

VILLAGE OF CORNWALL-ON-HUDSON BOARD OF TRUSTEES

May 24, 2010

The Special Meeting of the Board of Trustees was called to order at 7:00 P.M., at 325 Hudson St., Cornwall-on-Hudson, N.Y.

The following Board Members were in attendance:

Mayor Joseph J. Gross  
Trustee Barbara Gosda  
Trustee Mark J. Edsall  
Trustee Douglas Vatter  
Trustee James P. Kane

Also present was: DPW Superintendent David Halvorsen, and Village Clerk Jeanne Mahoney

**NEW BUSINESS**

REVENUE ANTICIPATION NOTE – WATER RENTS

Trustee Vatter introduced the following resolution and moved for its adoption.

A RESOLUTION DELEGATING TO THE VILLAGE TREASURER OF THE VILLAGE OF CORNWALL-ON-HUDSON, ORANGE COUNTY, NEW YORK, POWER TO AUTHORIZE THE SALE AND ISSUANCE OF NOT TO EXCEED \$350,000.00 REVENUE ANTICIPATION NOTES OF SAID VILLAGE IN ANTICIPATION OF THE REVENUES TO BE RECEIVED AS WATER RENTS BY SAID VILLAGE IN THE 2010-2011 FISCAL YEAR OF SAID VILLAGE.

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF CORNWALL-ON-HUDSON IN THE COUNTY OF ORANGE, NEW YORK, AS FOLLOWS:

Section 1. The power to authorize the sale and issuance of not to exceed \$350,000.00 Revenue Anticipation Notes of the Village of Cornwall-on-Hudson, Orange County, New York, including renewals thereof, in anticipation of the receipt of revenues to be received by said Village as water rents during the 2010-2011 fiscal year of said Village, is hereby delegated to the Village Treasurer, the chief fiscal officer. Such notes shall be of such terms, form and contents as may be determined by said Village Treasurer, pursuant to the provisions of the Local Finance Law.

Section 2. This resolution shall take effect immediately.

The adoption of the foregoing resolution was seconded by Trustee Edsall and duly put to a vote on roll call, which resulted as follows:

AYES: [ 5 ]

NAYS: [ 0 ]

The resolution was declared adopted.

## APPOINTMENT – ATTORNEY FOR VILLAGE

Mayor Gross stated that at the last meeting, the Board discussed the proposals received from Kevin Dowd, Esq. of Montgomery, Tarshis, Catania, Liberth, Mahon & Milligram, PLLC of Newburgh, and Harris Beach of White Plains. The board agreed to pose a question to each applicant relative to how the Village does business with an attorney. Opinions have been received from all three. He asked for Board comment.

Trustee Gosda stated she feels the request for proposals process was flawed from the beginning. The solicitation only went to local newspapers and not a law journal where we could have gotten more responses. She is disappointed that we only received 4 responses, none of which she feels is from a strong candidate.

Trustee Edsall stated that he totally disagrees with Mrs. Gosda. Many municipalities within the county send out requests for proposals through the Times Herald Record and a local newspaper. He also disagrees with her comments regarding the applicants. In his opinion, at least two of the attorney's interviewed seemed to address the needs of the Village. He believes we heard from good candidates and were able to interview 2 of the 4 that were responsive to the RFP.

Trustee Kane stated that five responses were entertained by the Board. Four were submitted in accordance with the RFP, and one was sent directly to the Mayor after the return date. The 3 interviews conducted went well. The applicant resumes show a depth of experience. The process went the way it should. He is comfortable with proposals submitted and with the 3 attorneys interviewed.

Mayor Gross stated that two years ago an ad was posted in the N.Y. law journal when the Board was looking to replace Jacobowitz & Gubits. A local firm was chosen, although interest was received from throughout the region. We are currently facing local issues (i.e. DPW facility) that require representation not "sullied" by any local connections. He feels the process was flawed. When the Board approved distribution of the RFP, no deadline was on it. Consequently, he sought out Harris Beach who submitted a "late" proposal; however the Board did agreed to consider it.

Discussion followed regarding the RFP finalized at the April 12<sup>th</sup> work session and then distributed and approved at the April 19<sup>th</sup> regular meeting. Trustee Edsall stated that it contained a submittal deadline.

Trustee Edsall asked how many firms were interviewed 2 years ago based on the Village's needs prior to selection by contract of Rider, Weiner & Frankel, P.C. He recalls objecting to the fact that no RFP was solicited. When Rider, Weiner & Frankel, P.C. were appointed "interim attorney", the Board agreed to do an RFP, and one was never sent out. He submits that this process was more democratic and inclusive than the manner in which Rider, Weiner & Frankel was selected "because we in fact went through with an RFP".

Mayor Gross stated that on the night of the Reorganization Meeting, he was "blindsided by the appointment that was attempted to bring in Loeb, Drake" and did not consider that a democratic process. As this has evolved, he agrees it has become more democratic; however, the question of whether or not this is a "Mayoral Appointment" or a "Contract" arose. He does not believe that has yet been resolved. He has been researching Village minutes back many years, and there is "a very strong question about the Mayor's appointment power". In addition, for years ranging from 2003 to 2008, the Deputy Village

Attorney took an oath of office. Mr. Dowd has raised the question whether this is an office or if it contractual. In his opinion, the “jury is still out on this process”.

Trustee Vatter stated that the Board is not going to agree. He made a motion to contract with Kevin Dowd, Esq. to be attorney for the Village.

Mayor Gross stated that his motion is “out of order” based on the appointment powers of the Mayor.

Trustee Kane stated that he would like to contract with Tarshis, Catania, Liberth, Mahon & Milligram, PLLC for the Village Board and the Ethics Board. He would like to contract with Kevin Dowd, Esq. for the Planning and Zoning Boards.

Mayor Gross repeated that this action is “out of order”, hereby appoints Kristen Wilson and the firm of Harris Beach, and requested a motion to that appointment.

Trustee Gosda made a motion to accept the Mayor’s appointment of Kristen Wilson and the firm of Harris Beach as Village Attorney. She feels this firm has the “depth and the experience in areas that this Village happens to need right at this moment”. Mayor Gross seconded the motion.

Trustee Edsall challenged the Mayor’s authority to second a motion. He further stated that the Mayor’s conclusion that this is a “Mayoral appointment” has been strongly discounted by case law referenced by Mr. Dowd and the Tarshis law firm. In fact, Harris Beach did not even answer the question posed, but rather affirmed the fact that an employee Village attorney is a mayoral appointment. He has agreed all along that if the Board was hiring an employee Village attorney, it would be the Mayor’s appointment to make. This is a contractual matter and he believes the Harris Beach investigation is silent to that issue. Mr. Dowd and the Tarshis law firm both clearly indicate that authority for contractual retaining of counsel is that of the Board, not of the Mayor.

Trustee Kane agrees with Trustee Edsall’s comments.

Mayor Gross stated that the first order of business for an attorney, once agreed upon, is to formulate this question and present it to the Attorney General for an opinion.

Trustee Vatter stated that as a point of order an appointment cannot be made into a position that doesn’t exist.

Trustee Edsall stated that the Department of State has clearly indicated that a firm cannot be appointed to an employee position; therefore, Trustee Gosda’s motion is out of order.

Mayor Gross called for a vote which was resulted in 2 Ayes (Gross, Gosda) and 3 Nays (Edsall, Vatter and Kane). The motion was not carried.

Trustee Kane made the following motion and moved for its adoption.

The Village board does hereby resolve to enter into a contract/agreement with Tarshis, Catania, Liberth, Mahon & Milligram, PLLC to provide legal services as Attorney for the Village Board and Attorney for the Ethics Board, at the rate of \$175.00 per hour, for the term beginning immediately through the Reorganization Meeting of the Village Board in 2011. The motion was seconded by Trustee Vatter.

Mayor Gross asked the record to reflect that “never before has this Board”, to his knowledge, “appointed an attorney in this fashion” and he still believes it is out of order. He then called for a vote which resulted in 3 Ayes (Edsall, Vatter and Kane) and 2 Nays (Gross, Gosda). The motion was carried.

Trustee Kane made the following motion and moved for its adoption.

The Village board does hereby resolve to enter into a contract/agreement with Kevin Dowd, Esq. to provide legal services as Attorney for the Planning Board and Attorney for the Zoning Board, at the rate of \$175.00 per hour, for the term beginning immediately through the Reorganization Meeting of the Village Board in 2011. The motion was seconded by Trustee Edsall and carried by a vote of 3 Ayes (Edsall, Vatter and Kane) and 2 Nays (Gross, Gosda).

#### TERMINATION OF LEGAL SERVICES – RIDER, WEINER & FRANKEL, P.C.

Trustee Edsall made a motion that the Village Board of Trustees does hereby terminate all services of Rider, Weiner & Frankel, P.C. as Interim Attorney for the Village effective immediately and rescinds any and all agreements previously agreed upon between the parties. The motion was seconded by Trustee Vatter and carried by a vote of 3 Ayes (Edsall, Vatter and Kane) and 2 Nays (Gross, Gosda).

Having concluded the business set before them, Trustee Vatter moved to adjourn the special meeting at 7:20 P.M. which was seconded by Trustee Edsall and upon a vote of 5 Ayes and 0 Nays, the meeting was adjourned.