P.L. 1986, c. 69 (C. 40:49-27a to 40:49-27e). (Emphasis added).

The Home Rule Act, originally enacted in 1917, is a general body of laws pertaining to local matters delegated by the State to New Jersey municipalities. It is expansive in scope and was enacted in order to provide guidance and basic home rule powers to all municipalities as to a host of local issues, including streets and sidewalks, public parks and playgrounds, planning and zoning, ordinances and resolutions, public utilities, etc. It is not specific to any form of government available to New Jersey municipalities.

By contrast, the Walsh Act, originally enacted in 1911, deals specifically with municipalities that have adopted the commission form of government. The Walsh Act is

a comprehensive, integrated piece of legislation designed to impose statutory procedures and requirements specifically on municipalities choosing the commission form on a host of issues, including which ordinances are subject to referenda and the procedure for such referenda.

It must be noted at the outset that the issue before the court appears to be one of first impression and has not been specifically addressed in any reported New Jersey cases since N.J.S.A. 40:74-5 was enacted in its current form. The instant matter concerns the intersection of the referenda provisions of the Walsh Act and the Home Rule Act and thus constitutes a question of statutory interpretation, which is a purely legal issue. See Manalapan Realty v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). A court's task in statutory interpretation is to determine and effectuate the Legislature's intent. Bosland v. Warnock Dodge Inc. 197 N.J. 543, 553 (2009); see also N.J.S.A. 1:1-1 ("In the construction of the laws and statutes of this state...words and phrases shall...unless inconsistent with the manifest intent of the legislatures or unless another or different meaning is expressly indicated, be given their generally accepted meaning..."). Therefore, the court will "look first to the plain language of the statute, seeking further guidance only to the extent that the Legislature's intent cannot be derived from the words that it has chosen." Bosland, 197 N.J. at 553 (quoting Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 264 (2008)). "A court should not resort to extrinsic interpretative aids when the statutory language is clear and unambiguous, and susceptible to only one interpretation." DiProspero v. Penn, 183 N.J. 477, 492 (2005); Burnett v. County of Bergen, 198 N.J. 408, 421 (2009). The Legislature is presumed to be familiar with its own enactments, with judicial declarations relating to them, and to have passed or preserved cognate laws

with the intention that they be construed to serve a useful and consistent purpose. State v. Federanko, 26 N.J. 119, 129 (1958).

Also, "statutes must be read in their entirety; each part or section should be construed in connection with every other part or section to provide a harmonious whole." Burnett, 198 N.J. at 421 (quoting Bedford v. Riello, 195 N.J. 210, 224 (2008)). When reviewing two separate enactments, the Court has an affirmative duty to reconcile them, so as to give effect to both expressions of the lawmakers' will." St. Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 14 (2005). "Statutes that deal with the same matter or subject should be read *in pari materia* and construed together as a 'unitary and harmonious whole'." Id. at 14-15 (citing In re Adoption of a Child by W.P. and M.P., 163 N.J. 158, 182-83 (2000) (Poritz, C.J., dissenting) (citations and footnote omitted)).

The plain language of N.J.S.A. 40:74-5 clearly *excepts* ordinances authorizing an improvement or the incurring of an indebtedness, other than for current expenses, from the referenda provisions contained within that section of the Walsh Act. As noted by the City, this has not always been the case. The original version of the Walsh Act indeed subjected all ordinances to referendum under that statute except "when otherwise required by the general laws of the state or by the provisions of [the] act" and ordinances "for the preservation of the public peace, health or safety". Wethling v. Board of Commissioners of City of Orange, 94 N.J.L. 36, 37 (Sup Ct. 1919) (citing Section 17 of the Walsh Act as it existed at the time the case was decided: Pamph. L. 1911, p. 462; 1st Sup. Comp. Stat., p. 1087). In Wethling, the New Jersey Supreme Court ruled that Section 24, Article 37 of the Home Rule Act, at that time, superseded and repealed Section 17 of the Walsh Act in so far as it related to the operation, suspension and

referendum to the voters of ordinances authorizing any improvement or the incurring of any indebtedness. Section 24, Article 37 of the Home Rule Act, as it was enacted in 1917, read as follows:

> "Any ordinance authorizing any improvement or the incurring of any indebtedness, excepting for current expenses, shall become operative ten days after the publication thereof after its final passage, unless within said ten days a protest or protests against making such improvement or the incurring of such indebtedness shall be filed in the office of the clerk of such municipality signed by taxpayers representing ten per centum in amount of the assessed valuation of such municipality, whose names appear on the last preceding assessment roll thereof, in which case such ordinance shall remain inoperative until a proposition for the ratification thereof shall be adopted at an election to be held for that purpose by a majority of the qualified voters of such municipality voting on such proposition. The certificate of the clerk of the municipality filed in his office as to the filing or sufficiency of any protest or protests shall be conclusive for the purpose of this section. Any proposition submitted to the voters of any municipality under the provisions of this act shall be voted upon at the next general election held in the municipality at least thirty days after the filing of the protest or protests herein provided for, unless the governing body thereof shall call a special election therefor." Wethling, 94 N.J.L. at 38-39.

The Wethling Court went on to note that Section 24, Article 37 of the Home Rule Act "cover[ed] in detail the subject-matter of the operation, suspension, and referendum to the voters" of ordinances authorizing improvements and the incurring of indebtedness. Id. at 39.

At the time Wethling was decided, the Walsh Act did not contain the exception from referendum it does today for ordinances authorizing improvements or the incurring of indebtedness. The Legislature added this exception without comment when the Walsh Act was amended in 1937. Therefore, it appears that from 1919 when Wethling was decided until 1937 when the exception language was added to N.J.S.A. 40:74-5, which excised ordinances authorizing an improvement or incurring indebtedness from referendum, the provisions of the Home Rule Act for this type of ordinance would have

controlled in Walsh Act municipalities because the Home Rule Act was, during that period, the more specific legislation covering those types of ordinances. As has long been the rule of statutory construction in this state, "where there is any conflict between a general and specific statute covering a subject in a more minute and definitive way, the latter will prevail over the former." In re Municipal Court of the Borough of East Newark, 390 N.J. Super. 513, 519 (Law Div. 2006)(quoting Ackley v. Norcross, 122 N.J.L. 569 (Sup. Ct. 1939) aff'd 124 N.J.L. 133 (E. & A. 1940)).

This court agrees with the City that, with the Legislature's 1937 amendment to the Walsh Act exempting ordinances authorizing improvements and incurring indebtedness, it became the more specific, and thus controlling, statute. The presumption that the Legislature intended to create this exception is bolstered by the fact that the referenda provisions of the Walsh Act have been amended several times since 1937, and it has not eliminated the specific language which exempts improvement and indebtedness ordinances from referendum. In 1976, when the Legislature added the language which exempted from referendum ordinances fixing the salary, wages and compensation of municipal employees, it also added the words "or ordinances" before words "...authorizing an improvement of the incurring of indebtedness..." to make clear that the exemption for such ordinances continued to exist. In 1980, N.J.S.A. 40:74-5 was amended again to add the language which exempted ordinances which by their terms or by law cannot become effective unless submitted to the voters or ordinances which by their terms authorize a referendum. Again, the language exempting improvement ordinances and ordinances incurring indebtedness other than current expenses was left undisturbed.

Finally, in 1982 the Legislature again amended the statute after a comprehensive study of municipal government relative to initiative and referendum was completed. The bill amended the initiative and referendum procedures of the Walsh Act and the Faulkner Act by clarifying and making uniform the initiative and referendum procedures, and in particular the 20 day time frame for ordinances to take effect. Once again, the exemption language was not changed.

These numerous amendments to N.J.S.A. 40:74-5 since 1937 indicate an intent on the part of the Legislature to leave ordinances authorizing improvements and the incurring of indebtedness other than for current expenses exempt from becoming the subject of a referendum via a petition submitted by the voters of the Walsh Act municipality.

It must be noted that such ordinances are not completely immune from referendum under the Walsh Act. Ordinances authorizing improvements and the incurring of indebtedness may still be submitted to the voters for approval on the board of commissioners' own motion. N.J.S.A. 40:74-7. Furthermore, N.J.S.A. 40:74-8, entitled "When submission unnecessary", states:

> No petition or submission to the vote of the electors shall be necessary to authorize the undertaking or completion of any work, the purchase or construction of any public utility or improvement, which any municipality may be authorized by law to undertake, purchase or construct, or to authorize the borrowing of money and the issuance of bonds or other obligations for any purpose for which any municipality may be authorized by law to issue bonds or other obligations. N.J.S.A. 40:74-8.

All of these provisions show that the clause exempting improvement-authorization ordinances and ordinances incurring indebtedness in N.J.S.A. 40:74-5 was not included in that provision off-handedly. Clearly, there was an intent on the part of the

Legislature to at least partially shield these ordinances from referendum in Walsh Act municipalities.

The Plaintiffs also advance the argument that, somehow, the statute does not mean what it says when it exempts such ordinance from referendum, specifically, because of the insertion of the words "where other requirements are made by law" after the language exempting ordinances authorizing improvements and incurring indebtedness other than for current expenses. While this court re-iterates that it finds the statute clear and unambiguous on its face, this finding is bolstered by the fact that, very recently, the New Jersey Supreme Court considered this very same language in In Re Referendum Petition to Repeal Ordinance 04-75, 192 N.J. 446 (2007). In that case, the Supreme Court was reviewing the Faulkner Act to determine whether an ordinance restructuring the police department of the City of Trenton, a Faulkner Act municipality, was exempt from referendum. In reviewing the legislative history of the Faulkner Act, it noted that identical language exempting ordinances authorizing improvements and the incurring of indebtedness existed in an early version of the Faulkner Act which was later deleted:

> Significantly, an earlier rejected version of the referendum bill in the Faulkner Act proposed carving out an exception to the voters' right to seek ballot approval of municipal ordinances. Assemb. B. 300, 173d Leg. (N.J. 1949). That earlier bill read:
>
> If within twenty days after the final passage of an ordinance, ***except ordinances authorizing an improvement or the incurring of an indebtedness, other than for current expenses*, where other requirements are made by law**, a petition signed by electors of the municipality equal in number to at least ten per cent of the registered voters protesting against the passage of such ordinance, be presented to the governing body, it shall thereupon be suspended from going into operation and the governing body may reconsider the ordinance. [Ibid. (emphasis added).]
>
> The final bill that became law eliminated the exception for "ordinances authorizing an improvement or the incurring of indebtedness" and increased to fifteen percent the number of protesting voters necessary to trigger a referendum.

> See N.J.S.A. 40:69A-185. The Legislature obviously considered and rejected writing in the qualification to the right of referendum contained in the earlier bill. We can infer that the Legislature was mindful not only of the breadth of the statute, but also of how to expand or contract voter participation. In re Referendum Petition to Repeal Ordinance O4-75, 192 N.J. at 464-465.

Thus, the New Jersey Supreme Court found the exact same language, albeit in the context of the Faulkner Act and not the Walsh Act, would have been an exception from referendum if included in the final version of the statute. I note that the Supreme Court has cautioned against finding an exception to the voters' power of referendum unless the Legislature has made clear its intention to create such an exception, or "carve-out" with precision. In Re Petition for Referendum On City of Trenton Ordinance 09-02, 201 N.J. 349, 362 (2010). However, unlike the Faulkner Act, there exists such a carve-out within the Walsh Act at N.J.S.A. 40:74-5.

Plaintiffs also take issue with Hiltner's rejection of their Petition, arguing that Hiltner's task in reviewing the Petition was purely a ministerial act to determine whether procedural requirements of the Petition were met under N.J.S.A. 40:49-27, and his rejection of the Petition because it was not a proper matter for referendum pursuant to N.J.S.A. 40:74-5 was arbitrary and capricious. Plaintiffs argue that the City took no official action in response to Hiltner's "lawless act", emphasizing that if the City believed the Petition was invalid, the onus was on the Commissioners to adopt a resolution authorizing the filing of a Complaint in Lieu of Prerogative Writs. Because the City did not file a Complaint, Plaintiffs opine the City now lacks standing to challenge the Petition.

In fact, Hiltner presented the Petition to the Commissioners on October 7, 2010, with his Certification indicating that, based upon a legal opinion from the City Solicitor,

he believed the Petition was inconsistent with N.J.S.A. 40:74-5. At the October 7, 2010 Commissioners meeting, Plaintiff Woerner advised the governing body that Plaintiffs would be filing a Complaint in Lieu of Prerogative Writs. The Complaint was filed one week later, thus negating the need for the City to file a Complaint. The City filed an Answer with Separate Defenses, seeking dismissal of the Complaint because the Walsh Act, N.J.S.A. 40:70-1 *et seq.* is the controlling law in the matter. The City's motion for Summary Judgment was filed on November 15, 2010. Plaintiffs' position that the City lacks standing, and that Hiltner acted improperly, is without merit.

Conclusion

For the reasons set forth above, the Defendants' Motion for Summary Judgment is hereby GRANTED. The Plaintiffs' Cross-Motion for Summary Judgment is DENIED. The Complaint is dismissed with prejudice. A Final Judgment is enclosed.

VALERIE H. ARMSTRONG, A.J.S.C.