

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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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. :

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

MICHAEL P. WIENER, being duly sworn, deposes and says:

1. I am Michael P. Wiener and I live at 47 Pine Brook Drive in Larchmont, New York.
2. I have been a volunteer member of the Larchmont Fire Department since 1978, and was elected by the members as Chief from April 1997 through April 2000 and for each year I was appointed by the Village Board, which followed the process specified in Village Law and in the Department Bylaws. Prior to my service as Chief I was elected and served as Second Deputy chief in 1994 and 1995, and in 1996 I became first deputy chief.
3. I was also served three terms as a Village Trustee from 2002 through 2007. I am the only Fire Chief in recent years who has also served as a Village Trustee.
4. I make the affidavit to explain that the Village Board's appointment of a paid Fire Chief has created a dangerous situation in Larchmont, while at the same time there was no urgent need for the Board to make such an appointment. The only way I know to relieve the danger is to restore the Fire Department to its mode of operation before the Village Board's action.

5. The Village Board waited until after my term as trustee ended, at the end of March 2007, before springing their idea of appointing a paid Chief on the Fire Department and on the residents of Larchmont. There has been no study conducted by any expert, and, since I was the only member of the Board with any experience in the fire service, there is no expertise on the Village Board. There is also no back-up plan to protect life and property in the Village in the event that the resignations of 30 trained, experienced and active volunteer firefighters become effective on June 17, 2007.

6. The affidavit of Defendant Feld, sworn to on May 24, 2007, and submitted in support of the defendants' position attaches at paragraph 7 a two-page excerpt of the "Buracker Report", which was prepared in 1996. The report is more than 200 pages long and made numerous observations and recommendations and needs to be placed in a proper context.

7. Many of the recommendations were implemented by the Department. One example is the revision of the Department Bylaws, which was approved by the Fire Council and subsequently adopted by the Village Board in August 2001. The revised Bylaws do not provide for the Village Board to appoint a Chief, paid or otherwise. The revision reorganized the role of the fire companies in the governance of the department and in firefighting operations, but continued the critical role of the Fire Council in accordance with New York State law.

8. In addition to the revised bylaws other major recommendations were implemented. These included, streamlining the incident command structure of the department, instituting more rigorous training requirements, instituting length of service and training requirements for each officer position, the appointment of the 15th professional firefighter and creation of the Captain of Operations position, among many other things.

9. Following delivery of the report, as First Deputy Chief and then as Chief, I was involved in discussions about implementation of recommendations, of which there were about 30. The particular recommendation referred to by defendant Feld that a paid chief be appointed by the Village Board - was not implemented, and I can explain reasons why.

10. Together the leadership of the Fire Department and the Mayor and Trustees discussed options to enhance or support the position of Fire Chief. These options included a) a paid fire chief, b) a paid fire commissioner, and c) a paid fire department administrator.

11. I understood then and continue to believe now that any material change in the function and authority of the Fire Council constitutes a partial abolition of a key part of the Fire Department and would therefore trigger the permissive referendum provision.

12. It was common knowledge at the time that any of the above options would trigger the "permissive referendum" provision of Village Law Village Law § 10-1020 which says in part "*The board of trustees of any village may, by resolution, abolish, in whole or in part, the fire department in such village, which action of the board of trustees shall be subject to a permissive referendum as defined in this chapter;*"

13. The Buracker Report did not pretend to contradict that or to conduct a legal analysis, or to say that any of the options were permissible under state law without a referendum.

14. I recall discussions about this with then-Mayor Cheryl Lewy and then-Trustee Kenneth Bialo, who subsequently served as Mayor of the Village from 2002 to 2006. . The discussions concerned whether the Fire Department members would petition for a referendum.

15. Eleven years have passed since the Buracker Report was completed, and with the many improvements in volunteer participation in fires and vastly improved training, it is not possible to know whether Buracker, or anyone else would make the same recommendation in 2007.

16. 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.

17. I am aware, however, 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.

18. Neither of the May 16th resolutions is consistent with the Bylaws of the Department, or with State law as I understand it.

19. The two May 16th resolutions eliminate key functions of the Fire Council. The Bylaws of the Fire Department, as approved by the Village Board in 2001, assigns the following responsibility to 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.

20. The May 16th resolutions take the authority for each of these functions from the Fire Council and assigns some to the purported Chief, and assigns others to an unclear status

pending a discussion between the purported Chief and the remaining elected members of the Fire Council. The purpose of the discussion, according to Resolution #2, is to discuss a division of authority between the purported Chief and the surviving version of the Fire Council. In such a discussion, the remaining elected members of the Fire Council would have already lost any claim to the authority given by State law and the Department Bylaws.

21. Therefore Resolution #2 would abolish the Fire Council as it defined the Village Law and in the Department Bylaws. What survives would be an entity that might be called "Fire Council" but that would actually be an "advisory committee to the Chief."

22. I consider the current uncertainty in the Larchmont Fire Department to be dangerous to residents and firefighters in Larchmont. 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. Thirty members have informed the Fire Council of their intention to resign as of June 17th, 2007.

23. This is dangerous because the Larchmont Fire Department is a combination volunteer/paid department. 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, however, 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. This is dangerous.

24. Neither the Mayor, nor the Board, nor Richard Heine seem to recognize the severity of the situation within the Department, and the risks resulting for Village residents.

25. I believe that the Fire Department functioned well while I served as Chief and continued to function well since that time.

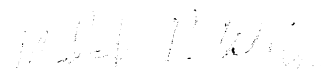
26. In addition, the Mayor makes inaccurate statements in her affidavit. She has stated, in paragraph 5 that "the number of volunteers has been dropping" throughout her service as Trustee and Mayor. This is not true. I was a Village Trustee during those same years. In fact, the number of active volunteer firefighters increased from 23 in 2001 to 27 in 2007, based on official department records of member responses to alarms and related events and incidents, which are used to determine which members are eligible to vote in the annual department elections. In fact, it is the Board's actions that will cause the number of volunteers will drop dangerously – causing the very problem that they claim they are attempting to solve.

27. The Mayor also states, in paragraph 5 that “the cost of operating the department is growing” during her period of service as Trustee and Mayor, which is the same period during which I was a Village Trustee. This statement is also not true.

	2000-2001	2006-2007	% Increase
Tax Levy	\$7,402,000	\$10,212,115	38.0%
General Appropriation	\$9,883,740	\$13,814,365	39.8%
Fire Department	\$1,226,095	\$1,620,703	32.2%
LFD salaries (controlled by Board)	\$1,067,220	\$1,469,117	37.7%
LFD operations (controlled by Chief)	\$158,875	\$151,586	-4.6%

The above table (reflecting numbers from the official approved budgets of the Village for the years indicated) shows that while all Village expenditures increased by 39.8 %, the cost of operating the Fire Department grew at a slower rate of 32.2%. The budget items not mandated by a contract negotiated and approved by the Village Board, and therefore managed by the volunteer fire chiefs, actually decreased by 4.6%.

28. 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, there are other less draconian ways to do it. The solution proposed by the Board creates many more problems that it might ever solve.



MICHAEL P. WIENER

Sworn to before me this
28th day of May, 2007



Notary Public

KATHERINE A. BIALO
Notary Public, State of New York
No. 02B14841554
Qualified in Westchester County
Commission Expires Feb. 6, 2010