

## VILLAGE OF CORNWALL-ON-HUDSON BOARD OF TRUSTEES

January 18, 2011

The regular meeting of the Board of Trustees was called to order at 7:30 P.M., with the Pledge of Allegiance, at 325 Hudson St., Cornwall-on-Hudson, N.Y.

The following Board Members were in attendance:

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

Also present were: Water Superintendent Robert June, DPW Superintendent David Halvorsen, Police Chief Paul N. Weber, Village Treasurer Stephen Auffredou, Attorney for the Village Joseph G. McKay, and Village Clerk Jeanne Mahoney.

Trustee Edsall made a motion to accept the October 18, 2010 Regular Meeting Minutes as presented, which was seconded by Trustee Gosda and carried by a vote of 5 Ayes and 0 Nays.

Trustee Kane requested a correction to a motion he made in the November 15, 2010 minutes. Page #10 second full paragraph, should read "Trustee Kane made a motion to set up a special meeting to go over attorney bills at a date to be determined, within 2 weeks of when Trustee Vatter returns which was seconded by Trustee Edsall and upon a vote of 2 Ayes and 2 Nays, the motion was not carried." He then moved for the acceptance of the November 15, 2010 Regular Meeting Minutes as corrected on a motion seconded by Trustee Gosda and carried by a vote of 5 Ayes and 0 Nays.

Mayor Gross requested two corrections to the December 20, 2010 minutes. On page #11, middle of first paragraph should read "is not fun, but when he has to reduce our jobs to dollars and cents, he is representing the taxpayers". On page #17, last paragraph should read "Trustee Vatter immediately moved to adjourn the meeting which was seconded by Trustee Edsall and upon a vote of 3 Ayes and 2 Nays (Gross, Gosda) the meeting was adjourned at 10:45 PM".

Trustee Vatter made a motion to accept the December 20, 2010 Regular Meeting Minutes as amended, which was seconded by Trustee Gosda and carried by a vote of 5 Ayes and 0 Nays.

Trustee Gosda requested a correction be made in attendance at the December 6, 2010 Special Meeting to reflect that Trustee Edsall was absent.

Trustee Kane made a motion to accept the December 6, 2010 Special Meeting Minutes, as amended which was seconded by Trustee Vatter and carried by a vote of 5 Ayes and 0 Nays.

Trustee Edsall made a motion to accept the December 13, 2010 Special Meeting Minutes as written which was seconded by Trustee Gosda and carried by a vote of 5 Ayes and 0 Nays.

Trustee Vatter made a motion to accept the January 10, 2011 Special Meeting Minutes as written which was seconded by Trustee Kane and carried by a vote of 5 Ayes and 0 Nays.

## **TREASURER’S REPORT**

Village Treasurer Auffredou presented the treasurer’s report through December. He reported receipt of 84.8% in anticipated revenues and 75.9% in anticipated expenditures so far this fiscal year.

Clerk Mahoney reported that the January 18, 2011 warrant total is \$299,841.48.

The open utility balances report for the end of December read as follows:

Village water, sewer, garbage & penalties	\$ 332,731.40
Town water & penalties	245,568.54

Which included 1 final/adjustment for the Village and 1 for the Town.

## **DEPARTMENT REPORTS**

The Water Department reported an average daily production of 1.330 million gallons with all bacteria samples passing N.Y.S. Standards. The required monthly and quarterly samples were collected (a total of 25). It was also reported that 15 meters were repaired or replaced, and meter reading was completed. In addition to routine building and grounds clean up and snow removal, 79 utility mark-outs were done, routine maintenance was done to pressure reduction valves (PRV), water main breaks were repaired on Maple Street and Roe Avenue, and a service line was repaired at 77 Weeks Avenue (hit by Central Hudson contractor). The department assisted the Department of Public Works with snow removal.

The Department of Public Works reported repairs to Village vehicles, installation of street signs, cold patching of potholes, plowing and sanding of roads (3 storms), snow maintenance of sidewalks, snow removal in parking and business areas, and maintenance to sewers. In addition, collection of Christmas trees has begun.

DPW Superintendent Halvorsen thanked Michael Biggs/Quality Auto for quickly repairing the dump truck (now back in service), Matt Brodmerkel/VanEtten Paving for lending us a Bobcat on “a moments’ notice” (ours is out of service), and Bob Conley/Cornwall Street Superintendent for loaning their machine to clean our sidewalks.

Upon the recommendation of DPW Superintendent Halvorsen, Trustee Vatter made a motion to purchase a new Bobcat in an amount not to exceed \$24,392 (NYS current contract price) with the understanding that the Village will be fully reimbursed through NYS CHIPS. The motion was seconded by Trustee Edsall and carried by a vote of 5 Ayes and 0 Nays.

Mayor Gross thanked DPW Superintendent Halvorsen and his department for the job being done in an already “tough winter”. He thanked the other departments as well.

The Police Department reported 0 felony crimes, 9 misdemeanor/violations, 4 arrests, 9 vehicle accidents, 16 violations issued, 15 warnings, 8 disabled vehicles and lockouts, 4 domestic incidents, 6

suspicious vehicles and/or persons, 2 animal complaints, 5 disorderly conduct, 6 responses to alarms, 6 assists to the Town of Cornwall Police Department, 8 EMS assist calls, and 4 assists to other agencies.

Chief Weber recognized P.O. Michael Lug and P.O. Thomas Moran for their assistance on New Year's Eve.

The Fire Department reported 29 events, including 5 emergency medical service (EMS) calls, for a total of 184 volunteer man hours.

The Building Inspector/Code Enforcement Officer report indicated 9 onsite inspections, 1 fire inspection, 3 building permits, and 7 certificates of occupancy/certificates of compliance were issued.

Mayor Gross reported that the Town of Cornwall Building Department is providing "back up". It is his understanding that the Town Board has taken action to assist us for a "few months"; however, he has not received anything in writing.

## **CORRESPONDENCE**

Mayor Gross is in receipt of a letter dated January 10, 2011 from NYS Department of Environmental Conservation reissuing our permit for the repair of rip rap at Donahue Memorial Park until December 31, 2012.

He explained that the purpose of this is to try to renegotiate the FEMA monies that were awarded to the Village which appear to be less than what is required to make the improvements as specified by FEMA. We are looking for FEMA to allow us to restore what we have "in kind" and use whatever monies are available for that purpose.

Mayor Gross is in receipt of the list of 2011 Line Officers for Storm King Fire Engine Co. #2.

Mayor Gross is in receipt of the 2010 summary of calls to Storm King Fire Engine Co. #2. A total of 454 calls were received and 10,662 man hours volunteered.

Mayor Gross is in receipt of a letter dated December 16, 2010 from John Harwick, Esq. of Hacker Murphy LLP, special counsel to the Village on the DPW matter. He recommends that the DPW building not be utilized until a professional engineer and/or architect has thoroughly inspected the structure and given a written opinion that the building is safe to occupy.

Mayor Gross is in receipt of a letter from Toya Dubin of Mountainville regarding concerns over deep drilling and testing taking place on Taylor Road at the former Star Expansion wells.

Mayor Gross is in receipt of a letter from Lillian and Joseph Suto of 10 Washington Street, requesting relief of sewer charges on their bill. They recently became aware of a significant water leak in the basement which caused consumption to increase from 15,000 to well over 100,000 gallons. They request relief of the additional sewer charges.

Trustee Edsall made a motion to authorize relief of sewer charges subject to proof from Water Superintendent June that the corrective work performed shows consumption is back to a normal range which was seconded by Trustee Gosda and carried by a vote of 5 Ayes and 0 Nays.

## **PUBLIC COMMENT**

Andrew Argenio of 18 Church Street stated that he attended the work session where the Board established “timing” for the current budget. He questions if there is enough time between the date the budget was “outed to the public” and its adoption. He investigated “what the laws are for it” and “according to 508 of the code that we have to comply with”, preparation and filing of the tentative budget should have been done on December 20<sup>th</sup> and presentation of the budget to the Board by the Clerk by December 31<sup>st</sup>. A notice of public hearing was required on January 10<sup>th</sup> and the public hearing held 5 days later. The hearing “can go on for 5 days”. The final adoption is required by February 1<sup>st</sup>. He spoke with the Village Clerk and would like to know what corrective action the Board will take to get into compliance. It is an important process and the public should be involved.

Trustee Gosda stated that the schedule has been “put in place by motion”. To have a budget hearing at 6:00 PM on January 27<sup>th</sup>, close the hearing and then vote, gives no time to implement anything the public brings to the Board.

Trustee Kane asked when the tentative budget was provided to Clerk Mahoney who replied that she first saw it on January 3<sup>rd</sup>. He then asked who prepares the tentative budget. Mr. Argenio replied it is the responsibility of the budget officer who is Mayor Gross.

Mayor Gross wants the record to indicate that the dates were presented to him by the Clerk and they tried to act in accordance with the dates presented. Discussion followed.

Jan Smith of Cherry Avenue is concerned how the public will learn details of the final adjusted budget after the public hearing on January 27<sup>th</sup>.

Clerk Mahoney responded that the final budget must be adopted by February 1<sup>st</sup>. If that is not accomplished the initial draft budget presented to the Board becomes our budget for the year. In the event the public makes recommendations the Board would like to consider, another meeting would be required to incorporate those changes into a revised budget. That meeting would have to be advertised, the public would need time to review revisions to the proposed budget, and then a vote would take place.

Trustee Edsall added that minor budget adjustments agreed to on the 27<sup>th</sup> could be incorporated into an approval motion that same evening.

After some discussion, Trustee Edsall made a motion to modify the Special Work Session on January 24, 2011 into a Special Meeting for the sole purpose of budget discussion and call it a public hearing in order to receive public comment. The motion was seconded by Trustee Vatter and carried by a vote of 5 Ayes and 0 Nays.

Anthony Missere of 3-5 River Avenue read a letter to the Board regarding the recruiting, appointment, and performance of the Mayoral appointed Building Inspector/Code Enforcement Officer for the Village of Cornwall-on-Hudson. He alleges that the position of Building Inspector/Code Enforcement Officer has been vacant since the retirement of Mr. Robert Gilmore and any work conducted after the Mayoral appointment has no legal standing. He further alleges that the Mayor, Deputy Mayor and the attorney who represented the Village during this time, had knowledge that the appointee did not meet “minimum qualifications”, did not meet “NYS Village law requirements”, made false statements on his formal application and had a “criminal past”. It “behooves the Board to immediately recruit and fill the

position or development a working relationship with an adjoining or other municipality, hold the law firm that represented the Village at the time of the Mayoral appointment culpable and financially accountable to Village taxpayers, and demand the immediate resignation of the Mayor and Deputy Mayor of the Village of Cornwall-on-Hudson”.

Charles Hahn, of 7 Andrews Street requests, on the behalf of Village taxpayers, that there be a line item in the budget to cover repairs to the DPW building. Further, he requests that the Board “exercise all haste to get a temporary certificate of occupancy (C.O.) so our employees can get back in there and they can repair our equipment, they can house our equipment, they can do a more effective job”. “They have done a wonderful job in spite of the restrictions imposed by our Mayor”. “They really deserve having a building to work from”. In addition, according to members of the Mayor’s advisory committee, a local attorney has been representing the Mayor for several months on correspondence with the Attorney General, etc. This attorney has made the allegation that the Mayor always picks the Attorney, which “is ridiculous”. He served with the last 4 Mayors and it was “always by consensus of the Board, never a personal thing”.

Kris Seiz, of 19 Avenue A is here tonight to show her support of Police Officers Terwilliger and Pena. She has lived here 12 years, and her children grew up knowing these officers. She would like to see them stay here and not lose their pensions/benefits. They have been outstanding police officers, residents can call them at any time day or night and they have responded.

Jaweed Chaudhary, owner of DB Mart, is here tonight to endorse the full-time officers.

Elsa Cameron of 62 Duncan Avenue stated that she is also here tonight to endorse our 2 full-time officers.

Kurt Hahn of 7 Andrews Street stated he also supports our officers and wants to keep the last 2 full-time officers “on board”.

Jonathan Chase of 1 Taft Place stated that “the fact of the matter is at no time in Village’s history has a Village Attorney ever been picked over the Mayor’s objection, that is a fact”.

James Gagliano of 11 Wood Avenue wanted to raise an issue with regard to a law recently enacted by the Village Board regarding “breed specific legislation”. This type of legislation is being challenged in court. With regard to a “dangerous dog” sign that residents are required to post, he has 3 rescued pit bills. He is “extremely resistant” to putting a sign on his house that says he has a dangerous dog. He asked if the Board consulted with counsel prior to enacting the new law.

Mayor Gross responded that the Board has been “put on notice”. A letter was received from the American Kennel Association cautioning the possible “illegality of the law”. The law has not been “exercised” to cite anyone. The law is under review by counsel.

## **OLD BUSINESS**

### **APPOINTMENT OF VILLAGE ATTORNEY**

Mayor Gross stated that he put this item on tonight’s agenda in order to “drive home the point that we are in a position where work needs to be done”. The Village has encumbered bills from Joseph McKay,

Esq., the “Attorney to the Board” who works for the Tarshis law firm, totaling \$90,184.89 for 6 months of legal work. The current budget line for legal expenses this fiscal year is \$65,000. He would like to address the issues facing the Village, including payment of these bills, and in order to expedite this has asked the Village Clerk to distribute a proposal from the Harris Beach law firm for legal services. This firm “is willing to work for the Village for approximately \$5,500.00 a month, which is consistent with \$65,000.00, budgeted for this year”. He does not believe the Village can continue expending this money, something needs to be done and it needs to be done quickly.

Trustee Gosda made a motion to appoint Harris Beach as Village Attorney and Kristen Wilson as Deputy Village Attorney.

Trustee Kane stated that he will not entertain any motion with regard to this issue which has been “beat to death”. This question was posed to the Attorney General back in July. It comes down to a “factual issue”, whether or not the Attorney for the Village is an employee or independent contractor. Based upon the research done, this Village has employed a law firm over the past 50 years for representation. A law firm cannot be an employee. A lawyer does not have sovereign power, no benefits, and is not treated as an employee. The Mayor continues “bringing this up every month” and the bottom line is that the Board voted and hired Tarshis, Catania, Liberth, Mahan, and Miligram, PLLC as the independent contractor to represent the Village as the “Attorney for the Village”.

Mayor Gross agrees that this issue has been beat to death; however, there is a backlog of work, and the Board has no choice but to hire counsel we can afford to finish the year’s work and move on. He then seconded the motion made by Trustee Gosda.

Trustee Edsall stated for the record he believes everything Trustee Kane to be “factually correct”. In addition to the Attorney Generals’ Office opinion that a law firm cannot be hired to the position of Village Attorney, the Office of the NYS Comptroller has made it very clear that an independent contractor, their term for a law firm, cannot be a Village employee (which is what a Village Attorney is). Furthermore it has been verified with Orange County Personnel that the position of Village Attorney does not exist and therefore cannot be filled. The office of Village Attorney, which statutorily has to be created for the Mayor to make the appointment, also does not exist. The contractual arrangement with a law firm, which has existed for 50 years, is the Attorney for the Village by contract. In fact Mr. McKay has offered to negotiate a monthly retainer agreement with the Mayor, but the Mayor has refused because he did not vote for him and therefore will not negotiate with him. If the Mayor had sat down with Mr. McKay to negotiate, these bills would not be “what they are and we would have moved forward on a less costly basis”.

Trustee Gosda stated that the draft contract received back in September from Mr. McKay was for \$175.00 per hour, with an 8% penalty for late payments.

Trustee Edsall added that when it was agreed to be favorable for the Village to have a “fixed monthly fee contract”, Mr. McKay offered to sit and negotiate out. He still thinks there is an opportunity to “soften the bills, but it is very difficult to negotiate with someone to soften the bills when you are refusing to pay them anything”.

Mayor Gross stated that the bills “keep coming in to the tune of about \$15,000.00 per month”. We have more than doubled the budget and cannot afford this law firm. He then reminded the Board of a motion and a second on the floor and called for a vote which resulted in 2 Ayes, (Gross, Gosda). Motion died.

Trustee Edsall asked Mr. McKay if he is stilling willing to work out a monthly charge. Mr. McKay replied that he has said to the Board every night he has come “if the board wants to negotiate an agreement with the law firm, he is perfectly willing to sit down and negotiate an appropriate and reasonable fee so the Board can have its matters handled appropriately and the firm can be paid a reasonable fee”.

#### MOUNTAIN VALLEY GUIDES-2011 REQUEST FOR USE OF DONAHUE MEMORIAL PARK

Trustee Vatter disclosed that his son worked for Storm King Adventure Tours and he will abstain on any vote regarding this issue.

After some discussion, Trustee Edsall made a motion establishing an annual deadline to be end of business on February 1<sup>st</sup> for commercial permit applications to be received by the Village Clerk’s Office. The motion was seconded by Trustee Gosda and carried by a vote of 4 Ayes, 0 Nays, and 1 Abstain (Vatter).

#### MCCLAREN PAYMENT

Mayor Gross stated that the Board needs to authorize this matter to be paid.

Trustee Edsall stated that McClaren did the work and “did a fine job”; however there was a “procedural error” because the agreement was signed without Board authorization. Now the Board is being asked to “retroactively pay on a bill that was never authorized by the Board for a contract that was signed by the Mayor that was never authorized by the Board”. When this was first brought out several months ago, he proposed a solution. Mayor Gross “summarily rejected it” saying he would work it out with the County to have them paid it directly. Now approximately 4-5 months have passed and this has gotten nowhere. He asked if the Mayor worked something out with David Church of the Orange County Planning Department to pay McClaren directly.

Mayor Gross replied that he said he would “attempt to do that with Mr. Church”. Obviously he has not done that otherwise he would not have brought it to this Board again. It needs to be paid. The work needs to be authorized. He suggests that the Board authorize this work, we have received the money and McClaren has done the work.

Trustee Edsall stated that the Board cannot retroactively pay a bill for something that was never approved; however the Board can authorize McClaren to perform the work, and ask them to resubmit the report and bill after the date of authorization. He would have no objection, because then it would be procedurally and legally correct.

Trustee Edsall made a motion to authorize McClaren Engineering to perform an “intersection walkability study” to enhance walkability and improving pedestrian safety at 3 intersections in the Village.

Trustee Vatter agrees with Trustee Edsall and stated that there is a misdemeanor problem if the Board were to “sign off” on a bill that was not properly authorized. He then seconded the motion.

Mayor Gross asked the “board’s counsel” for an opinion on this procedure.

Attorney for the Village McKay replied that we would ask for the opportunity to review this in detail. It has been many months since this matter was discussed.

Trustee Edsall amended his motion to include subject to legal verification that doing so would not make him guilty of a misdemeanor. The motion as amended was seconded by Trustee Kane and carried by a vote of 4 Ayes and 1 Abstain (Gross).

#### EHTICS BOARD APPOINTMENTS

Mayor Gross stated for the record that in a 6 month time period, the Tarshis law firm has received \$12,199.45 for work on the Ethic Board which “we don’t even know if it’s meeting”. Discussion followed.

Trustee Edsall asked if any of the billed amounts involve the multiple inquires Mayor Gross made to Attorney for the Village McKay asking about appointments to the Ethics Board.

Mayor Gross replied in the affirmative.

Clerk Mahoney reported that at the October 18, 2010 Regular Board meeting, Ethics Board Appointments were staggered and one will come due each year at the Reorganization Meeting.

#### BUDGET TRANSFERS - TREASURER

Treasurer Auffredou requested several budget transfers. After some discussion, this item was tabled for action at the Special Meeting, January 24, 2011.

#### BUDGET TRANSFER OF FUNDS

Trustee Kane introduced the following budget transfer resolution and moved for its adoption.

WHEREAS, a Request For Qualifications/Proposal for Legal Services for Attorney for the Village was published with a response date of no later than May 6, 2010, and

WHEREAS, the Village Board of Trustees at its May 10, 2010 special meeting agreed to review the proposals submitted pursuant to the terms of said Request For Qualifications/Proposal for Legal Services and conducted interviews, and

WHEREAS, the Village Board at its May 10, 2010 agreed to use the services of the firm Rider, Weiner & Frankel P.C. temporarily to provide legal consultation as Interim Attorney for the Village Board, Planning Board, Zoning Board of Appeals and Ethics Board for a short term until such time as the Village Board agrees to use the services of new counsel, and

WHEREAS, the Village Board conducted interviews of the selected candidates on May 17, 2010 and has voted on and chosen new legal counsel, and

WHEREAS, the Village Board on May 24, 2010, held a vote and selected Tarshis, Catania, Liberth, Mahon & Miligram PLLC as Attorney for the Village, and

WHEREAS, the Village Board of Trustees engaged the services of Tarshis, Catania, Liberth, Mahon & Miligram PLLC since May 24, 2010 to date, and said firm has provided professional legal

services in good faith to the benefit of the Village Board and Village of Cornwall on Hudson, and has only been paid for professional services rendered for May 24, 2010 - June 30, 2010, and

WHEREAS, the Village Board of Trustees has an obligation to make payment for services rendered, and wishes at this time to pay Tarshis, Catania, Liberth, Mahon & Milligram PLLC for the professional services rendered for from July 1, 2010 through October 31, 2010, and

WHEREAS, the Village Budget for legal services for fiscal year 2010-2011 is \$55,000.00, budget Line Code A1420.4 and as of the date of this Resolution legal fees paid to Rider, Weiner & Frankel P.C \$16,014.79; Jacobwitz & Gubits, LLP \$55.40; Roemer \$280.00; Jay Siegel, Esq. \$3,218.00; Richard Hoyt, Esq. \$2,975.00; Kevin Dowd, Esq. \$1,158.60; and Tarshis, Catania, Liberth, Mahon & Miligram PLLC \$21,491.70; and

WHEREAS, the outstanding bill for legal services rendered by Tarshis, Catania, Liberth, Mahon & Miligram PLLC from July 1, 2010 through October 31, 2010 amounts to \$54,921.71;

WHEREAS it is necessary to transfer funds within the budget to cover the costs of such legal expenses, with said transfers intended to acknowledge those departments wherein the legal services were necessary as well as other available monies within the budget to support the actual needs for operation of the Village;

NOW, THEREFORE, BE IT RESOLVED as follows:

That the Village Board of Trustees does hereby direct that the following transfers be made from the following budget items to Line Code A1420.4 effective immediately:

- \$ 6,000.00 from A3120.10 (police)
- \$ 6,000.00 from A1410.40 (Village Clerk)
- \$ 3,500.00 from A5112.3 (Sidewalks)
- \$29,421.71 from A1990.4 (Contingency)

And, that the Village Board of Trustees does hereby direct that \$10,000.00 be transferred from FF1990.4 (water contingency) to FF8310.410 (legal) effective immediately:

BE IT FURTHER RESOLVED as follows:

That the Village Treasurer is directed to make such transfer immediately and the same be reflected on the books and records of the Village within one business day of this Resolution.

The foregoing resolution was seconded by Trustee Edsall.

Prior to putting the motion to a vote, Mayor Gross read a prepared statement.

Insofar as this motion seeks to appropriate a budget line which was established for the position of Village Attorney, before the position Attorney for the Village Board was even created this past year, I believe this action violates the Home Rule Law of this State and I therefore rule it out of order and not subject to a vote. My reasons are as follows:

The Village Board fired the Village Attorney this year, then denied my appointment of another Village Attorney and instead retained over my objection, TCLMM for the newly created position of "Attorney for the Village Board".

Since that time I have been without official legal counsel while the Board has exercised sole control of their AVB, often without the requisite authorization by motion, and often directed counsel to do work for the purpose of subordinating the office of the mayor. When I have asked for legal advice, I have routinely been met with the response that counsel would require Board authorization to do the

assignment. Indeed, on the dispute regarding counsel's very engagement, their time sheets showed consultations with the Board members while there were none with me. In another instance, I specifically requested legal review of certain proposed contracts concerning the DPW building. Counsel and the Board refused to provide it, yet the very same Board members who denied me counsel concerning the mayoral function of executing contracts, sought and obtained legal advice from counsel for themselves to oppose my request for legal advice.

Now they want to steal the budget for the Village Attorney they refused to hire this year and use it for their "caucus" attorney. I believe this to be an improper and illegal action and I will not allow it to be voted upon, so long as it seeks to draw upon the budget appropriated for the Village Attorney.

The reason is not that the Board does not have the authority to re-allocate budget items, which they can do under 4-412 of the Village Law of this State. But what the Board cannot do is use the Legal budget for their caucus counsel without effectively abolishing the mayorally-appointed position of Village Attorney, for which that budget was appropriated last year. I believe that it is very clear under NY law that the Board's powers to appropriate funds under section 4-412 are delimited by section 23(f) of the Home Rule Law of this state, which requires a public referendum when power is transferred from Mayor to Board as this budget transfer seeks to do.

Whether I or some other citizen occupies the Office of Mayor in this Village, it is absolutely essential to have access to legal advice in which the Mayor can have confidence. For at least fifty years, this has been done by agreement between the Mayor and the Board. During all that time the Mayor has appointed counsel and the Board has approved that appointment. At no time during this period has the Mayor's first choice not been approved. And this is no accident: it is the law of this State. This year, not only has the Board voted down the Mayor's appointment, but they didn't afford me another chance to appoint counsel. They just went ahead and took the unprecedented step of hiring the "Attorney for the Village Board" over my objection without budgeting for the new position. Nor did they contract to define how much they were going to spend on it or authorize much of the work on which counsel has worked, and for which these statements contain charges. The "Legal" budget appropriated last year was for the Village Attorney, a position appointed by the Mayor, approved by the Board, and available to both. That position has been vacant since the Board refused to fill it and invented the new position of "Attorney for the Village Board".

This budget is for the "Village Attorney", not the Board's caucus counsel. And that is the only item that this budget will be used for, as long as I occupy this office, or a judge orders me to do otherwise.

And this is for no other reason than to protect the tools which I or any other Mayor of this Village has available to carry out the duties of this office. This action is not born of stubbornness, spite, or vengeance. It is not for any personal purpose whatsoever. It is to protect the office which I occupy from being undermined by the illegal budgetary actions of the Board of Trustees.

Future Mayors should not be left without counsel acceptable to them at the whim of a Board majority, as has happened this year. The disruption and chaos and indeed sabotage, as well as the vast extra expense which now requires the raiding of other department's budgets which this Board has caused, cannot be allowed to be repeated. And this action is intended to ensure that future Boards will not be able to steal essential tools from the Mayor by arguing that precedent was established by their improper actions this year.

Trustee Vatter asked Mayor Gross if he is familiar with Village Law Section 4-412. It reads in part "whenever required by a member of the board, the vote upon any question shall be taken by ayes and noes and the names of the members present and their votes shall be entered in the minutes". He then asked Mayor Gross where that section doesn't allow for a vote.

Mayor Gross replied that he will not do anything that he thinks could potentially be illegal and pursue a vote.

Trustee Vatter stated that the Mayor has recused himself from a vote and asked Trustee (Deputy Mayor) Gosda to step in for the Mayor and pursue the vote.

Trustee (Deputy Mayor) Gosda replied she will not.

Trustee Vatter then stated that in their absence and refusal to do “your job” the remaining board members need to appoint “one of our own”. Trustees Edsall and Kane reminded Trustee Vatter that any member can call a motion.

Trustee Kane again made a motion to adopt the foregoing budget transfer resolution which was seconded by Trustee Edsall.

Mayor Gross ruled the board members out of order.

Trustee Edsall stated that for the record, the Mayor’s statement is “misguided” because it again indicates that he is appointing the “Village Attorney” as a firm which is contrary to the specific writings of the Attorney General and the Office of State Comptroller. He is attempting to fill a position that doesn’t exist at Orange County Personnel or in the local laws of the Village of Cornwall-on-Hudson. His statement of a budgeted amount for that person is “inconsistent with law and inconsistent with the state agencies referenced”. According to section 2 of 4-412 requires that a motion be called, his second stands, and he is prepared to vote.

Mayor Gross again ruled the motion to be out of order.

Trustee Kane called the motion which resulted in 3 Ayes 1 Nay (Gross) and 1 Abstain (Gosda).

#### PAYMENT OF LEGAL FEES – ATTORNEY FOR THE VILLAGE

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

WHEREAS, a Request For Qualifications/Proposal for Legal Services for Attorney for the Village was published with a response date of no later than May 6, 2010, and

WHEREAS, the Village Board of Trustees at its May 10,2010 special meeting agreed to review the proposals submitted pursuant to the terms of said Request For Qualifications/Proposal for Legal Services, and

WHEREAS, the Village Board has reviewed the detailed proposals and qualifications statements from the various attorneys and has conducted interviews of the selected candidates on May 17, 2010, and

WHEREAS, the Village Board has determined that it is appropriate and necessary that a contract/agreement for legal services be entered into such that the business of the Village can proceed without further delay,

WHEREAS, the Village Board on May 24, 2010, held a vote and selected the firm of Tarshis, Catania, Liberth, Mahon & Miligram PLLC (TCLMM) as the an Attorney for the Village, and

WHEREAS, the minutes of the May 24, 2010 meeting reflect the terms of said agreement to provide legal services as Attorney for the Village Board, Planning Board, Zoning Board of Appeals and Ethics Board for the term beginning immediately thru the Reorganization Meeting of the Village Board in 2011, and

WHEREAS, the Village Board of Trustees have engaged the services of Tarshis, Catania,

Liberth, Mahon & Miligram PLLC since May 24, 2010 to date, and said firm has only been paid for professional services rendered for May 24, 2010 - June 30, 2010, and

WHEREAS, the Village Board of Trustees have engaged the services of Tarshis, Catania, Liberth, Mahon & Miligram PLLC since June 30, 2010 to date and said firm has issued invoices for professional services rendered for legal opinions, communications, correspondence and advice including but not limited to:

- (1) Village Attorney/Attorney for the Village issues
- (2) Animal Control Law;
- (3) Village of Cornwall on Hudson Police Department SGT Park 207C matter
- (4) Tax certiorari;
- (5) Meetings, communications and correspondence with Mayor Gross, Trustee Gosda, Trustee Kane, Trustee Edsall and Trustee Vatter;
- (6) Various CSEA issues including: longevity
- (7) DPW sewer easements, DPW building etc.;
- (8) Water department dams, mitigation plans etc.
- (9) Meetings and Teleconferences with Water Dept. & DPW Superintendent
- (10) Teleconferences and meetings with Bruce Yancewicz re: Building Dept., code enforcement, inspections, residency requirement etc;
- (11) Meetings, communications, correspondence with the Ethics Board and review of ethics complaints and ethics law;
- (12) Legal research and opinions for the Ethics Board;
- (13) Legal research and opinion re: appointment to Ethics Board
- (14) Legal research and opinions for re: FOIL requests
- (15) Legal research and opinions for re: improper practice charges
- (16) Legal review and response to Maser, McLaren and Tectonic contracts etc.
- (17) DPW building construction claims;
- (18) Public works contracts
- (19) Appearances at Arbitration hearings, Village Board, Planning Board, and Ethics board work sessions and meetings
- (20) PBA & CSEA negotiations

WHEREAS, the outstanding bill for legal services rendered by Tarshis, Catania, Liberth, Mahon & Miligram PLLC from July 1, 2010 through October 31, 2010 amounts to \$54,921.71 and the Village Board of Trustees has audited and reviewed said bills and has approved the same for payment and that the Village Board of Trustees desires to pay Tarshis, Catania, Liberth, Mahon & Millgram PLLC for the professional services rendered,

WHEREAS, despite the established procedures of the Board of Trustees to pay such warrants including the aforementioned legal bill, Mayor Joseph Gross in contravention of said procedures refuses to have payment issued to Tarshis, Catania, Liberth, Mahon & Miligram PLLC for the professional services rendered, and,

WHEREAS, in contravention of a legal vote of the Board to have such legal bills paid, Mayor Joseph Gross has directed that the Treasurer and Deputy Treasurer that they are not to take direction from any Trustee or combination of Trustees to write or sign checks and that by doing so will be cause for immediate termination of their position in the Village,

NOW, THEREFORE, BE IT RESOLVED as follows:

That the Village Board of Trustees does hereby resolve to pay Tarshis, Catania, Liberth, Mahon & Miligram PLLC for professional services rendered in the amount of \$54,921.71 with such payments to be \$44,921.71 from Budget Line Code A1420.40 and \$10,000.00 from Budget Line Code FF8310.410

That the Village Treasurer is directed to issue payment to Tarshis, Catania, Liberth, Mahon & Miligram PLLC in the amount of \$54,921.71 for the referenced services and that said payment be mailed within five (5) days of the date of this Resolution;

That, if the Village Treasurer fails to comply with Village policy and the directive of this resolution, the Mayor shall cause the proper payment within one (1) day following the time period referenced above, and is further directed to institute a disciplinary review of Village Treasurer and his failure to comply with the lawful direction issued by this Village Board.

Mayor Gross ruled the motion out of order and asked if Trustee Kane is authorizing monies for an Article 78.

Trustee Kane replied that “we will see what you do”. He further stated that pursuant to Village Law 4-412, the Mayor’s comment that the motion is out of order is nebulous and his motion stands.

Mayor Gross again called the motion out of order.

Trustee Vatter seconded the motion.

Trustee Kane asked for further discussion. Hearing none he called the motion which resulted in 3 Ayes 0 Nays and 2 Abstain (Gross, Gosda who will not recognize the motion).

#### CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR APPOINTMENT

Mayor Gross stated that he notified the Board that the position was advertised, provided the names of individuals who applied, and invited Board members to participate in interviews with 3 candidates chosen by he and Trustee Gosda. He suggests John Fenton, currently a part-time Code Enforcement Office in the Village of Wappingers Falls as a possibility.

Trustee Edsall stated that the Town of Cornwall Building Inspector’s office is offering to provide services with a “sunset clause”. In his opinion, it is cost effective to pursue a longer term arrangement. If that fails, the Village still has the residency law to resolve. He doesn’t want to expose the Village to litigation because the last Code Enforcement Officer resigned because he was not in compliance with the residency requirements.

Trustee Kane stated that before moving forward, the Board needs to accept the resignation of Mr. Bruce Yancewicz to avoid exposing ourselves to litigation with him if we hire an individual from Wappingers Falls because the law has not been changed.

Trustee Gosda stated that she was hoping the Board could authorize a temporary appointment and get our own Code Enforcement Officer “on board”. The Town seems limited in what they want to do for the Village at this point.

Mayor Gross questioned why the Board needs to accept a resignation when they have been advised there is a vacancy in that position.

Clerk Mahoney was asked to contact the Orange County Personnel Department and inquire that if a position has been deemed vacant, is an acceptance of resignation letter required.

#### PBA/CSEA CONTRACT NEGOTIATIONS

This item will be addressed in Executive Session later in tonight's agenda.

#### MASER ENGINEERING PROPOSAL

Trustee Edsall made a motion to retain the services of Maser Consulting to perform the Grandview sewer relocation design with a lump sum fee of \$2,950.00 and that this fee plus the prior survey work be taken by line item number G8120.4. Trustee Gosda seconded the motion and it was carried by a vote of 5 Ayes and 0 Nays.

#### RESCHEDULE FEBRUARY 21, 2011 MEETING – PRESIDENTS DAY

Trustee Edsall made a motion to reschedule the February regular meeting of the Village Board of Trustees to Monday, February 28<sup>th</sup> at 7:30 PM which was seconded by Trustee Gosda and carried by a vote of 5 Ayes and 0 Nays.

#### CORNWALL COMMONS

Trustee Edsall recused himself from this discussion and left the meeting room.

Upon the written recommendation of Kristen Wilson, special counsel hired by the Village Board with regard to Cornwall Commons, Trustee Vatter made a motion to authorize Water Superintendent June to execute the Department of Health agreement, at the expense of the developer, which was seconded by Trustee Gosda and carried by a vote of 4 Ayes and 0 Nays.

Having concluded the business set before them, Trustee Gosda moved to adjourn into Executive Session in order to discuss PBA/CSEA contract negotiations, with Chief Weber and Clerk Mahoney present, which was seconded by Trustee Vatter and upon a vote of 4 Ayes and 0 Nays the meeting was adjourned at 9:35 PM.