

PUBLIC HEARING ON PLL 15-2009

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MINUTES OF A PUBLIC HEARING OF THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK HELD ON MONDAY, JANUARY 11, 2010 AT 7:30 P.M. IN THE COURTROOM AT VILLAGE HALL, MAMARONECK, NEW YORK

PRESENT:	Mayor	Norman S. Rosenblum
	Trustees	Louis N. Santoro Toni Pergola Ryan John M. Hofstetter Marianne V. Ybarra
	Village Manager	Richard Slingerland
	Village Attorney	Christie McEvoy-Derrico
	Police Department	Lieutenant James Gaffney
	Clerk-Treasurer	Agostino A. Fusco
ABSENT:		None

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held by the Board of Trustees of the Village of Mamaroneck on the 11th of January, 2010, at 7:30 p.m., or as soon thereafter as all parties can be heard, at the municipal building located at 169 Mount Pleasant Avenue, Mamaroneck, New York, to consider PROPOSED LOCAL LAW NO.15-2009, a local law amending Section 78-5 (Term; Compensation; Status; Dismissal) of Chapter 78 (Village Attorney) of the Code of the Village of Mamaroneck.

PLEASE TAKE FURTHER NOTICE that a copy of Proposed Local Law No. 15-2009 is on file with the Clerk-Treasurer of the Village of Mamaroneck.

PLEASE TAKE FURTHER NOTICE that at said public hearing, all persons interested will be given an opportunity to be heard.

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF MAMARONECK, NEW YORK

Agostino A. Fusco
Clerk-Treasurer

Dated: January 4, 2010

On motion of Trustee Ryan, seconded by Trustee Ybarra:

RESOLVED that the Public Hearing on Proposed Local Law 15-2009 be and is hereby opened.

Ayes: Ybarra, Ryan, Santoro, Rosenblum

Nays: Hofstetter

Mayor Rosenblum read names of individuals who sent in statements that they are not in favor of this proposed local law. Ms. Roberts read into the record the communications from those residents who requested they be read at the meeting. They were from Kate Colson of Munro Avenue and Stuart Tiekert of Beach Avenue.

Trustee Ybarra stated that she believes that the Village will save money with having a part time attorney and that is crucial especially during this time of economic strain.

Trustee Hofstetter stated that he is not in favor of changing the law. He believes that changing one word is a substantial change and that it allows for a part time attorney when he feels that a full time attorney has and will serve the Village well. If we replaced the word "shall" with "may" in much of what was received in tonight's package, it would change the meaning of these documents.

Trustee Ryan stated that the word shall is a command and the word may is a permissive word. We are not simply changing a word, but changing the law. She gave an example; God did not give a tablet to Moses and call them the Ten Suggestions, he called them the Commandments. The Board in 2007 was very specific and careful when they crafted the law. They wanted to be sure that there would be an attorney who was an employee of the Village, with the Village's best interest in mind. On December 7, 2009 the law read that the attorney would be a full time employee; however, a part time employee was appointed. She believes that tonight the law is being changed to validate an appointment. The law in 2007 was studied, publicized and the recommendation was made that the attorney be an employee. She does not understand why the newly appointed attorney cannot be a part time employee of the Village instead of a consultant.

Ms. Sanger of Hall Street appeared. She is concerned with the turn of events as the law in 2007 was deliberated on and public hearings were held for years and by complete surprise, everything was overturned and done in a non-transparent way. She asked what in the world is going on.

Mr. Nicholas Allison of Stuart Avenue appeared. Mr. Allison is a former Trustee of the Village. He reiterated that in the Ten Commandments, it reads "Thou Shalt Not Kill" not "Thou May Not Kill". He disagrees with the changing of the law. He recapped the sequence of events that led up to this evening. He believes that the Code is being softened by changing the word shall to may. He believes that the whole process is out of sequence. He stated that the public hearing should have been held before the attorney was appointed and her contract voted on. He thought that resumes and proposals would have been requested; a normal bidding process. Instead there is a Village Attorney working with no signed agreement on the content of work to be done or the payment for this work. In his line of business, this is not done.

Mr. Thomas Murphy of Prospect Avenue appeared. Mr. Murphy is a former Trustee of the Village and was instrumental in the work done on the law that was passed in 2007. This work began in 2005 as legal fees were getting out of hand. He felt that the attorneys representing us were benefiting from the litigation. He stated that the newspaper ran an article stating that the attorney's office was always a consulting position. This is not true. There were many attorneys who were employees. In 2005 he began a study with three resident attorneys. The report was completed in 2006. In 2006, he, along with Trustees Ryan and Hofstetter ran for election and re-election. One of the platforms they ran on was hiring a full time Village Attorney. They ran on it and debated on it. A problem he has is that this was never publicly mentioned by the three new members of the Board when they were running for office. He believes they should have let the voters know of their intent. In 2007 the law was changed to require that the attorney be a Village employee, to stop outside law firms from benefiting by our litigation. He believes that this worked for the past two years and that legal costs were reduced and the big entanglements that happened in the past were avoided. He respects the Mayors right to appoint whomever he wishes as Village Attorney, he simply asks that this person be an employee of the Village. He believes that changing this law will open the door to have what happened in the past, happen again. Mr. Murphy also stated that this is not about politics, as was in the newspapers, but about policy.

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Ms. Sue McCrory of the Crescent appeared. Ms. McCrory also believes that this is a policy and pocketbook question, as she believes the Village residents' pocketbooks have been affected by having either an employee or consultant, as past attorneys who were on retainer made up to \$400,000 per year. Because we have no internal control, the consulting attorney has a conflict between what is best for the Village and best for their own pocketbook. She also believes that the Village will not get the same quality and quantity of work from a part time attorney. She is also disquieted that the newly constituted Board appointed an attorney in defiance of the law on the books. She urged the Board to keep the Village Attorney an employee of the Village.

Ms. Sue Odierna of Munroe Avenue appeared. Ms. Odierna feels that this is not political, as she was at the meeting when Mayor Trifiletti and Trustee Fava voted to put this law in place. She also does not understand why they would appoint an attorney before the law was changed. She believes that this is an ethical issue. There was a letter to the Editor in the Sound and Town where the writer stated that we may not need a full time attorney as we do not have all of the lawsuits that we had in the past. She asked who is to say that the reason we don't have all of these suits is because we had a full time attorney.

Congresswoman, Nita Lowey appeared. Mrs. Lowey believes that she was given the wrong information about the meeting this evening; but is happy to be in the Village and to be serving the residents of the Village. She wished good luck to the newly elected and all Board members. She looks forward to working together on the many challenges ahead. Mayor Rosenblum thanked Mrs. Lowey for all that she does for the Village.

Ms. Nancy Wasserman of Raleigh Road appeared. Ms. Wasserman is in favor of the law change. She recalls that this is the third meeting that this has been discussed; and she believes that it is time to get on with the business of the Village.

Ms. Alice Pernick of Woodbine Avenue appeared. Ms. Pernick gave an example of why she believes that this change is not a good idea. During her time as Chair on the Committee for the Environment, there were things that came up that were discussed with the Village Attorney and they found her advice to be very helpful and because she was an employee of the Village, it did not cost anything to get this advice. She believes that someone who is part time will not have the time to deal with all of the Boards and Commissions.

Mr. Tim Keebe of Wagner Avenue appeared. Mr. Keebe is an attorney and also a member of the HCZM. What impressed Mr. Keebe with having a full time attorney who specializes in municipal law is that she attended all of their meetings and could advise them on the spot, as she knew these laws without having to do research. Mr. Keebe asked Ms. Ybarra how she could have stated at the beginning of this hearing that this would save the Village money as she expressed during her debates that she would listen to residents with an open mind. He also stated that as a litigator, he would love to litigate for the Village as he makes a lot of money doing this. If you have someone on salary, they do not have incentive to turn up the hours. He believes that the Village will save hundreds of thousands of dollars having an attorney who is an employee.

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Mr. Rick Velleu of Knollwood Avenue appeared. He stated that he knows little about politics and less about economics; however in his business as a film maker, he does not make any decisions of this sort without doing cost projections first. He assumes that we will save benefits, but are rolling the dice that we are not going to have a lot of lawsuits. He asked that if a Board and Commission member picks up the phone to call Ms. Derrico, if the Village will be charged? This is a disincentive for him to call his own attorney as it is extremely expensive. He believes that this is a shortsighted economic decision.

Mr. Luis Quiros of Rockland Avenue appeared. He thanked Ms. Derrico for the hundreds of hours of legal advice given to him during the time the Village was having trouble with the day laborer case. He has yet to see a bill from her. He is putting his money on Ms. Derrico and believes that her reputation precedes her.

Ms. Theodora Saal of Crown Court appeared. Ms. Saal is an attorney. She believes that Ms. Derrico's ethics and personality are not up for debate. The hearing tonight is not about Ms. Derrico, but is about whether or not the Village Attorney should be an employee of the Village. What is up for discussion is the difference between "shall" and "may". Being obligated to perform a task and not suggested to do so is a substantive change. She also warned that as the Village is still under the review of a Federal Judge on the Day Laborer Case, if something goes wrong, we will be "in it" again, as we remain liable for our behavior. She has seen no financial cost analysis, nor a description of the attorney's responsibilities. Ms. Saal believes that unlike the time when this law was first established this has been done behind closed doors and this should not have been the first act of the new administration. The economical and ethical issues should have been discussed before this dictate was handed down.

Trustee Santoro stated that he did some research on this issue. He read the following statement for the record:

There have been a considerable amount of comments being made via email and in the press regarding the appointment of a part-time attorney in the Village of Mamaroneck.

The truth of the matter is, streamlining the Office of Village attorney, including turning this fulltime position into a more appropriate part-time position will save the village approximately \$122,000.00 per year.

History:

The 2007 Village board not only hired a fulltime village attorney, but created an Office of Village attorney. You can read this section in the Village Code, Chapter 78, <http://www.ecode360.com/?custld=MA0954>. What is interesting is that very few municipalities (especially "villages") in the State of New York have an Office of Village Attorney. Overwhelmingly, municipalities in NY State engage lawyers pursuant to retainer agreements. The retainer agreement arrangement has several advantages 1) it specifically sets out the term of employment 2) the parties can limit benefits 3) it provides for termination if the client is dissatisfied. Having an Office of Village Attorney exposes the village to paying employee benefits and restricts the freedom of the village if they are unhappy with the legal work performed.

The Village is a small community. We are not a big city or a big corporation; there is not enough legal work to occupy a full time attorney.

Why is it so important that Mamaroneck have a full time attorney when so many communities don't? Harrison, Mamaroneck Town, Rye City, Rye Town, Larchmont, Pelham, Pelham Manor, North Castle, New Castle, Somers, Bedford.all have part time attorneys. Some are bigger than Mamaroneck and have plenty of litigation and they have no problem with part time counsel. Few Villages our size have a full time attorney, in fact, locally, only 2 do. Scarsdale and Port Chester (in Port Chester the Village Attorney also represents the zoning board and handles the art 78's).

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In the time since we have had an Office of Village Attorney the village still retained a local prosecutor, a zoning attorney, and 2 attorneys who dealt with employment issues, this does not include the various attorneys who work on individual litigation cases, some of whom are assigned by the insurance carriers yet the village still pays the bills.

The truth is almost all the legal work that was done was largely tax certioraris. Tax certs for the village are by and large co-counseled by the attorneys for the Town of Rye and the Town of Mamaroneck, therefore requiring very little legal work for the village. The village basically follows the lead of the attorneys in the Towns of Rye and Mamaroneck.

What the fulltime village attorney position didn't do:
Litigation, Article 78s, Employment law

Mayor Rosenblum stated that during the campaign it was very clear that there was going to be a complete review of all Village departments. One issue that they ran on was the tax base of the Village. The Law department was looked at first as the Attorney is appointed at the Annual Organizational Meeting. Mayor Rosenblum presented a spreadsheet which showed funds budgeted versus actual in the Law Department for 2007, 2008, 2009 and projected 2010. The savings in cost for the Law Department in 2009 versus what is projected to be spent in 2010 is approximately \$123,000. Mayor Rosenblum then presented a spreadsheet of the thirteen outside law firms that have been retained by the Village to handle litigation for a total of \$620,000 in the last fiscal year. The information presented follows:

Village of Mamaroneck Summary Legal Bills Fiscal Year										
	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	Total
6381 Thacher Proffitt & Wood	-	-	312,113.48	156,406.17	527,099.12	805,534.78	321,249.39	-	-	2,122,372.94
2871 Hilsman, Hoffman & O'Reilly LL	3,448.66	76,164.70	110,242.23	123,942.36	61,343.09	25,851.33	86,629.68	55,799.60	-	543,121.83
3446 London Fischer	-	44,503.98	69,702.71	27,506.48	158,046.80	219,409.60	-	-	-	519,169.57
5465 Wilson, Elser & Moskowitz Etal	127,569.00	228,994.64	93,784.73	45,565.78	5,628.97	7,457.72	1,457.64	20,794.30	-	531,243.68
3745 Joseph Messina	12,000.00	21,939.71	127,711.83	290,506.01	374,258.68	288,846.71	48,252.69	-	-	1,163,515.83
6930 Jackson Lewis, LLP	-	-	-	827.39	49,172.61	-	-	23,967.93	20,879.81	94,747.74
6924 Silverberg Zalowitz	-	-	-	-	12,976.97	39,553.33	161,544.92	61,950.87	63,404.64	309,460.73
7251 Rocchino	-	-	-	-	132,367.37	-	-	-	-	132,367.37
7243 Friedman	-	-	-	-	135,137.82	-	-	-	-	135,137.82
6891 Robert Burn	-	-	-	8,861.25	12,696.75	40,090.00	11,600.00	6,813.25	-	79,861.25
Callahan & Fusco	-	-	-	-	-	-	6,649.50	-	-	6,649.50
Almudy, Demers & McManus	-	-	-	-	-	-	-	18,527.90	648.42	14,176.32
Aian Levino, Esq.	-	-	-	-	-	-	-	13,005.00	-	13,005.00
Bond, Schoenck & King	-	-	-	-	-	-	-	5,989.04	-	5,989.04
Mound Cotton Weilan	-	-	-	-	-	-	-	2,794.06	-	2,794.06
7949 D'Andrea & Goldstein	-	-	-	-	-	-	-	13,600.00	-	13,600.00
7972 Phillips Nizer, LLP	-	-	-	-	-	-	-	13,342.56	2,150.00	15,492.56
McCullough, Goldberger	-	-	-	-	-	-	-	45,325.30	-	45,325.30
Winget Spadafora	-	-	-	-	-	-	-	-	-	-
8361 Lewis Bristol Bisgaard	-	-	-	-	-	-	-	\$ 34,414.61	\$ 6,273.40	40,688.01
	<u>143,018.56</u>	<u>371,603.03</u>	<u>713,554.98</u>	<u>653,105.44</u>	<u>1,468,698.18</u>	<u>1,426,743.47</u>	<u>637,383.80</u>	<u>329,938.49</u>	<u>102,199.39</u>	<u>5,846,245.34</u>
Insurance reimbursements										
London Fischer	-	44,503.98	69,702.71	27,506.48	158,046.80	219,409.60	-	-	-	519,169.57
Lewis Bristol Bisgaard	-	-	-	-	-	-	-	34,414.61	6,273.40	40,688.01
	<u>143,018.56</u>	<u>327,099.05</u>	<u>643,852.27</u>	<u>625,598.96</u>	<u>1,310,651.38</u>	<u>1,207,333.87</u>	<u>637,383.80</u>	<u>295,523.88</u>	<u>95,925.99</u>	<u>5,286,387.76</u>
									<u>proof of</u>	

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Date Prepared: 06/03/2009 03:58 PM
 Report Date: 03/12/2009
 Account Table: AEXP

VILLAGE OF MAMARONECK
Budget Preparation Report

BUD4011 1.0
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 Prepared By: AFUSCO

Alt. Sort Table:

Fiscal Year: 2010 Period From: 1 To: 12

Account Item	Type	Sub	Description	2007 Actual	2008 Actual	Adopted 2009 Budget	Adjusted 2009 Budget	Actual To Date	2010 REQUESTED Stage	2010 TENTATIVE Stage	2010 ADOPTED Stage	Variance To ADOPTED Stage
Dept 1420			LAW									
Group 1			PERSONAL SERVICES									
A.1420.0110			PERM. REGULAR PERSONNEL									
30			VILLAGE ATTORNEY			121,000.00			131,325.00	131,325.00	131,325.00	
20			SENIOR OFFICE ASST.			49,600.00			53,596.00	53,596.00	55,215.00	
				75,244.21	84,842.16	170,600.00	175,600.00	173,622.67	184,921.00	184,921.00	186,540.00	9.34%
A.1420.0120			PART-TIME SALARIES									
10			PART TIME CLERK - 18HRS PER WEEK \$22.48 HR			14,040.00			16,848.00	16,848.00	21,041.00	
				13,425.28	856.00	14,040.00	14,040.00	22,443.75	16,848.00	16,848.00	21,041.00	49.86%
A.1420.0140			OVERTIME									
10			OVERTIME			1,000.00			1,500.00	1,500.00	1,500.00	
				1,714.50	0.00	1,000.00	1,000.00	267.07	1,500.00	1,500.00	1,500.00	50.00%
Total Group 1			PERSONAL SERVICES									
				90,383.99	85,698.16	185,640.00	190,640.00	196,333.49	203,269.00	203,269.00	209,081.00	12.63%

Trustee Ryan stated that she saw the information given by Trustee Santoro on a blog, which she does not feel is a reliable source. Trustee Ryan also stated that the Village Attorney was not hired to handle the litigation. Some of those cases were already in process before this law was instituted. There were only two new cases during the time that the Village Attorney law was in place and they are no where near the magnitude that Mayor Rosenblum alluded to.

Trustee Hofstetter believes that a side by side analysis needs to be done. In Ms. Derrico's contract the fee is \$60,000 for 16 hours of work per week. The previous Village Attorney worked 40+ hours per week and attended several night meetings for her salary.

Mr. Tom Murphy of Prospect Avenue appeared again in response to Trustee Santoro's accusation and Mayor Rosenblum's presentation. Mr. Murphy stated that many of the attorneys listed were working on cases that the Village was involved in before the full time attorney was hired and some of these cases are still on-going. Mr. Murphy stated that everything done in regard to this law was done above board and he does not appreciate the personal attack made by Trustee Santoro.

Ms. Randi Robinowitz of Lawn Terrace appeared. Ms. Robinowitz is a former Trustee. She stated that she believes the reason Mr. Santoro could not find the files is that the system is in disarray and in the process of being updated and organized. She also feels that the Trustees should not rubber stamp everything the Mayor does, but to do all of the research and work needed to form an opinion.

Trustee Ybarra stated that in January 2008 the previous Village Attorney was hired and it wasn't on the agenda. She therefore does not see why people are making an issue out of this as residents were not allowed to express their thoughts at that time. She doesn't see the difference between then and now.

Mr. Jeff Rubin of Wagner Avenue appeared and stated that the previous Board is no longer in office and that is how it is different.

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On motion of Trustee Hofstetter, seconded by Trustee Ryan:

RESOLVED that the Public Hearing on PLL 15-2009 be and is hereby closed.

Ayes: Ybarra, Hofstetter, Ryan, Santoro, Rosenblum

Nays: None

On motion of Trustee Ybarra, seconded by Trustee Santoro:

RESOLVED that Proposed Local Law 15-2009 be and is hereby adopted and shall read as follows:

LOCAL LAW NO. 1-2010

A proposed local law amending Chapter 78 (Village Attorney) of the Code of the Village of Mamaroneck by amending Section 78-5 (Term; compensation; status; dismissal)

Be it enacted by the Board of Trustees of the Village of Mamaroneck as follows:

SECTION 1. Section 78-5 (Term; compensation; status; dismissal) of Chapter 78 (Village Attorney) is hereby amended to read as follows:

The Board of Trustees shall fix said Village Attorney's salary and other terms and conditions of employment not inconsistent with the provisions hereof. Notwithstanding the foregoing, the Village Attorney shall have no civil service status, may be an employee of the Village employable by the Village and shall be subject to dismissal by a majority of the Board of Trustees.

SECTION 2. If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

SECTION 3. This Local Law shall become effective immediately upon filing in the office of the Secretary of State.

Ayes: Ybarra, Santoro, Rosenblum

Nays: Hofstetter, Ryan

RESPECTFULLY SUBMITTED BY:

AGOSTINO A. FUSCO, CLERK-TREASURER