

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Francis Marabella

DEFENDANTS

Borough of Conshohocken

and 16 1153

Board of Commissions of Borough of Conshohocken, et al

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Leo A. Hackett, Esquire  
102 Chesley Drive, Suite 1A  
Media, Pa 10963

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State: PTF  1, DEF  1
- Citizen of Another State: PTF  2, DEF  2
- Citizen or Subject of a Foreign Country: PTF  3, DEF  3
- Incorporated or Principal Place of Business In This State: PTF  4, DEF  4
- Incorporated and Principal Place of Business In Another State: PTF  5, DEF  5
- Foreign Nation: PTF  6, DEF  6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Age Discrimination Act 29 U.S.C. 621 et. seq.

Brief description of cause:

Employment claims for breach of contract, age discrimination etc

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
- DEMAND \$ over \$150,000.
- CHECK YES only if demanded in complaint: JURY DEMAND  Yes  No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 3/10/16

SIGNATURE OF ATTORNEY OF RECORD

Signature of Leo A. Hackett

08936

Stamp: MAR 11 2016

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 230 Barren Road, Media, Pa 19063 **16 1153**

Address of Defendant: 1 West First Ave., Suite 200 Conshohocken, Pa 19428

Place of Accident, Incident or Transaction: Borough of Conshohocken  
*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY:  
 Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

- Civil cases are deemed related when yes is answered to any of the following questions:
- Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes  No
  - Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes  No
  - Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes  No
  - Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes  No

- CIVIL: (Place  in ONE CATEGORY ONLY)
- |   |  |
|---|--|
| <p>A. Federal Question Cases:</p> <ol style="list-style-type: none"> <li><input type="checkbox"/> Indemnity Contract, Marine Contract, and All Other Contracts</li> <li><input type="checkbox"/> FELA</li> <li><input type="checkbox"/> Jones Act-Personal Injury</li> <li><input type="checkbox"/> Admiralty</li> <li><input type="checkbox"/> Patent</li> <li><input type="checkbox"/> Labor-Management Relations</li> <li><input checked="" type="checkbox"/> Civil Rights</li> <li><input type="checkbox"/> Habeas Corpus</li> <li><input type="checkbox"/> Securities Act(s) Cases</li> <li><input type="checkbox"/> Social Security Review Cases</li> <li><input type="checkbox"/> All other Federal Question Cases<br/>(Please specify) _____</li> </ol> | <p>B. Diversity Jurisdiction Cases:</p> <ol style="list-style-type: none"> <li><input type="checkbox"/> Insurance Contract and Other Contracts</li> <li><input type="checkbox"/> Airplane Personal Injury</li> <li><input type="checkbox"/> Assault, Defamation</li> <li><input type="checkbox"/> Marine Personal Injury</li> <li><input type="checkbox"/> Motor Vehicle Personal Injury</li> <li><input type="checkbox"/> Other Personal Injury (Please specify)</li> <li><input type="checkbox"/> Products Liability</li> <li><input type="checkbox"/> Products Liability — Asbestos</li> <li><input type="checkbox"/> All other Diversity Cases<br/>(Please specify) _____</li> </ol> |
|---|--|

**ARBITRATION CERTIFICATION**  
*(Check Appropriate Category)*

Leo A. Hackett, counsel of record do hereby certify:  
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
 Relief other than monetary damages is sought.

DATE: 3/10/16 Leo A. Hackett 08936  
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/10/16 [Signature] 08936  
 Attorney-at-Law Attorney I.D.#

**16 MAR 15 2016**



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Francis Marabella

v.

Borough of Conshohocken, et al.

CIVIL ACTION

16 1153

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255.
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits.
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2.
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos.
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

3/10/16  
Date

Leo A. Hackett  
Attorney-at-law

Francis Marabella  
Attorney for

610-565-7700

301-566-4400

lhackett@lahackettllaw.com

Telephone

FAX Number

E-Mail Address



CMR

\$400

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS J. MARABELLA :  
230 Barren Road :  
Media, PA 19063 :  
v. :

16 1153

BOROUGH OF :  
CONSHOHOCKEN :  
400 Fayette Street, Suite 200 :  
Conshohocken, PA 19428 :

JURY TRIAL DEMANDED

And :

BOROUGH COUNCIL OF :  
BOROUGH OF CONSHOHOCKEN :  
400 Fayette Street, Suite 200 :  
Conshohocken, PA 19428 :

**I. INTRODUCTION**

AND NOW, comes Francis J. Marabella, by and through his attorney, Leo A. Hackett, Esquire, and brings this Complaint based upon the following:

1. Plaintiff brings this action seeking damages to address breach of employment contract, and deprivation of due process and liberty rights, age discrimination, attorney fees, and costs pursuant to 42 USCS § 1983.; and violation of the Age Discrimination in Employment Act 29 U.S.C. 621 et. seq.; Pennsylvania Human Relations Act 43 P.S. § 955 and the, Pennsylvania Wage Payment and Collection Act 43 P.S. 260.1 et. seq.



**II. JURISDICTION**

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and 1343(3). This proceeding is authorized and instituted pursuant to the federal laws set forth herein and supplemental jurisdiction (28 U.S.C. § 1367) of the state law claims.

**III. PARTIES**

3. Plaintiff, Francis J. Marabella (hereinafter “Plaintiff”) is an adult individual residing at 230 Barren Road, Media, Pennsylvania 19063.

4. Defendant, Borough of Conshohocken (hereinafter “Defendant”) is a public corporation doing business in the Commonwealth of Pennsylvania with its principal place of business at 400 Fayette Street, Suite 200, Conshohocken, Pennsylvania 19428.

5. The Defendant Borough Council of the Borough of Conshohocken provide services and management of the Borough of Conshohocken.

6. Defendants’ actions stated herein as to Plaintiff constituted state action.

**IV. FACTUAL ALLEGATIONS**

7. Plaintiff was employed by Defendants on or about April 20, 2006.

8. Plaintiff was continuously employed by Defendants for eight (8) years.

9. Plaintiff had been employed in Municipal Management and Finance for 26 years.

10. Plaintiff held the positions of Borough Manager and Borough Finance Officer. Most recently for the 2013-2014 year he made an annual salary of \$141,300.00 plus benefits.

11. On or about March 19, 2014, Plaintiff was about sixteen months away from being able to retire with lifetime health insurance coverage for himself and his dependents.

12. At all times relevant hereto, the Defendant corporation acted through its officers, agents and employees.

13. Plaintiff was formally terminated by the Defendants at a public meeting on or about March 19, 2014. On or about March 23, 2014, at the age of sixty (60) Plaintiff received a letter from the Borough of Conshohocken dated March 21, 2014 advising him of his termination without cause.

14. In the period just prior to his termination the Borough promoted the Office Supervisor to Assistant Borough Manager (age 43) “just in case something happened to him”; he was asked by his employer within months prior to his termination “aren’t you retiring this year”; his employer stated that “we need someone who will take us forward for the next ten years”.

15. Just prior to the Plaintiff’s termination, Defendant’s first tried to force him to resign and even put his resignation on the Borough Council agenda without his consent. 16. The Plaintiff was not given any reason for his termination although Defendant Commissioners commented to the press as set forth below.

17. The Plaintiff never received any negative performance reviews and in fact he made many improvements for the Borough over his eight years of service and was commended by his employer for his work on behalf of the Borough.

18. The representatives of the Borough and the Borough Council told the press that “it was a lot of work holding two positions” (Plaintiff held the two positions

successfully for eight (8) years) and “We feel it was a little too much for him” and “I believe that council felt that the Borough has a different set of hurdles to tackle over the next decade and it was time to make a change.” “He’s a good guy, very decent, very thorough. But it’s just time to go a different direction”. “We fired him because we didn’t think he was doing the job right. His firing doesn’t bother me”. A true and correct copy of the newspaper articles are attached hereto as Exhibit “A”.

19. After the termination of the Plaintiff the Borough hired an Interim Manager (age 43) and then hired Mr. Richard Manfredi as Borough Manger who was fifty-two (52) years old at the time at \$140,000 annually and promoted the staff accountant to a separate Finance Officer (age 53). Defendant’s never offered to split these two positions held by the Plaintiff and allow him to remain in one of them.

20. Defendant’s did not offer any notice to the Plaintiff of the cause for his termination or a hearing based on his expectation of continued employment or to clear his good name and reputation.

#### **COUNT I - BREACH OF CONTRACT**

21. Plaintiff incorporates paragraphs 1 through 20 as though set forth herein at length.

22. Defendants’ promised to Plaintiff benefits at retirement equal to the best provided to other employees of the Borough. The best retirement packages in the Borough prior to the termination of the Plaintiff was lifetime medical insurance benefits for the Plaintiff and his dependents. Plaintiff had accepted employment with the Defendant’s on the promise of receiving these benefits upon retiring. Plaintiff had an expectation of receiving these benefits upon retirement and that they would be made

available to him unless terminated for just cause. A true and correct copy of the Plaintiff's Agreement with the Borough of Conshohocken is attached hereto as Exhibit "B" and specifically paragraph #17.

23. Defendants' without cause and to avoid paying these benefits to the Plaintiff, terminated his employment on or about March 19, 2014.

24. Defendants' failed to comply with the contract with the Plaintiff and failed to carry out the terms of the contract in good faith.

25. By reason of Defendant's actions Plaintiff has suffered great loss and damage including loss of pay, benefits including lifetime benefits, loss of pension and future pay and benefit contributions.

WHEREFORE, Plaintiff seeks compensatory damages, consequential, and incidental damages.in excess of \$150,000.00

**Count II – 1983 Claim (Due Process and Liberty Interest)**

26. Plaintiff incorporates by reference all averments contained in paragraphs 1 through 25 above as though set forth fully at length herein.

27. Defendants' without notice or opportunity to be heard terminated the Plaintiff and made public statements concerning the Plaintiff and his performance as an employee of Defendants without the opportunity for a name clearing hearing.

28. As a result of the Defendant's actions, Plaintiff's name and reputation as a Municipal Manager and Financial Director has been severely damaged, interfering with the Plaintiff's ability to find other employment.



WHEREFORE, Plaintiff seeks compensatory damages, consequential and incidental damages, punitive damages, attorney fees, interest and costs in excess of \$150,000.00

**Count III Pa. Wage Payment and Collection Act.**

29. Plaintiff incorporates paragraphs 1 through 28 as though set forth herein.

30. Defendant failed to pay wages and benefits due and owing to Plaintiff in accordance with the contract.

31. By reason of Defendant's actions Plaintiff has suffered great loss and damage including loss of pay, benefits including lifetime benefits, loss of pension and future pay and benefit contributions.

WHEREFORE, Plaintiff seeks compensatory damages, consequential and incidental damages, punitive damages, attorney fees, interest and costs in excess of \$150,000.00

**Count IV Age Discrimination Claim**

32. Plaintiff incorporates paragraphs 1 through 31 as though set forth herein.

33. Defendants discriminated against the Plaintiff by termination of the Plaintiff's employment and replacing him with substantially younger person(s) and failing to offer the Plaintiff one of the two positions filled both of which he held and performed at the time of the termination of his employment.

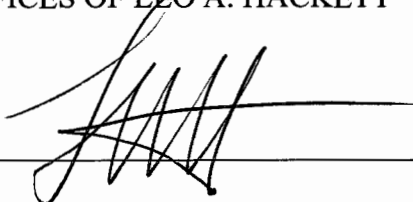
34. By reason of Defendants' actions Plaintiff has suffered great loss and damage including loss of pay, benefits including lifetime benefits, loss of pension and future pay and benefit contributions.

WHEREFORE, Plaintiff seeks compensatory damages, consequential and incidental damages, punitive damages, attorney fees, interest and costs in excess of \$150,000.00.

Respectfully submitted,

LAW OFFICES OF LEO A. HACKETT

BY: \_\_\_\_\_



LEO A. HACKETT, ESQUIRE  
Attorney I.D. No. 08936  
102 Chesley Drive, Suite 1A  
Media, PA 19063  
(610) 565-7700  
Attorney for Plaintiff

# **EXHIBIT "A"**

3/15/2014

Conshohocken fires Marabella as manager and finance director

Saturday, March 15, 2014

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# Conshohocken fires Marabella as manager and finance director

AdChoices **Allison Steele, Inquirer Staff Writer**  
LAST UPDATED: Saturday, March 15, 2014, 1:08 AM  
POSTED: Friday, March 14, 2014, 5:54 PM



CONSHOHOCKEN Conshohocken officials on Friday fired the borough manager, a longtime employee who also served as finance director.

Francis Marabella had worked for Conshohocken for more than eight years, Councilman Robert Stokley said. But in recent months the council members began considering that the borough's operations and finances might be more efficiently managed by two people, not one.

"It's a lot of work, holding those two positions," said Stokley, who indicated that the council decided several weeks ago to terminate Marabella. "We feel it was a little too much for him." Marabella, who became borough manager in 2006, did not return a call for comment.

Council members informed Marabella of the decision Friday morning.

"I think he was relieved," Stokley said. "He's a good guy, very decent, very thorough. But it's just time to go in a different direction."

Marabella was paid \$140,000, borough attorney Michael J. Savona said. He will receive six months' pay and benefits.

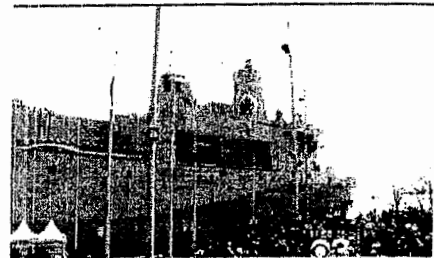
Council members will appoint an interim manager at their regular meeting next week, Savona said, then start searching for a full-time replacement. The council hopes to identify candidates and hire a new manager within a few months, he said. The council will also decide how to redistribute Marabella's duties as director of finance.

The borough also must fill the position vacated this month by Councilman Raj Gupta, who resigned because he is moving out

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3/15/2014

Conshohocken Borough manager Francis Marabella fired

The Times Herald (<http://www.timesherald.com>)

## Conshohocken Borough manager Francis Marabella fired

By Carl Rotenberg, The Times Herald

Friday, March 14, 2014

CONSHOHOCKEN — Borough Manager Francis Marabella was fired on Friday morning at the borough offices according to Councilman Robert Stokley.

“Fran is no longer with us,” Stokley said on Friday morning.

Marabella had worked for the borough for “eight or nine years” as borough manager, said Councilman James Griffin.

“We fired him because we didn’t think he was doing the job right. It was a unanimous vote,” Griffin said. “That vote was taken at our last executive meeting two weeks ago.”

Griffin said council voted 6-to-0 to fire Marabella. Ward 1 Councilman Raj Gupta had resigned from council before the executive session was held, Griffin said.

Stokley and Councilman Anita Barton delivered the news to Marabella on Friday morning.

Conshohocken Solicitor Michael Savona said Marabella became the permanent borough manager in 2006 and held the titles of both borough manager and the finance director.

“He was at \$140,000 a year,” Savona said.

Marabella’s salary was higher than other township managers because he also served as the finance director, Savona said.

“The borough manager serves at the pleasure of council. The way the contract works is if council decides to terminate him, he gets six months of salary in a lump sum,” Savona said. “He is carried on the borough health insurance, along with disability insurance and life insurance for six months from the date of termination. And he gets any accumulated sick days and vacation days.”

Savona said the council members plan to appoint an interim borough manager at the Wednesday night council meeting. They will also authorize advertising for applicants for the permanent job. He said council had plans to hire a permanent borough manager within 60 to 90 days.

The borough has an annual budget of more than \$10 million and slightly more than 50 police officers, public

3/15/2014

Conshohocken Borough manager Francis Marabella fired

works employees and administrative staff.

“Council has been discussing this for a couple of months,” Savona said. “They did discuss it before the last council meeting on March 5 in the executive session.”

Griffin declined to specify the precise reasons for Marabella’s termination.

“His firing does not bother me,” Griffin said. “There were things that he was not doing right.”

Follow Carl Rotenberg on Twitter @CarlWriter.

URI.: <http://www.timesherald.com/general-news/20140314/conshohocken-borough-manager-francis-marabella-fired>

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3/19/2014

Conshohocken Borough manager Francis Marabella fired by Council - Main Line Media News

Main Line Media News (mainlinemedianews.com)

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Region

## Conshohocken Borough manager Francis Marabella fired by Council

Friday, March 14, 2014

By Carl Rotenberg,  
Crotenberg@21st-centurymedia.com

CONSHOHOCKEN — Borough Manager Francis Marabella was fired on Friday morning at the borough offices according to Councilman Robert Stokley.

"Fran is no longer with us," Stokley said on Friday morning. "It happened 20 minutes ago."

Marabella had worked for the borough for "eight or nine years" as borough manager, said Councilman James Griffin.

"We fired him because we didn't think he was doing the job right. It was a unanimous vote," Griffin said. "That vote was taken at our last executive meeting two weeks ago."

Griffin said council voted 6-to-0 to fire Marabella. Ward 1 Councilman Raj Gupta had resigned from council before the executive session was held, Griffin said.

Stokley and Councilman Anita Barton delivered the news to Marabella on Friday morning.

Council is expected to hire an outside company to help find a temporary replacement for Marabella.

"If we think that person works out they could become a permanent replacement," Griffin said.

Griffin said Marabella had an annual salary of more than \$100,000. His contract included "buyout" provisions that allowed council to terminate him without notice, Griffin said.

Griffin declined to specify the precise reasons for Marabella's termination.

"His firing does not bother me," Griffin said. "There were things that he was not doing right."

Follow Carl Rotenberg on Twitter @CarlWriter.

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URL: <http://www.mainlinemedianews.com/articles/2014/03/15/region/doc5323260219fee516692280.prt>

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Conshy's Historic Candy and Nut Outlet | 441 East Hector Street | (610) 828-7441

(<http://edwardsfreeman.com?referer=http%3A%2F%2Fmorethanthecurve.com>)



More than  
The Curve.com  
Conshohocken

Stef.C Photo 2013

## (<http://morethanthecurve.com>)

### Borough Now Saying that Borough Manager Fran Marabella Resigned



(<http://morethanthecurve.com/borough-ncw-saying-that-borough-manager-fran-marabella-resigned/>)

Last week the Times Herald reported that Borough Council fired Borough Manager Fran Marabella on Friday, March 14th after an unanimous vote taken two weeks prior. Last night during a meeting of the Conshohocken Business Development Commission, council member Matt Ryan informed the commission that Marabella had in fact resigned and that Borough Council would accept his resignation during its March 19th meeting. The agenda (<http://ccnshohockenpa.org/government/borough-council/agendas/638-public-council-meeting-agenda-march-19-2014>) for this meeting confirms this. We asked Ryan if the Borough would still pay him his buyout (\$70,000) now that the story is that he resigned. He confirmed the Borough intends to make this payment due to his years of service.

Lets look back at the quotes from last week provided the Times Herald and the Philadelphia Inquirer regarding this situation:

Bob Stokley (Councilperson for Ward 6) to the Philadelphia Inquirer ([http://articles.philly.com/2014-03-16/news/48247314\\_1\\_borough-manager-finance-director-council-members](http://articles.philly.com/2014-03-16/news/48247314_1_borough-manager-finance-director-council-members))

"It's a lot of work, holding those two positions," said Stokley, who indicated that the council decided several weeks ago to terminate Marabella. "We feel it was a little too much for him."

Ike Griffin (Councilperson for Ward 1) to the Times Herald (<http://www.timesherald.com/general-news/20140314/conshohocken-borough-manager-francis-marabella-fired>)

"We fired him because we didn't think he was doing the job right. It was a unanimous vote," Griffin said. "That vote was taken at our last executive meeting two weeks



So two different newspapers, speaking to two different council members, confirm there was a vote taken to fire Marabeila. The two council members didn't say that council asked him to resign, they said that council "decided several weeks ago to terminate" and "we fired him".

So what took place on Friday and over the weekend to turn this from a firing to a resignation? Did Borough Council decide they handled the situation poorly and decided to offer him the opportunity to resign? Did both papers misquote members of Borough Council? Something else? We hope to find out more during tonight's meeting of Borough Council. If you want to attend, the meeting is at 7:00 p.m. at Old Borough Hall at West 8th and Fayette.

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(<http://edwardsfreeman.com?referer=http%3A%2F%2Fmorethanthecurve.com>)



# (<http://morethanthecurve.com>)

## Conshohocken - Case Study on How Not to Terminate an Employee



(<http://morethanthecurve.com/conshohocken-case-study-on-how-not-to-terminate-an-employee/>)

The recent firing (yes, we are back to his being fired) of Borough Manager Fran Marabella is a case study of how not to terminate an employee. Lets review.

- On Friday Marabella was fired by two members of Borough Council and someone must have called the Times Herald while his seat was still warm because they had a story up quickly. People don't usually inform the media when they are fired, so we suspect it had to be a member of Borough Council or someone on the Borough's staff.
- Borough Council also made a poor choice in regards to timing. They fired Marabella on Friday, March 14th. There were headlines in the Times Herald and on Philly.com stating "Borough Manager Fired in Conshohocken." It is a shame that when there was so much positive build-up to the Saint Patrick's Day Parade that they took action that resulted in such headlines the day before. Firing Marabella couldn't have waited a week?
- From the Times Herald, "His firing does not bother me," Griffin said. "There were things that he was not doing right." Griffin is Borough Council member Ike Griffin. Did he really just say that about a long time borough employee who was not accused of any wrong doing?
- Lets compare Griffin's comment to that of Borough Council member Matt Ryan on MoreThanTheCurve.com's Facebook page, "When Fran was hired the borough was in a weak financial situation. We needed an accounting expert with management experience to lead audits and restructure the boroughs financials. He was a great selection and did a fantastic job at cleaning up the books. The borough is in a much stronger position in a large part due to Fran. I believe council felt that the borough has a different set of hurdles to tackle over the next decade and it was time to make a change."
- Marabella deserves an apology from Griffin.
- Was it to much trouble to write a paragraph explaining the firing and wishing Marabella well? Ryan's statement above would have worked fine.
- The initial reporting was that Marabella was fired. MoreThanTheCurve.com was then told on Tuesday night by Ryan that Marabella was in fact going to resign and the agenda for last night's Borough Council meeting reflected that they would accept his resignation. However, when that agenda item came up, the vote was on the "dismissal" of Fran Marabella. After the meeting we asked Ryan if the word "dismissal" meant that he was indeed fired. He said yes. So why the changing story?

While there was unanimous agreement to make a change, it appears there was some disagreement on how it was handled.

And here you have it.

# EXHIBIT "B"



ilze/a.c

**Agreement**  
**Borough of Conshohocken**  
**And**  
**Francis J. Marabella**

## TABLE OF CONTENTS

<b>Introduction</b>	<b>P.1</b>
<b>Section 1: Term</b>	<b>P.1</b>
<b>Section 2: Duties and Authority</b>	<b>P.1</b>
<b>Section 3: Compensation</b>	<b>P.1</b>
<b>Section 4: Health, Disability and Life Insurance Benefits</b>	<b>P. 1</b>
<b>Section 5: Vacation, Sick, Personal and Holiday Leave</b>	<b>P. 2</b>
<b>Section 6: Automobile/Monthly Vehicle Allowance</b>	<b>P. 2</b>
<b>Section 7: Retirement</b>	<b>P. 3</b>
<b>Section 8: General Business Expenses</b>	<b>P. 3</b>
<b>Section 9: Termination</b>	<b>P. 3</b>
<b>Section 10: Severance</b>	<b>P. 3</b>
<b>Section 11: Resignation</b>	<b>P. 4</b>
<b>Section 12: Performance Evaluation</b>	<b>p. 4</b>
<b>Section 13: Hours of Work</b>	<b>P. 4</b>
<b>Section 14: Outside Activities</b>	<b>P. 4</b>
<b>Section 15: Indemnification</b>	<b>P. 5</b>
<b>Section 16: Bonding</b>	<b>P. 5</b>
<b>Section 17: Other Terms and Conditions of Employment</b>	<b>P. 5</b>
<b>Section 18: Notices</b>	<b>P. 6</b>
<b>Section 19: General Provisions</b>	<b>P. 6</b>

**Francis J. Marabella  
Employment Agreement**

**Introduction**

This Agreement, made and entered into this April 20, 2006, by and between the Borough of Conshohocken, Conshohocken, Montgomery County, Pennsylvania a municipal corporation, (hereinafter called "Employer") and Francis J. Marabella, (hereinafter called "Employee") an individual who has particular education, training and experience in local government management and finances, both of whom agree as follows:

**Section 1: Term**

A. This agreement shall remain in full force and effect from April 20, 2006 until terminated by the Employer or Employee as provided herein. Employee acknowledges and agrees that his employment by Employer shall be at-will and no portion or provision of this Agreement shall be construed as granting Employee any vested rights to employment, excepting and reserving those rights to post-termination benefits conferred under this Agreement.

**Section 2: Duties and Authority**

Employer agrees to employ Francis J. Marabella as Borough Manager and Finance Officer to perform such functions and duties as set forth under law and as may be directed by Employer.

**Section 3: Compensation**

- A. Base Salary: Employer agrees to pay Employee an annual base salary of \$95,000, payable in installments at the same time that the other management employees of the Employer are paid.
- B. Employer agrees to consider, on or about January first, an increase in compensation, commensurate with Employee's performance review for the prior year.
- C. This agreement shall be automatically amended to reflect any salary adjustments that are provided.
- D. The Employer agrees to increase the compensation each year by at least the increases granted to other employees of the Employer.

**Section 4: Health, Disability and Life Insurance Benefits**

- A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, prescription, dental, comprehensive medical insurance for the Employee and his/her dependents equal to that which is provided to all other employees of the Borough of Conshohocken or, in the event no such plan exists, to provide coverage for the Employee and dependents.
- B. The Employer agrees to put into force and to make required premium payments for short term and long-term disability coverage for the Employee.

C. The Employer agrees to pay the premiums necessary to provide Employee with term life insurance in the amount of \$250,000, for so long as Employer remains employed under this Agreement.

C. All health, life and disability insurance benefits will be effective immediately on the benefit premium date due.

D. The Employer agrees to provide health insurance at retirement for the employee and their dependents which are provided to other employees.

#### **Section 5: Vacation, Sick, Personal and Holiday Leave**

A. Upon commencing employment, the Employee shall be credited and earned four (4) weeks vacation, six (6) personal days and six (6) illness days. The Employee shall then effective January 1<sup>st</sup> accrue and earn on an annual basis four (4) weeks vacation, six (6) personal days and six (6) illness days. All current year's benefit days will be considered accrued and earned effective January 1st.

B. Upon commencing employment, the Employee shall have access to a bank of 60 sick days to be used in the case of serious medical conditions. This leave can only be used to provide coverage during the waiting period between the onset of illness or disability and the point at which short or long-term disability coverage takes effect and may be renewed after each occurrence. The sick days provided under this paragraph shall not be subject to lump sum payment to Employee upon retirement, termination, or any other such separation from service.

C. In the event that the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, all accrued illness time, all personal time and other benefits to date.

D. The Employee is entitled to accrue all unused leave per the current leave limits allowed.

E. Upon commencing employment, the Employee shall be credited and earned one (1) extra week vacation per the other administrative employees. The Employee shall then effective January 1st accrue and earn on an annual basis an extra one (1) week vacation.

#### **Section 6: Automobile/Monthly Vehicle Allowance**

A. At the option of the employee, the employer agrees to pay the employee in the first pay of the month the current monthly cost of the premium for health insurance that the employee elect to pay on his own. The employee may submit the premium for his health insurance to be paid by the employer and the remaining balance of the current monthly premium cost will be paid to the employee in his paycheck. The difference in the actual premium paid and the current premium will be used by the employee as a car allowance/help to pay the higher deductibles for his insurance coverage/help to fund the employee 457 deferred compensation plan.

B. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage for the employee's vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of his vehicle.

C. The employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the employee vehicle.



**Section 7: Retirement**

A. The Employer agrees to enroll the Employee, effective the date of employment, into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf, for the Employer share required.

**Section 8: General Business Expenses**

A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

B. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the Annual Conference and meetings, for any other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

E. The Employer shall provide Employee with a fully equipped office within the municipal building and a cell phone from which Employee may perform the duties of his employment.

F. The Employer agrees to budget and pay for all business expenses incurred by the Employee.

**Section 9: Termination**

For the purpose of this agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.

B. If the Employer, citizens or legislature acts to amend the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

**Section 10: Severance**

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

- A. If the Employee is terminated; the Employer shall provide a minimum severance payment equal to six (6) months salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.
- B. The Employee shall also be compensated for all accrued leave in accordance with the provisions of Section 5 of this Agreement. The Employer agrees to allow the employee to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.
- C. For a minimum period of six (6) months following termination, the Employer shall pay the cost to continue the following benefits:
1. Health insurance for the employee and all dependents as provided in Section 4A.
  2. Life insurance as provided in Section 4D.
  3. Short-term and long-term disability as provided in Section 4B.
  4. Monthly vehicle allowance option in Section 6A.
- D. If the Employee is terminated because of conviction of a felony, then the Employer is not obligated to pay severance under this section.
- E. The Employer agrees to allow the Employee to collect unemployment compensation when the employee is terminated.

#### **Section 11: Resignation**

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of two (2) weeks notice unless the parties agree otherwise. Resignation by Employee shall forfeit any and all post employment benefits set forth under this Agreement, including, but not limited to, severance under Section 10.

#### **Section 12: Performance Evaluation**

Employer shall annually review the performance of the Employee in November subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer, and Employee. The process, at a minimum, shall include the opportunity for both parties to: (1) meet and discuss the employee performance, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee by December 31<sup>st</sup>.

#### **Section 13: Hours of Work**

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end, Employee shall consult with Employer to establish an appropriate work schedule.

#### **Section 14: Outside Activities**

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.



**Section 15: Indemnification**

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Borough Manager and Finance Officer or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Employer shall not indemnify Employee for any acts determined to be willful, intentional, deliberate, grossly negligent, reckless, or any claims or awards for punitive or special damages arising from or relating to the willful, intentional, deliberate, grossly negligent or reckless acts of Employee.

Employee, throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer, agrees to perform such acts as necessary to assist Employer in the defense of any third party claims, and to continue such assistance regardless of the Employee's employment status, for as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation in the event Employee is no longer employed by Employer.

**Section 16: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

**Section 17: Other Terms and Conditions of Employment**

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or any other law.

A. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other appointed officials, appointed employees, department heads or general employees of the Employer as provided in the Personnel Rules and Regulations or by practice.

**Section 18: Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) Council President  
Borough of Conshohocken  
1 West First Avenue, Suite 200  
Conshohocken, PA 19428
  
- (2) Francis J. Marabella  
230 Barren Road  
Media, PA 19063

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

**Section 19: General Provisions**


A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

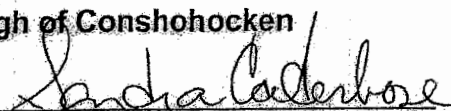
B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

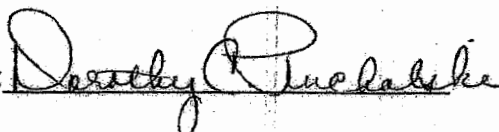
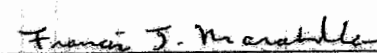
C. **Effective Date.** This Agreement shall become effective on April 20, 2006.

D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, we, the undersigned, intending to be legally bound hereby, have hereunto set our hands and seals this day and year first above written.

Attest:   
Pearl Duckett  
Borough Secretary

Borough of Conshohocken  
By:   
Sandra Caterbone, President  
Borough Council

Witness:  By:   
Francis J. Marabella