

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

JAMES E. SWEENEY, F. WARREN BENTON,  
SAM ORANS, BRIAN PAYNE, RAY  
MALDONADO, DAN HEUBEL, PAUL J.  
ABRAHAMSEN, CHRISTOPHER MACDONALD  
and MICHAEL WIENER,

Plaintiffs,

-against-

ELIZABETH N. FELD, Mayor, MARLENE  
KOLBERT, Trustee, ANNE McANDREWS, Trustee,  
JIM MILLSTEIN, Trustee, RICHARD WARD,  
Trustee, constituting the Village of Larchmont Board  
of Trustees and RICHARD HEINE, "Chief" of the  
Fire Department of the Village of Larchmont,

Defendants.

Index No.: 9480/07

**AFFIDAVIT OF ELIZABETH N.  
FELD IN OPPOSITION TO  
APPLICATION FOR  
PRELIMINARY INJUNCTION**

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF WESTCHESTER    )

ELIZABETH N. FELD, being duly sworn, deposes and says:

1. I am the Mayor of the Village of Larchmont (the "Village") and one of the named defendants in this action and as such I have personal knowledge of the facts contained herein. I submit this Affidavit in opposition to plaintiffs' application seeking to enjoin the Village from implementing the two resolutions adopted by Village Board of Trustees (the "Village Board") on May 16, 2007 which, among other things, provisionally appointed Richard Heine as the paid Fire Chief of the Village Fire Department, and provided Chief Heine with the authority over all Fire Department personnel, both paid and volunteer, and over all apparatus and equipment of the Village Fire Department.

2. I served as a Trustee of the Village from 2002 through 2006. During the period from 2003 to 2006 I also served as the Deputy Mayor of the Village. I was elected Mayor of the Village in 2006.

3. The Village Fire Department is comprised of both volunteer firefighters and paid "professional" or "career" firefighters. Such fire departments are commonly referred to as "combination" departments. The Fire Department currently has approximately 25 active volunteer firefighters, down from approximately 50 in 1991. There are currently 14 paid professional firefighters on the staff.

4. The Fire Department has traditionally been managed by a volunteer Chief who usually has a full-time job outside of the Fire Department. However, according to Village Board meeting minutes and salary reports, the Fire Department had a paid Chief from 1915 through 1934.

5. Throughout my service as both Trustee and Mayor, the Village Board has been concerned with a number of issues affecting the Fire Department, including that (i) the number of volunteers has been dropping while the level of administrative and emergency preparedness responsibilities has increased exponentially; (ii) the cost of operating the department is growing; (iii) friction between the career and volunteer members is escalating to the point that the Department is not functioning effectively; and (iv) the demands on those in charge continues to intensify. Indeed, throughout his tenure, immediate past chief MacDonald continually expressed his grave concerns about these issues.

6. The position of Chief of the Fire Department has become a full-time job, and it is virtually impossible for a volunteer, with another full-time job, to run a department with the level of detail and accountability that the Village requires. All of the other Village departments are supervised by paid, full-time department heads.

7. In 1996, the Village hired Carroll Buracker & Associates ("Buracker") to conduct a study of the Fire Department and to evaluate and offer recommendations designed to improve the Larchmont Fire Department and to make it more effective and efficient. Buracker's findings and recommendations are contained in the Buracker Report which recommended, among other things, appointing a paid Chief of the Fire Department to provide consistent leadership accountable to the Village Board. A copy of the relevant pages of the Executive Summary of the Buracker Report is annexed hereto as Exhibit A.

8. The Village Board has given this issue very careful consideration. Numerous public hearings have been held and there have been countless discussions between board members and both paid and volunteer firefighters, past fire chiefs and those involved with the provision of fire services from other communities. In that regard, we learned that there are other combination fire departments within the County of Westchester that have paid fire Chiefs, including the Villages of Scarsdale and Pelham. As noted above, the Village itself has had a paid Fire Chief in the past.

9. The Village Board also sought the certification of the position of Village Fire Chief from the Westchester County Department of Personnel, which serves as the Civil Service Department for municipalities in the County. The Civil Service department has certified the position for the Village. A copy of the County Personnel Officer's Certification of the position for the Village of Larchmont dated March 26, 2007 is annexed hereto as Exhibit B.

10. Following years of careful consideration and approval by the Civil Service Department, on May 16, 2007, the Village Board adopted two resolutions provisionally appointing Richard Heine to the position of Fire Chief of the Fire Department, having authority over all Fire Department personnel, both paid and volunteer, and all Fire Department apparatus

and equipment. A copy of the Village Board resolutions is annexed hereto as Exhibit C. Chief Heine took and filed the oath of office with the Village Clerk on the morning of May 17, 2007.

11. As he notes in his affidavit, Chief Heine was raised in the Village, joined the Fire Department as a volunteer when he was fourteen years old, and remained as a volunteer from 1983 into 1989. In 1989 Chief Heine became a paid member of the Fire Department where he has served for 17 years, most recently as Lieutenant. Chief Heine is also a hospital corpsman in the United States Navy Reserves and has served two tours of combat duty in Iraq. He is intimately aware of the issues related to both groups in the Fire Department, and the Board believes that his unique background and skills make him the perfect choice to supervise the combination department.

12. In support of plaintiffs' application, plaintiffs assert that they will suffer irreparable harm in the absence of injunctive relief because the appointment of a paid Fire Chief will create chaos in the Department. Plaintiffs Memorandum of Law at 13-15. In fact, that has not been the case. Chief Heine has been serving as Chief since May 17, 2007 without incident. There has been no confusion as to his status as Chief or any question as to his authority over all personnel and equipment. Former Chief MacDonald has acquiesced to the authority of Chief Heine. There have been calls in the past week while Chief Heine has been in charge and they have been dispatched efficiently and without confusion or question as to his authority. A training exercise was conducted under his supervision with both volunteer and career members without incident. I have personally confirmed with the adjoining municipalities, the City of New Rochelle, the Town of Mamaroneck, and the Village of Mamaroneck, that they will continue to provide mutual aid and that they recognize Chief Heine's authority. The Village Police Department acknowledges Chief Heine's authority. There is simply no support for plaintiffs' assertions.

13. Finally, there is no truth to the assertion that the Fire Department has been abolished. The four volunteer Companies remain in place. The Fire Council is still active, and the four Companies still elect two members from their respective membership to represent the Companies at Fire Council. The two Deputy Chiefs are still elected by the members of the Fire Department, with confirmation from the Board, and they retain the full authority they have had, which includes incident command authority at fire scenes.

14. The only substantive change is that the Chief is now a full-time, paid employee of the Village, rather than a volunteer. He is the paid firefighter with authority over all Fire Department personnel, both paid and volunteer, and over all apparatus and equipment of the Fire Department. Our attorneys advise that this structure is completely proper pursuant to N.Y. Village Law § 10-1020.

15. Moreover, because Chief Heine has been serving in his position since last Thursday and the transition has been smooth in all respects, an order removing him from office would not, as plaintiffs suggest, preserve the status quo; rather, it would more likely cause the confusion that plaintiffs claim to be trying to avoid.

16. Accordingly, and for the reasons set forth in the accompanying memorandum of law, plaintiffs' application for injunctive relief should be denied in all respects.

  
ELIZABETH N. FELD

Sworn to before me this  
24 day of May, 2007

  
Notary Public

EILEEN A. FINN  
Notary Public, State of New York  
No. 4987093  
Qualified in Westchester County  
Commission Expires Oct. 7, 2009



## EXECUTIVE SUMMARY (Continued)

### The Fire Department Team

During the course of conducting this assessment, it became exceedingly clear to the Study Team that the various components of the Larchmont Fire Department (chief officers, companies and paid staff) do not currently function as efficiently as they could function in a team approach. A comment from one volunteer member was representative of most input; he related, "an adversarial relationship exists between the paid and volunteer, the chiefs and paid and between the volunteers and the chiefs." Others noted that there are impediments to functioning as a team.

Many different ideas for solutions for organizational change were suggested by Larchmont firefighters and officers. A number of these recommendations were supported by the Study Team. These suggested changes focus on the long-term resolution of the redevelopment of a **team approach** within the Larchmont Fire Department.

The organizational recommendations include:

- A. Adopting the proposed new Mission Statement and goals and supporting philosophies for the Fire Department and its members.
- B. Establishing a Larchmont Board of Fire Commissioners to function as the governing body of the Fire Department. A seven-member Board of Fire Commissioners, appointed for two-year terms by the Village Board of Trustees, is suggested with membership as follows:
  - 1. One member of the Village Board of Trustees
  - 2. One Village resident
  - 3. One Village business representative
  - 4. The Chief of the Fire Department
  - 5. Three other Fire Department representative elected at-large every two years from the membership



## EXECUTIVE SUMMARY (Continued)

- C. Rescinding the policy of including ex-chiefs in the incident chain of command.
- D. Establishing a maximum of eight total volunteer company officer positions within the Larchmont Fire Department.
- E. Establishing minimum operational officer experience requirements.
- F. Appointing a paid chief due to the crucial need for the day-to-day leader of the Larchmont Fire Department to be able to help resolve the internal issues currently facing the Fire Department.
- G. Abolishing the Ambulance Protective Corps.
- H. Abolishing the four current remaining companies and establishing one new company to be titled the "Volunteer Fire Company of the Fire Department of Larchmont, N.Y."

### Opportunities for Consolidation

During discussions with Village officials, the Westchester 2000 Report, which called for consideration of consolidating some services, was referenced. Consolidation of municipal organizations and resources is viewed as an alternative and potential remedy to a number of fiscal constraint-related problems facing local governments. Consolidation can also improve safety of public safety providers and customers by pooling resources.

Historically, consolidations have been studied and implemented for both entire jurisdictions and specific services, such as police and fire departments, within jurisdictions. There is a long history of the study and implementation of consolidation of fire departments. Generally, the primary motivating factors in the consideration of consolidation involve matters of fiscal constraint, desires to improve the level of service, and efforts to improve and streamline the management functions.







**WESTCHESTER COUNTY**  
**Personnel Office**  
**New Position Duties Statement**

Department head or other authority requesting the creation of a new position, prepare a separate description for each new position to be created except that one description may cover two or more identical positions in the same organizational unit. Forward two typed copies to this office.

Civil Service Law Section Twenty Two Certification for new positions. Before any new positions in the service of the city or other civil division shall be created, the proposal therefor, including a statement of the duties of the positions, shall be referred to the municipal commission having jurisdiction and such commission shall furnish a certificate stating the appropriate civil service title for the proposed positions. Any such new position shall be created only with the title approved and certified by the Personnel Office.

1. Name of Employee  
**Unknown**

2. Present Title  
**Fire Chief Proposed**

3. Employed by :  
Towns:  
Villages: Larchmont  
School District:  
Special District:

4. If Position is Clerical:  
A. Is Typing Ability Required? Yes ( )  
No ( )  
B. Is Ability to Take Dictation Required? Yes ( )  
No ( )

5. Type of Position  
 Full time 12 months  
 Full time 10 months  
 Temporary \_\_\_\_\_ days

6. Total Hours of Work Per Week  
( ) 35  
 40  
( ) \_\_\_\_\_

7. Rate of Pay  
105,000- (x) Annually  
125,000 ( ) Monthly  
( ) Daily  
( ) \_\_\_\_\_

8. Place of Work (Location)  
**Larchmont Fire Department**

9. Name and Title of Immediate Superior  
**Mayor Elizabeth Feld**

10. DESCRIPTION OF DUTIES: Describe the work in sufficient detail to give a clear word picture of the job. Use a separate paragraph for each kind of work and describe the more important or time-consuming duties first. In the left column, estimate how the total working time is divided.

PER CENT  
OF  
WORK TIME

- 10% Takes active command at major fires and extraordinary emergencies
- 10% Assigns firefighters to stations and shifts
- 10% Recommends the purchase of equipment and supplies, addition of personnel
- 10% Plans and directs training activities for the department
- 10% Supervises the investigation and determination of the causes of fires
- 10% Maintains discipline and promotes morale of the fire department
- 10% Directs the inspection of buildings for fire hazards to insure compliance with local fire prevention ordinances
- 10% Coordinates activities of fire department with other municipal departments
- 10% Prepares and presents the annual department budget
- 10% Exercises supervision and control of all Fire Department apparatus and equipment

11. Names and Titles of Persons Supervising this position (General, Direct, Administrative, etc.)

NAME	TITLE	TYPE OF SUPERVISION
Elizabeth Feld	Mayor	Direct

12. Names and Titles of Persons to be Supervised by Employee in this position

NAME	TITLE	TYPE OF SUPERVISION
Entire Fire Department		

13. Names and Titles of Persons doing substantially the same kind and level of work as will be done by the incumbent of this new position

NAME	TITLE	LOCATION OF POSITION
Chris McDonald	Volunteer Fire Chief	Village of Larchmont

14. What minimum qualifications do you think should be required for this position?

Education: High school 4 years  
 College \_\_\_\_\_ years, with specialization in \_\_\_\_\_  
 Other \_\_\_\_\_ years, with specialization in \_\_\_\_\_

Experience: (List amount and type)

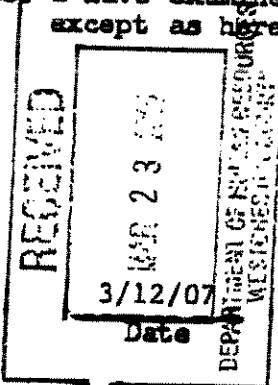
Three years of permanent service as a paid Fire Lieutenant, Captain  
 Essential knowledges, skills and abilities:  
 Comprehensive knowledge of modern firefighting & fire prevention methods & equipment  
 Type of license or certificate required:

15. The above statements are accurate and complete.

Date: 3/12/07 Title: Mayor Signature: *Elizabeth Feld*  
 Immediate Supervisor

Appointing Officer Approval

16. I have examined the above entries and have no corrections, addition, or comments except as here stated or attached:



Village Treasurer  
 Title

*[Signature]*  
 Appointing Authority or  
 Authorized Representative

DO NOT WRITE BELOW - FOR PERSONNEL OFFICE USE ONLY

CERTIFICATE OF PERSONNEL OFFICER

17. In accordance with the provisions of Civil Service Law, Section 22, the Westchester County Personnel Officer certifies that the appropriate civil service title for the position described is:

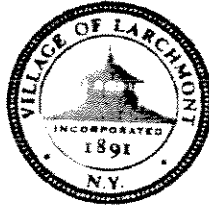
Title: *Fire Chief*  
 Code: *0101*  
 Class: *Competitive*

Date: 3/24/07

Signature: *J. Russell Inley*  
 Personnel Officer



OFFICE OF



VILLAGE OF LARCHMONT  
MUNICIPAL BUILDING  
LARCHMONT, N.Y. 10538  
TEL: (914) 834-6230  
FAX: (914) 833-2170

Extract from the minutes of the meeting of the Board of Trustees of the Village of Larchmont, New York, held at the Municipal Building on Wednesday, May 16, 2007:

On motion of Trustee Millstein, seconded by Trustee McAndrews, and unanimously carried, the following resolution was adopted, to wit:

WHEREAS, the Village Board has the authority under applicable provisions of law to employ firefighters; now, therefore,

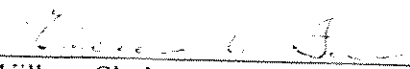
BE IT RESOLVED, that Richard Heine is provisionally appointed to the position of Fire Chief at an annual salary of \$115,000; and

BE IT FURTHER RESOLVED, that while Chief Heine is not eligible for overtime compensation, he shall receive such other benefits as are otherwise available to Larchmont Firefighters holding the position of Fire Captain.

\*\*\*\*\*

I hereby certify that I have compared the attached resolution with the original on file in my office and the same is a true and correct copy of the resolution which was duly adopted by the Board of Trustees of the Village of Larchmont, New York, a quorum being present, on May 16, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said Village of Larchmont this 18<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
Village Clerk

OFFICE OF



VILLAGE OF LARCHMONT  
MUNICIPAL BUILDING  
LARCHMONT, N. Y. 10536  
TEL. (914) 834-6230  
FAX (914) 833-2170

Extract from the minutes of the meeting of the Board of Trustees of the Village of Larchmont, New York, held at the Municipal Building on Wednesday, May 16, 2007:

On motion of Trustee Millstein, seconded by Trustee McAndrews, and unanimously carried, the following resolution was adopted, to wit:

WHEREAS, Richard Heine has been provisionally appointed to the position of Fire Chief, now, therefore,

BE IT RESOLVED, pursuant to applicable provisions of law, including Section 10-1020 of the New York Village Law, that Chief Heine shall have authority over all Fire Department personnel, both paid and volunteer, and shall have charge of all apparatus and equipment of the Larchmont Fire Department; and


BE IT FURTHER RESOLVED, that in light of the Village Board's appointment of Richard Heine as Fire Chief, delegates and or members of the Fire Department shall no longer nominate a person to be Chief of the Fire Department but shall continue to nominate Assistant Chiefs (aka "First Deputy Chief" and "Second Deputy Chief") as they have in the past; and

BE IT FURTHER RESOLVED, that the Fire Council of the Village of Larchmont shall remain in place. As soon as is reasonably practicable, Chief Heine shall meet with the Council of the Fire Department and he shall work together with the Council to formulate recommendations for the future division of responsibilities between himself and the Fire Council which shall then be submitted to the Village Board for approval.

\*\*\*\*\*

I hereby certify that I have compared the attached resolution with the original on file in my office and the same is a true and correct copy of the resolution which was duly adopted by the Board of Trustees of the Village of Larchmont, New York, a quorum being present, on May 16, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said Village of Larchmont this 18<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
Village Clerk

duly entered in the office of the clerk of the within named court on.

Dated,

Yours, etc.

**McCULLOUGH, GOLDBERGER & STAUDT, LLP**  
*Attorneys for*

*Office and Post Office Address*  
1311 Mamaroneck Avenue, Suite 340  
White Plains, New York 10605

COUNTY OF WESTCHESTER

JAMES E. SWEENEY, F. WARREN BENTON,  
SAM ORANS, BRIAN PAYNE, RAY  
MALDONADO, DAN HEUBEL, PAUL J.  
ABRAHAMSEN, CHRISTOPHER  
MACDONALD and MICHAEL WIENER,

-against-  
Plaintiffs,

NOTICE OF SETTLEMENT

PLEASE take notice that an order of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ M.  
Dated, \_\_\_\_\_ Yours, etc.

**McCULLOUGH, GOLDBERGER & STAUDT, LLP**  
*Attorneys for*

*Office and Post Office Address*  
1311 Mamaroneck Avenue, Suite 340  
White Plains, New York 10605

ELIZABETH N. FIELD, Mayor, MARLENE KOLBERT, Trustee, ANNE McANDREWS, Trustee, JIM MILLSTEIN, Trustee, RICHARD WARD, Trustee, constituting the Village of Larchmont Board of Trustees and RICHARD HEINE, "Chief" of the Fire Department of the Village of Larchmont,  
Defendants

**AFFIDAVIT OF ELIZABETH N. FIELD IN OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION**

**McCULLOUGH, GOLDBERGER & STAUDT, LLP**  
*Attorneys for Defendants*

*Office and Post Office Address, Telephone*  
1311 Mamaroneck Avenue, Suite 340  
White Plains, New York 10605  
(914) 949-6400

To \_\_\_\_\_  
*Attorney(s) for*

Service of a copy of the within

Dated, \_\_\_\_\_ is hereby admitted.  
.....

\_\_\_\_\_  
*Attorney(s) for*