

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 WEINER,

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.

x Index No.

**AFFIDAVIT OF BRIAN  
PAYNE**

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

BRIAN PAYNE, being duly sworn, deposes and says:

1. I am Brian Payne and I live at 8 Birch Road in Larchmont, New York.
2. I submit this affidavit to correct statements made by the Defendants in this case.
3. I have been a member of the Larchmont Fire Department for more that 15 years. I was elected by the members to be Chief in 2001, 2002 and 2003 and for each year I was then appointed by the Village Board, which followed the process specified in Village Law and in the Department Bylaws. I currently also serve as the elected President of Larchmont Engine Company No. 1. As a Company President, the Larchmont Fire Department Bylaws provide that I am also a member of the Fire Council.
4. My understanding of the law and the Bylaws is that until a new Chief is sworn in, the old Chief remains in office. On April 5, 2007, the Fire Department members elected Tom Broderick as Chief. However, the Board of Trustees has not acted on his election yet, and therefore, according to law and the Department Bylaws, I consider Chris MacDonald to be the Chief of the Larchmont Fire Department.

4. I am aware that the Village Board passed two resolutions on May 16, 2007. Resolution #1 purported to appoint Richard Heine as Chief of the Larchmont Fire Department. Resolution #2 purported to a) abolish the position of elected volunteer chief in the Department, b) abolish the process of electing a chief by the members, c) abolish the Fire Council as it is in the Bylaws and substitute a new version of the Fire Council that would be worked out in discussions between the Chief and the members of the old Fire Council, and then recommended to the Village Board for approval.

5. I do not believe that either resolution is consistent with the Bylaws of the Department.

6. The two resolutions eliminate key functions of the Fire Council. The Bylaws of the Fire Department, as approved by the Village Board in 2001, include the following as responsibilities of the Fire Council:

- To make and prescribe By-Laws as shall be by them deemed necessary for the proper management of affairs and the disposition of the funds of the Fire Department.
- The care, custody and control of all property belonging to the Fire Department.
- The adoption of rules for the admission, suspension, removal and discipline of the members, officers and employees of the Fire Department and to prescribe their powers and duties.
- The control and supervision of members, officers and employees of the department and direction of their conduct at fires and prescription of methods of extinguishing fires.

The resolutions take the authority for each of these functions from the Fire Council and assign some to the purported Chief, and assign others to a negotiation between the purported Chief and the remaining elected members of what used to be the Fire Council. The purpose of the negotiation is to divide authority between the purported Chief and the surviving version of the Fire Council. But the resolutions would have already stripped the elected members of the Fire Council of any of the authority provided by State law and the Department Bylaws.

7. I therefore believe that Resolution #2 abolishes the Fire Council as it defined the Village Law and in the Department Bylaws. What survives would be an entity that would be a "Fire Council" in name only.

8. In my capacity as a Company President and a member of Fire Council, I assess membership status and alarm response on an ongoing basis. Most of the volunteer members of the department do not recognize Richard Heine to be Chief of the Department. They do not respond to his orders or instructions. I am also aware that few members are currently responding to alarms. The current situation is dangerous.

9. To respond to an alarm, particularly a potential working fire, we need the three or four paid firefighters typically on duty, as well as nine or more volunteers, in order to initiate fire suppression operations. With the number of volunteers remaining, the Department

will not be able to engage in fire suppression without a high level of assistance from nearby fire departments. Assistance from nearby fire departments will take longer to arrive, and in time the nearby departments will object to providing essential fire services for Larchmont - services which Larchmont should provide for itself.

10. I believe that the Fire Department functioned well while I served as Chief and continued to function well since that time. During the years that I was Chief, active volunteer membership increased from 23 members to 25 members, and the number of members responding to 25% or more of alarms increased from 12 members to 16 members.

11. While I was Chief, the budget for the Fire Department grew as presented in the following chart which depicts the budget from the official approved budgets of the Village for the years indicated:

	2000-2001	2002-2003	% Increase
Tax Levy	\$7,402,000	\$7,758,000	4.8%
General Appropriation	\$9,883,740	\$10,489,920	6.1%
Fire Department	\$1,226,095	\$1,335,425	8.9%
LFD salaries	\$1,067,220	\$1,190,000	11.5%
LFD operations	\$158,875	\$145,425	-8.5%

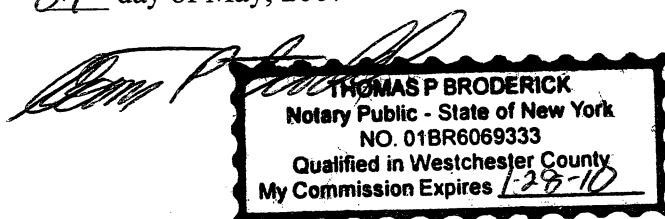
12. While the Fire Department budget grew at a faster rate than the Village budget, the key factor was the growth in career firefighter salaries and overtime, which was caused by the Village Board's decision to appoint a second paid Captain who would sometimes work in addition to the three paid firefighters routinely on duty. The part of the budget that was actually under my direct control – the operational expenditures - decreased by more than 8%.

13. I do not believe that the responsibilities of Fire Chief require that the position be a full-time paid position. If the Village Board wants to alleviate what they perceive to be a workload problem for the Fire Chief, this would be more efficiently and effectively resolved by assisting the volunteer chief with a staff assistant who might be a paid officer or a paid professional employee who is not an officer. The solution proposed by the Board creates many more problems that it might ever solve.

WHEREFORE, it is respectfully requested that this Court grant Plaintiffs' application in its entirety together with such other and further relief as this Court deems just and proper.

  
BRIAN PAYNE

Sworn to before me this  
29 day of May, 2007



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Notary Public