

**VILLAGE OF BROCKPORT
VILLAGE BOARD
Work Session Agenda
Tuesday, February 7, 2012**

This is a work session, not a regular meeting. No public comment.

Intended for Board discussion, not action. Therefore, meeting minutes are not required.
If any action is taken, the Village Manager/Treasurer takes notes & provides to Clerk.

- **CALL TO ORDER / PLEDGE:**
 - Please silence cell phones & electronic devices & refrain from texting

- **GUESTS:**
 - Gary Skoog & Bill Andrews, Greater Brockport Development Corp (GBDC) Officers
 - How can GBDC better serve the Village?
 - 60 Clinton Street – possible environmental project - bio cell remediation

 - Department Heads – discuss FY 2012-2013 budget estimates

- **ITEMS FOR DISCUSSION / REVIEW:**
 - Mayor's direction to refrain from texting during Board meetings (Hannan)

 - Creation of a naming policy for venues/buildings (Hannan & Blackman)

- **EXECUTIVE SESSION:**
 - Village Attorney – consider request for proposals (RFP) (Blair)

- **ADJOURNMENT**

Upcoming:

- 7pm, Tuesday, 2/14 & 2/28 – Village Board meeting
- Monday, 2/20 – Village Hall closed for holiday

Proposal of Mayor Castañeda to rename Barry Street Park/Playground for John Lessord

Read into the record at the January 24, 2012 Village Board meeting for Board consideration at an upcoming meeting.

Few people know how we received \$64,000 to spend on the Barry Street Playground. I would like to give some background information about how the Village acquired this money.

A man who moved to Lyman Street in the 1960's noticed unusual colors in the water that runs in the creek by his home. Alarmed, he registered a complaint with the Village. About 3 years later, a water pumping station was built by a factory located nearby, and the unusual colors of the water in the creek cleared up. They believed the problem was fixed.

Fast forward to the 1990's. This man noticed foul odors coming out of the creek. He did a lot of research about pollution and became very concerned about this problem. He called the NYSDEC, but after waiting a few more years, became frustrated, and contacted Erin Brockovich. She had her lawyer conduct a preliminary investigation, and concluded that a lawsuit against the companies that caused the pollution was in order.

The lawsuit finally produced a response from the polluters and then some measures were taken to clean up the contamination. Neighbors started to come to this man for advice about pollution in their neighborhood. This man helped them with the information he had accumulated over the years and the neighbors helped one another.

This man and his son did more research to determine the extent of the pollution. After studying many maps of the area, and using a metal detector, they were able to locate a lost manhole. They called the Village to inspect it. After the Village inspection, it was determined that the water in the manhole contained pollutants and that the pollution had extended to Oxford Street and across the canal to East Avenue.

As a result of this man's vigilance, hard work, and determination, the pollution was discovered and remediation is ongoing, even today.

This man never gave up over the years. He was not afraid to stand up against two large corporations.

This man was instrumental in acquiring the money the Village has to restore the playground for the residents of the affected neighborhood.

This man has been an exemplary member of our community for many years. Among many other things, this man has served our community as follows:

- Volunteer Fire Department for 26 years.
- Fire Chief for 2 years.
- Assistant Fire Chief for 4 years.
- Captain, Lieutenant and Warden of the Fire Department.
- Volunteer at Nativity Church for 14 years.
- Volunteer with Little League Soccer for 4 years.
- Merit Badge Counselor for 4 years.

The name of this man is John Lessord. I propose to name the Barry Street Park/Playground in his honor, to show our gratitude for the many services he has provided to our community.

Village Board Reports:

A. Vice Mayor Whipple

1. BISCO – Arts Festival – Plans are well underway. The arts/crafts portion is a two-day event (Saturday and Sunday) and does not include Friday. This has made many more vendors available to participate.
2. Community Center Feasibility Committee – The group is nearing the point where they can present recommendations to the municipalities and public. Mayor Thorpe asked about surveying the community and suggested a SUNY class taking this on as a project.
3. Canal Trek – July 23rd not July 24th as previously thought. Volunteers are needed for the chicken and biscuit dinner and breakfast the next morning at the Market Street fire hall.

B. Trustee DeToy – No report.

C. Trustee Knapp – No report.

D. Trustee Wexler

1. Naming of the Police Department Building at 1 Clinton Street – Trustee Wexler suggested naming the Police Department Building at 1 Clinton Street after former long-time Brockport Police Chief Donald M. Hare who recently passed away. Trustee DeToy said that would be a fitting tribute to a man who gave so much of his life to the Village.

⇒ Trustee Wexler moved, Trustee DeToy seconded, unanimously carried that the Brockport Police Department Building at 1 Clinton Street be named after former long-time Police Chief Donald M. Hare. Board agreed to work out the specifications of the signage at the upcoming workshop. Trustee DeToy suggested getting input from D. Hare's wife and children.

2. Contamination – Trustee Wexler said he contacted the firm of Faraci and Lang who are working with Ed Masry and Erin Brockovich on the lawsuit of the residents against the pollutant companies. They would be glad to speak to the Board at an upcoming meeting regarding the possibility of the Village getting involved in the lawsuit. Trustee Wexler said he spoke with W. Weber about those property owners who asked for reduction in their assessment due to contamination and will also talk to Alan Bader about the same.
3. Sweden/Brockport Comprehensive Plan Update – Trustee Wexler shared that the survey results were completed and will be distributed.
4. Employee Handbook – Trustee Wexler asked the status of the grievance by the Stetson Club regarding the Employee Handbook. Mayor Thorpe said she met with representatives of the Stetson Club. They have asked the Village to exempt them from coverage by the Employee Handbook. They asked that the Village insert a cover page in the employee handbook that states it does not apply to members of the Stetson Club (Police Officers) since they are covered by Union contract.
5. Chief Zimmer Completed Service – Trustee Wexler thanked Officer Cyr for his assistance when he accompanied A.G. Zimmer to clean out his desk.

E. Mayor Thorpe

1. Police Chief Search Committee –

⇒ Mayor Thorpe moved, Trustee Whipple seconded, Trustees DeToy and Wexler abstain, carried to appoint the following to the Police Chief Search Committee which will review applications and make recommendations to the Village Board. In no particular order:

Trustee	Peter C. DeToy
Trustee	Morton Wexler
Police Department – Stetson Club President	Sgt. Adam Mesiti
Police Department	Officer Mark Philippy
Resident At Large	Lisa Saeva
Resident At Large	Manuela Swanger
SUNY Brockport Criminal Justice Department Chair	Dr. Richard C. Lumb
Downtown Merchant Association President	Sharon Wentworth
Clergy	Rev. Peter Enyan-Boadu

Trustee Wexler commented that he does not question the integrity of Trustee DeToy, however, is concerned about a possible conflict of interest since Trustee DeToy has a son on the police force. Mayor Thorpe said this was discussed, but he is one of nine people on the advisory committee and there should be no conflicts simply reviewing applications.

Mayor Thorpe thanked all the residents at large that applied. Clerk Morelli will send letters of notification. Two neighboring Police Departments assisted in the draft job description that Civil Service is reviewing.

Trustee Hannan asked about security. J. Black said they will meet all requirements of the Liquor Authority. There will be a 6-man security team. He compared it to last year's convention which had no problems and benefited the business district.

Mayor Castañeda referred to feedback provided to the Board by Police Chief Varrenti.

→ Trustee Hunsinger moved, Trustee Blair seconded, carried 5/0 to grant the request to utilize a portion of the municipal parking lot between the Navy Club and the Brockport Police Department on Saturday, August 20th.

- o Bill Andrews of Historic Preservation Board - \$5,500 grant "Upper Floor Development Feasibility - Loft Apartments in Historic Districts" - authorize Mayor to sign CLG agreement - B. Andrews asked the Board to approve and authorize the Mayor to execute the agreement.

Trustee Hunsinger reminded the Board that he brought this to the Board's attention several months ago after having met with Bill Andrews on it. The Board authorized applying for the grant.

→ Trustee Blackman moved, Trustee Hannan seconded, carried 5/0 to authorize the Mayor to enter in to the Certified Local Government grant agreement regarding the \$5,500 grant "Upper Floor Development Feasibility - Loft Apartments in Historic Districts"

- o Mary Ann Thorpe, former Mayor - naming proposal re Utica Street Park - Mary Ann Thorpe referred to the proposal she put in writing to the Board on August 1st. It read:

"In the mid 1990's a parks committee was appointed by the Brockport Village Board to reevaluate the outdated playground equipment, parks accessibility, aesthetics, and to establish an annual plan and budget for the rehabilitation of parks and playgrounds in the Village of Brockport.

Monika Andrews was one of the original members of the Parks Committee. Early on she set a goal to establish a playground for all the youth of our community. She began to research what, if any, playground equipment was available for children with special needs for public parks. She discovered early on there was not a public handicap-accessible playground in Monroe County.

Monika was on a mission. She successfully obtained a matching grant to plan, design and purchase the equipment needed for a new community playground. She found a company that specialized in handicap-accessible playground equipment, helped to redesign the Utica Street Park, and organized over seventy volunteers to help build the park. The Village donated the use of DPW equipment and DPW employees donated their time. In the summer of 2000 Phase One of two phases of the playground was successfully constructed.

I believe most of us are aware that Monika is very ill and fighting the battle of her life. Too often we think of recognizing special people long after they have left us. With that in mind, I would like to suggest to the Board that the Utica Street Playground be renamed "The Monika Andrews Children's Park" in recognition of Monika's lifelong dedication of helping others.

I have been approached by a donor who has offered to fund appropriate signage for the park. I have discussed this request with Monika's husband, Bill, and he endorses the idea. I would be pleased to work with the family on signage and name appropriateness should the Board favorably grant this request."

→ Trustee Blackman moved, Trustee Hannan seconded, unanimously and enthusiastically carried 5/0 to accept the proposal of Mary Ann Thorpe to rename Utica Street Playground "The Monika Andrews Children's Park" in recognition of Monika Andrews lifelong dedication to helping others and successful mission in establishing a playground for all the youth of our community - the first handicap-accessible playground in Monroe County.

Trustee Blackman said she knows Monika well has bicycled with her and such. She said Monika has also helped the community through her work with the Brockport Food Shelf, the Clothing Shelf and the Isaiah House.

Trustee Blair said he was taken aback when he received the proposal and that it is great to be able to recognize her. He said he is glad she will be here to receive that recognition.

Leslie Ann Morelli

From: blackma [mblackma@brockport.edu]
Sent: Friday, January 27, 2012 4:31 PM
To: Mayor Maria Connie Castaneda; Kent Blair; Carol Hannan; Scott Hunsinger
Cc: Village Manager/Treasurer Michael A. Giardino; Leslie Ann Morelli
Subject: Naming Public Places and Spaces
Attachments: Naming P&R Facilities Policy signed.pdf; ATT00004.txt

Mayor and Board,

In reflecting on the request to name the Barry Street Park after a village resident, I would urge you to rethink this before the next board meeting. Last fall, at the request of a resident, the board voted to name the Utica Street Park after Monika Andrews who played an important role in the rehabilitation of that park. Because Monika was terminally ill at the time, the decision was partly an emotional one and there was an urgency to the decision. In the end, it was a good decision, but it set a dangerous precedent. We have 9 parks (two now with names), all of which might potentially be renamed. Not to mention a public building or two.

Yet we have no policy or procedures for doing so. Before we start renaming public places and spaces and because names carry such important symbolic weight, we need to adopt a policy and set of procedures which are removed as much as possible from the political process. In the case of parks, for example, it would make sense that the vetting process go through the parks committee before coming to the village board for approval. Some communities require petitions for naming; some communities require that nothing be named after a living person. These and other issues need to be considered.

I ran across the attached which is used by the City of Denver in naming parks and buildings which will give you an idea of how we might proceed. My recommendation is that the naming of the Barry Street park be withdrawn from the Feb 14th meeting until such time as we have adopted a naming policy and procedures.

Thanks,

Margay

SAMPLE

Department Policy and Procedures

Policy Name: Naming of Parks and Recreational Facilities

Number:
Effective:
Supersedes: 1991

Approved by Parks and Recreation Advisory Board: 11.9.05
Approved by Manager:
Reviewed by City Council:

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Policy

It is the policy of Denver Department Parks and Recreation (DPR) that the naming of new and renaming of existing parks and recreational facilities be reserved for exceptional circumstances and that the naming process comply with the guidelines and procedures set forth in this policy.

1.0 Purpose

These policies and procedures are intended to guide a) any individual or community group that is interested in having a park, building, or major feature named for a significant person, event, or place, b) any individual, group, or business that is interested in having their significant donation (park, building, major feature) named, c) the Parks and Recreation Advisory Board that will be making a recommendation to the Manager in regard to these requests, d) City Council members that will be holding public hearings and approving any Ordinances associated with the names of parks and buildings, and e) the DPR Manager and his/her staff.

2.0 Definitions

2.1 "Parks and Recreational Facilities" will include the following:

2.1.1 **Parks.** All traditional designed parks, natural open spaces, historic sites, golf courses, specialized parks (e.g. Skate Park), and trails under the department's jurisdiction or management, including Mountain Parks.

2.1.2 **Buildings.** Significant park and recreation structures that house parks and

recreational programs (e.g. recreation centers, enclosed pavilions, lodges, etc.).

2.1.3 Major Features. Major, permanent components of park and recreational facilities, e.g. ball fields, swimming pools, tennis courts, playgrounds, fountains, artwork or physical features (lakes). Rooms within Buildings are considered to be Major Features.

2.2 Amenities. Smaller furnishings and facilities in the parks and recreation system (e.g. benches, small fountains, tables, etc.) Amenities are not formally named. Recognition for donated amenities is covered under the *DPR Gift Policy*.

3.0 Authority

Under section 2.4.4(A) of the City Charter, the management, operation and control of all facilities owned by the City and County of Denver for park and recreational purposes are under the exclusive control of DPR and its Manager. Under section 2.4.3 of the City Charter, the Parks and Recreation Advisory Board reviews and advises the Manager with respect to the policy and operation of DPR.

4.0 Background and Principles

Naming or renaming parks and recreational facilities in the City and County of Denver (the City) is often complex and emotionally evocative since naming is a powerful and permanent identity for a public place. The names of Parks, Buildings, and Major Features tell the important stories of Denver's history. In addition, Denver has limited public resources for changing names on signs, maps, and literature, and excessive naming of individual features in parks and recreational facilities can be confusing to the public. Approval of naming requests is a prestigious, cautious process that typically involves the DPR Advisory Board, DPR Manager, and (for parks and buildings) Denver City Council. Consequently, the process for naming or renaming these public places needs to be carefully and thoughtfully undertaken and only when appropriate.

The policy of the department is to reserve the naming or renaming of parks and recreational facilities to those circumstances which tradition and practice have shown to best serve the interests of the City and assure a worthy and enduring legacy for the City's parks and recreation system. To this end, the department supports consideration of naming requests in the following three broad categories:

Exceptional individuals. Sometimes recognition of an exceptional City leader or a dedicated supporter of the City parks and recreation system can result in a community supported renaming of an existing or naming of a new park or recreational facility.

Historic Events, Places, and Persons. The history of a major event or place or historic persons can play an important role in the naming or renaming of parks and recreational facilities. The public often expresses a strong desire to preserve and honor the history of the City, its founders, pioneers, and other historical

figures, its Native American heritage, and its local landmarks and prominent geographical locations by giving certain parks and recreational facilities names of historic, social and cultural significance. Denver also has established ties to a number of international cities through the Denver Sister Cities Program.

Major Gifts. The City and the department have benefited from a rich legacy of community generosity. Over the decades Denver residents and businesses have given gifts of their time and skills, their resources and products, and their money. Public and private foundations, too, have invested deeply in the parks and recreation system. There are occasions when, upon the request of the donor, another party, or the department itself, an extraordinary gift may be acknowledged by permanent naming.

4.1 General Principles. In considering any proposal to name or rename a Park, Building, or Major Feature, the following questions should be considered individually and collectively:

- a) Will the name have historical, cultural and social significance for generations to come?
- b) Will the name engender a strong and positive image?
- c) Will the name memorialize or commemorate people, places or events that are of enduring importance to the community or the nation?
- d) Will the name engender significant ties of friendship and mutual recognition and support within the community or with those outside of the community?
- e) Will the name be identified with some major achievement or the advancement of the public good within the community or the nation?
- f) Will the name be particularly suitable for the park or recreational facility based on the location or history of the park, recreational facility or the surrounding neighborhood?
- g) Will the name have symbolic value that transcends its ordinary meaning or use and enhance the character and identity of the park or recreational facility?
- h) Will the naming request that accompanies a corporate gift result in the undue commercialization of the park or recreational facility?

4.2 Renaming Parks and Recreational Facilities. Proposals to *rename* parks and recreational facilities are not encouraged and should be entertained only after fully investigating and considering the potential impact of dropping the current name. Names that have become ingrained or widely accepted in the community should not be abandoned unless there are compelling reasons and strong public sentiment for doing so. Historical or commonly-used place names should be preserved wherever possible.

4.3 Naming or Renaming for Exceptional Individuals. The following guidelines apply to *naming or renaming* requests that result from either a community process or major gift.

4.3.1 Naming of parks and recreational facilities is encouraged only for persons

who are deceased. Typically, such naming after a person should not occur until the person has been deceased for at least seven (7) and that person's historical significance and good reputation have been secured in the history and lore of the community or the nation.

4.3.2 Priority for naming parks and recreational facilities after deceased persons should be given in the following order to those who have significant and lasting contributions 1) to the Denver parks and recreation system, 2) to the City; or 3) to the nation. Naming Parks and Buildings after national or international figures should be rare and only upon a substantial demonstration of the figure's connection to or special importance in the Denver community or the State of Colorado.

4.3.3 Naming of parks and recreational facilities after people or a group of people who perish in or survive a tragic event or war should be considered only well after the public shock generated by the tragic event or war has lessened. Potential sites for such memorials should be focused on parks or recreational facilities that are more known for their serene and contemplative nature rather than active recreational locations, such as playing fields and recreation centers. Emphasis should be placed on the contributions or heroic actions of these people during their lifetime, rather than the circumstances of their death or survivorship.

4.3.4 Exceptions for naming of Major Features for living persons may occur as described in section 4.5 on Major Gifts.

4.4 Naming and Renaming for Historic Events, Places, and Persons. When a park or recreational facility is located near or otherwise associated with events, places, and people of historic, cultural, or social significance, it is appropriate to consider naming such park or recreational facility after such events, places, and people. The relationship of the park or recreational facility to the events, places, and people of historic, cultural, or social significance should be demonstrated through research and documentation. The appropriateness of naming the park or recreational facility after such an event, place, or people is further supported if people of Denver or the surrounding neighborhood have already identified the park or recreational facility with the name of the event, place, or people.

4.5 Naming and Renaming for Major Gifts. Typically, the donation of gifts to the Denver parks and recreation system should be reward in itself, with recognition being given as set forth in the *DPR Gift Policy*. On a rare occasion, a gift will be made to the City of a parks and recreational facility that is of such magnitude and generosity that naming of such new park or recreational facility in honor of or at the request of the benefactor will be considered. Any request to rename an existing park or facility that associated with a major gift to expand or refurbish that park or facility must meet the guidelines in 4.2 and is discouraged.

4.5.1 Threshold. As a guideline but not a limitation, the threshold for naming

rights on Parks and Buildings would include one or preferably more of the following: 1) deeding to the City most if not all of the land on which the Park or Building to be named will be situated; 2) payment of one-half or more of the capital costs of constructing a Park or a Building to be named (depending on the availability of matching funds or grants); 3) some long-term endowment for the repair and maintenance of the donated Park or Building; and 4) the provision of significant program costs for facilities that will serve parks and recreation program needs.

Likewise, as a guideline but not a limitation, the threshold for naming rights on Major Features would include one or preferably more of the following:

1) payment of the capital costs for constructing and installing a Major Feature; 2) some long-term endowment for the repair and maintenance of the donated Major Feature; and 3) the provision of significant program costs for any Major Feature giving rise to or supporting a parks and recreation program.

4.5.2 Other Requirements. In no case shall naming or renaming be considered unless the major gift is deemed acceptable in accordance with the *DPR Gift Policy* and ultimately satisfies the Charter requirements of section 2.4.4(E).

4.5.3 Naming for Persons. Benefactors seeking naming rights for major gifts will be encouraged to follow the guidelines in section 4.3 on Persons with respect to naming of Parks and Buildings after persons. An exception will be considered on its own merits. A Major Feature that has been donated or refurbished may be named for a living person(s) provided that said person(s) is of good reputation. Whatever contract accompanies the gift and naming rights should address all conditions applying to the naming, including time limits for naming of features. However, in addition, DPR reserves the right to rename any Park, Building, or Major Feature if the person for whom it is named turns out to be disreputable or subsequently acts in a disreputable way.

4.5.4 Naming for Entities. A corporation, association, and other legally created entity making a major gift may request that the name of that entity be associated with the name of the Park, Building, or Major Feature which is the subject of the major gift. Each request is evaluated on its own merits and requires public input. In making a recommendation for a corporate name, the reputation of the company and community support should be considerations. No corporate logos, brands, insignias, or direct advertising text may be used as part of any name association or naming. As noted in 4.2, renaming of any existing Park or Building is discouraged even when associated with a major enhancement gift. The City reserves the right to remove an entity name association on a Park or Building or to rename a Major Feature if the entity turns out to be disreputable or subsequently acts in a disreputable way.

4.6 Sister City Parks. Ten parks have been named for the international cities associated with Denver's Sister Cities program. The department generally considers that an appropriate number of parks and at this time is not encouraging further proposals.

4.7 Other Considerations.

4.7.1 Typically, a Park should not be subdivided for the purposes of naming unless there are readily-identifiable physical divisions (major roads, waterways, etc.) in the Park and other compelling reasons for having more than one name for a Park. This limitation on naming a Park should not prevent giving a different name for a trail, Building, or Major Feature located in or near the Park. However, care should be taken in giving a name to a trail, Building, or Major Feature that is different from the name of the Park so that confusion is not caused for the users of said differently named facilities.

4.7.2 Facilities that are held by the department through a short-term lease or use agreement or improvements that have a limited life span or occupancy should not be named.

4.7.2 All signs on parks and recreational facilities must meet the department's graphic and signage standards. No specialized signage will be displayed.

4.7.4 If a new park or building is completed and no suggestion for a name has come from the community or in association with a gift, the DPR Advisory Board will recommend a name, using any organized public process (i.e. nominations, contest, etc.) that they decide upon.

5.0 Procedures for Community or Citizen Requests to Name or Rename a Park or Building.

5.1 Applicant's Process. An applicant must compile a petition and make a presentation to the Parks and Recreation Advisory Board (the "Board") to recommend naming or renaming a park or recreational facility. Applicants should refer to section 4.0 of this Policy to ensure that the request meets the criteria for proposed names. Details of the process include:

- Written notification to the DPR Manager's Office to start the process. It should include a condensed version of the reasons for the request. Those 2-3 sentences will be included in the petition language and template prepared by the department. The petitions can be picked up, mailed, or emailed.

*Board of Parks and Recreation
c/o Manager of Denver Parks and Recreation
201 West Colfax, Department 606
Denver, Colorado 80202
720-913-0696*

- A request to the appropriate City Council member or the DPR Manager's Office (720-913-0696) for the name of his or her Parks and Recreation Advisory Board member. Citizens should work closely with their Advisory Board representative and keep the councilperson informed.
- A formal filing of the petitions with the Board at the above address as soon as necessary signatures have been gathered. Registered Neighborhood Associations (RNOs) will be notified of the proposed action. The following criteria for the petition must be met:
 - a) The petition should state the reasons for the proposed name.
 - b) The petition should show community support for the proposed name.
 - c) The petition should contain a description and/or map depiction of the boundaries of the Park or Building to be named or renamed.
 - d) The petition may only be signed by persons living in the City and County of Denver.
 - e) The petition should show the name, address and telephone number of each signer.
 - f) The number of signatures required should be a minimum of 300 for small neighborhood parks and their Major Features; 500 for community parks (generally over 20 acres) and their Major Features; and 1,000 for regional parks (over 50 acres or regional draw) and their Major Features. Major buildings must have a minimum of 500 signatures.
 - g) The person or group should file the petition with the DPR Manager within ninety (90) days of receipt of the forms from the Board, unless the Manager grants in writing additional time for submitting the completed petition.
- A formal request to the Manager's Office or Board representative that the proposal be put on the agenda for the next possible Advisory Board meeting. Notice to all Registered Neighborhood Associations (RNOs) of the meeting.
- A formal presentation to the Advisory Board of the naming or renaming proposal.

5.2 DPR Advisory Board Action:

- Within 45 days after the completed petitions are filed, the Board will determine whether or not to recommend the proposed new name to the DPR Manager and the Denver City Council.
- The Board will not recommend a proposed name to the DPR Manager and the Denver City Council unless the criteria set forth in section 4.0 are met. An affirmative vote of a majority of a quorum of the Board is necessary to recommend approval of a new name.
- No Naming Ordinance shall be drafted unless the DPR Manager accepts the recommendation of the Board. The DPR Manager may opt to send the

recommendation back to the Board for further consideration in light of concerns or issues the DPR Manager raises.

5.3 Naming Ordinance:

- After the Board takes action (if the vote is favorable) and the DPR Manager approves the action, the department will request an ordinance for the naming/renaming (the Naming Ordinance). The applicant should keep in contact with the department to track that process. RNOs will be notified.
- After the Naming Ordinance is written, the department will take it to the assigned City Council Committee (such as Public Amenities). The applicant should attend and be prepared to speak briefly about the request. Other interested persons can be invited to attend as well. The applicant should ensure that his or her Council representative can attend the meeting.
- If the Naming Ordinance is deemed acceptable, the Committee then sends the Naming Ordinance to City Council for introduction (1st Reading) and a vote (2nd Reading). A public hearing is strongly recommended and the councilperson should request it at the 1st reading and the applicant will need to coordinate speakers. After the 2nd reading and any public hearing, City Council will vote on the Ordinance.

6.0 Procedures for Community Requests to Name or Rename Major Features

- The same petition and Board procedures for Naming Parks and Buildings (section 5.0) apply to Major Features, except City Council action is not required. The DPR Manager may elect to make an informational presentation to the City Council Committee.

7.0 Procedures for the Naming and Renaming of Parks, Buildings, and Major Features Associated with Major Gifts

- The DPR Manager will submit a proposal to the Board for the naming or renaming of any Park, Building, or Major Feature that is associated with a major gift to the City and the department. A petition process is not necessary. Registered Neighborhood Associations (RNOs) will be notified of the proposed action and Board meeting.
- For naming or renaming a Park or a Building, City Council approval through a Naming Ordinance is required (as provided above) following a favorable recommendation by the Board and the DPR Manager's approval. A Public Hearing is strongly recommended.

- For naming or renaming Major Features, only Board action and the DPR Manager's approval is required.

8.0 Sample Petition to the Advisory Board of Parks & Recreation

In accordance with the procedure established by the Denver Board of Parks & Recreation, the undersigned hereby petition the Board to recommend the naming of park between Ivanhoe Street, and Jersey Street, north of 10th Avenue approximately 300' "MAYFAIR PARK". In support of this petition, each of the undersigned affirms and states:

1. That he/she is lives in the City and County of Denver (at time of signature).
2. That the reasons for the proposed name are as follows:

"In honor of the neighborhood (Mayfair) that surrounds the park and its residents who worked for more than 20 years to make this park a reality. The park will be a continuing tribute to both the neighborhood and its residents

3. That there is community support for the proposed name as illustrated by the signatures below.

Sample Petition

<u>NAME</u>	<u>STREET ADDRESS</u>	<u>ZIP</u>	<u>PHONE NO.</u>	<u>DATE</u>
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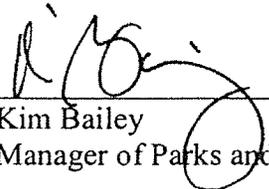
This *Naming of Parks and Recreational Facilities Policy* has been duly adopted in accordance with the rule-making requirements of section 39-2 of the Denver Revised

Municipal Code and is in accordance with the authority of the Manager of the Denver Department of Parks and Recreation under section 2.4.4 of the Denver City Charter.

This ***Naming of Parks and Recreational Facilities Policy*** is effective this 16th day of August, 2006.

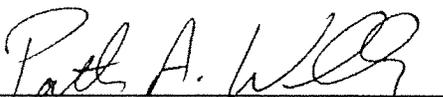
In accordance with section 39-2(e), D.R.M.C., copies of this ***Naming of Parks and Recreational Facilities Policy*** were filed with the Denver Clerk and Recorder and the Denver City Attorney within seven (7) days of the effective date set out above, and a notice of the adoption of this ***Naming of Parks and Recreational Facilities Policy*** was published in The Daily Journal on the 16th day of August, 2006. The notice included a statement that a copy of the ***Naming of Parks and Recreational Facilities Policy*** is on file with the Manager of Parks and Recreation and is available for public inspection.

APPROVED AND ADOPTED:

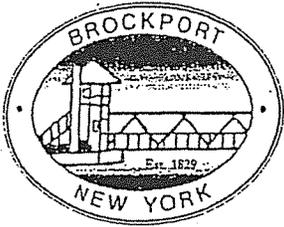


Kim Bailey
Manager of Parks and Recreation

APPROVED FOR LEGALITY:



Cole Finegan
City Attorney



VILLAGE OF BROCKPORT

49 State Street • Brockport, New York 14420
Telephone (585) 637-5300 • Fax (585) 637-1045

Website: www.brockportny.org

*The Victorian Village on the Erie Canal
Preserve America Community
Listed on the State and National
Registers of Historic Places
Certified Local Government
Tree City USA Community
Erie Canalway Heritage Award of Excellence*

REQUEST FOR PROPOSALS

Position Vacancy - Village Attorney (part-time)

The Village of Brockport is currently seeking qualified candidates/firms for the position of Village Attorney. Our preferred fee arrangement is a flat/fixed fee per appointment term (quarter-year, half-year, or annual appointment). The Village Attorney serves as general counsel to the Village as needed; Conducts discussions and telephone conferences with the Mayor and Village Board; Provides counsel to the Zoning Board of Appeals and Planning Board as needed; Reviews correspondence and Freedom of Information requests; Attends Village Board meetings/workshops if requested (at least once per month); May assume responsibility to prosecute parking, traffic, and other matters brought to the Town Court by the Village Police Department/Code Enforcement Office. In the past, the Village has employed separate counsel for court prosecution, employment matters and environmental issues.

Preferred candidates/firms will have experience in municipal law, preferably in a New York State Village government setting. Experience in the areas of municipal code enforcement and Civil Service law is a plus.

To be considered for this position, please forward a letter of interest and resume/law firm information to:

Leslie Ann Morelli
Village Clerk
Village of Brockport
49 State Street
Brockport, NY 14420
lmorelli@brockportny.org

Proposals requested by November 8, 2010

Mayor M. Connie Castañeda
Trustee/Deputy Mayor Daniel P. Kuhn
Trustees Kent R. Blair, Carol L. Hannan, Scott W. Hunsinger

Donald O. Chesworth
Edward M. O'Brien
Jeffrey M. Johnston†
Engene Welch
Michael P. Leone
Nathan A. Van Loon
David F. Mayer
LaMarr J. Jackson††
George Schmergel
Ellen J. Coyne††

† admitted in Florida
†† admitted in Connecticut

**HARRIS, CHESWORTH, O'BRIEN,
JOHNSTONE, WELCH & LEONE, LLP**

Attorneys at Law
www.harrishesworth.com*

**300 Linden Oaks, Suite 100
Rochester, New York 14625**

PHONE: (585) 899-1414

FAX: 899-1424*

*** not for service of process**

Senior Counsel:

Hon. L. Paul Kehoe

Of Counsel:

Eugene Van Voorhis

Associates:

Adam M. Clark

Nicole A. Rossow

Robert S. Leni

**Wayne M. Harris
(1925-2005)**

December 2, 2010

Mayor Castaneda and Village Trustees
Village of Brockport
49 State Street
Brockport, New York 14420

**Re: Response to Request for Proposals for position of
Attorneys for the Village of Brockport**

Dear Mayor and Trustees:

Please accept this letter and retainer as our firm's proposal to continue to provide legal services to the Village of Brockport. Our firm highly values our relationship with the Village and appreciates your consideration of our continued representation.

To serve the Village and to operate within the budget limitations set by the Board in its annual budget, we propose that from January 1, 2010 through May 31, 2012 our firm provided the following specific services for a set monthly fee. For services outside of this set "cap" we understand that such representation would have to be approved in advance of our providing the services. While whenever practical we will wait to receive approval at a board meeting, in those cases that time will not allow for a meeting, we will seek majority approval through electronic email.

SCOPE OF SERVICES SUBJECT TO \$2,500.00 MONTHLY CAP FEE PAYMENT

For a set monthly fee payment of \$2,500.00, our firm will represent the Village by reviewing the agendas and offering legal advice thereon for all Village Board Meetings, Zoning Board Meetings, Planning Board Meetings and other Board Meetings as requested. We will also attend the second monthly Village Board meeting of each month (which is the meeting commonly attended by the department heads). We will provide code enforcement services in the same manner as are currently being provided. We will be available to answer questions of a routine nature related to general procedural law (such as review of FOIL requests, open meeting questions and notice issues) on an as needed basis.

Mayor Castaneda and Village Trustees
Village of Brockport
Page 2 of 2

Any items outside the above services and/or items that would require substantial investigatory or legal research would be considered outside the Monthly Cap Fee Payment. We understand that any services outside the Monthly Cap Fee Payments must be approved in advance by the Board prior to our providing such services.

Michael P. Leone of our office will be the primary attorney providing the services herein and will be the attorney to review the monthly agendas, answer questions and attend the monthly Village Board Meetings. Robert S. Leni, who has been representing the town for code enforcement matters, will continue in that role.

BILLING

We will send you a bill on a monthly basis that will outline the activity and time devoted to each task. Although we will continue to reflect the time spent on each task, the monthly payment due will be set at \$2,500.00. Any work approved outside the cap will be sent as a separate bill and will reflect the hours worked and detail the services provided. The billing statements will reflect payments made, balance due, past due balances, if any, disbursements and any trust account balance. You agree that all bills will be paid within thirty (30) days of receipt. Interest of 1% per month (12% per annum) will be added to outstanding balances over thirty (30) days.

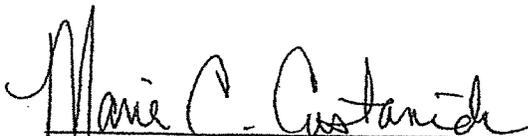
We thank you again for considering our proposal. If this meets with your approval, after the required Board vote we would ask that the Mayor sign two original copies, forward one to us and retain a copy for the Village's records.

Very truly yours,



Donald O. Chesworth
Managing Partner

Approved on behalf of the Village Board of the Village of Brockport



Marie C. Castaneda
Mayor M. Connie Castaneda

12-8-10

between an administrator and a manager, one village may have a "manager" who performs the exact same job responsibilities as another village's "administrator."

The manager/administrator is usually the administrative head of the village government and implements the policies of the village as established by the board of trustees. The manager/administrator attends the meetings of the board of trustees and reports on the needs and status of the various government operations. If the manager/administrator is the village budget officer, they would be responsible for preparing the tentative budget. In some villages, the board of trustees has appointed the manager/administrator to serve as village clerk or village clerk-treasurer.

The position is created in one of two ways:

1. A village board of trustees may establish a village manager form of government under Article 18 of the Village Law. Under this Article, the board passes a local law establishing a commission to study and prepare a local law that would both create the position of village manager and also define the manager's duties and responsibilities. The local law creating the commission is subject to a permissive referendum. Additionally, the local law creating the position of village manager and defining the position's duties and responsibilities is subject to a mandatory referendum. A village manager created under this article is a public officer of the village;¹⁴ or
2. A village board of trustees may create the position of village manager or administrator by local law pursuant to Municipal Home Rule Law § 10. The position may be created as a public office or position of employment, depending on the duties defined in the local law. The powers and duties of the position will determine whether the local law is subject to a permissive or mandatory referendum under Municipal Home Rule Law §§ 23 and 24. If the position of village manager is created as a public office, Municipal Home Rule Law § 24(2)(k) requires a permissive referendum to create and abolish the office. A referendum is not required if the position of village manager/administrator is created as a position of employment.

A small number of villages operate under the manager form of government established under former Village Law Article 15-A. In those villages, the manager has the exclusive authority to appoint individuals to all positions, except the positions of clerk, treasurer, and attorney which are board appointments. A village manager's appointments are not subject to board approval. For those villages, the manager retains the duties provided for under former Village Law, Article 15-A, unless the duties were subsequently changed by local law.

ATTORNEY

Overview

The "village attorney" is generally the primary attorney for the village, although each village must refer to its own local laws or resolutions to determine if the position of "village attorney" has been created explicitly and, if so, what the duties and responsibilities of the "village attorney" are. The role of any municipal attorney is the source of much discussion among municipal lawyers and bar associations across the country. Because the mayor and the board of trustees maintain separate responsibilities, they can have independent interests and needs when seeking legal advice. Consequently, there are three clients

which a village attorney may be called on to serve: the village as a corporate entity, the mayor as the chief executive public officer, and the board of trustees as the local legislative body. The relationship of the village attorney with these various clients is directly impacted by the ethical rules that govern lawyers.

Attorneys' Ethical Responsibilities

To insure the integrity of the legal system, lawyers operate under numerous obligations that are designed to maintain the highest standards of ethical conduct. In New York, the Rules of Professional Conduct¹⁵ serve as a guide for lawyers and a codification of the type of conduct that the public has a right to expect of them. The following Rules are particularly relevant when appointing a village attorney:

- Rule 1.2, entitled Scope of Representation and Allocation of Authority Between Client and Lawyer, provides that lawyers must “abide by a client’s decisions concerning the objectives of representation” and must “consult with the client as to the means by which they are to be pursued.”
- Rule 1.7, entitled Conflict of Interest, prohibits lawyers from representing clients if a reasonable lawyer would conclude that the representation will involve the lawyer in representing differing interests. Rule 1.7 does allow lawyers to represent clients with potential conflicts if “each affected client gives informed consent, confirmed in writing.” “Informed consent requires that each affected client be aware of the relevant circumstances, including the material and reasonably foreseeable ways that the conflict could adversely affect the interests of that client. Informed consent also requires that the client be given the opportunity to obtain other counsel if the client so desires.”¹⁶
- Rule 1.13 addresses representing a client which is an organization and requires the lawyer to recognize that an organization’s interests may differ from the organization’s officer or employees. The commentary to this rule expressly states that Rule 1.13 applies to government organizations.¹⁷

Implicit in these rules is the requirement that a client consent to being represented by a particular attorney, because a client who opposes being represented by a particular lawyer has an inherent conflict with that individual. These rules bear directly on the process of appointing a village attorney.

Retaining the Village Attorney

As a general rule, all department and non-elected officers and employees are appointed by the mayor subject to the board of trustees’ approval. See Village Law § 4-400(1)(c)(i). If the village has established the position of village attorney as a public officer with a term of office or as an employee, this same process of the mayor appointing (or hiring) an individual subject to the board’s approval also applies to the position of village attorney. Civil Service Law § 22 must be followed to create the position of village attorney as either an employee or a public office. In addition, appellate courts have held that a public officer exercises some of the sovereign power of the municipality.¹⁸ Village boards wishing to create the position of village attorney as a public officer should assure that among the village attorney’s duties is the exercise of a sovereign power of the village, such as the authority to settle, up to a specific limit, a claim against the village or to adjust a traffic violation. Few village attorneys have the authority to exercise a municipal sovereign power. As a result, the overwhelming majority of village attorneys who are on a municipal

payroll are public employees who do not serve a term of office and thus are not subject to reappointment, but whose termination from employment is subject to Civil Service procedures. As a general rule, village attorneys are classified as an exempt class, but village officials should consult with county Civil Service to confirm the classification.

Village officials uncertain as to how the village has structured the position should consult the local law or resolution establishing the position and, in the absence of any such enactment, should review the village's past practices when retaining the services of a lawyer. Note that, in villages that appoint the "village attorney" as an employee or public officer, both the mayor and the board of trustees must approve the appointment. As a result, both consent to being represented by the "village attorney," thus satisfying Rule 1.7.

Many villages hire a lawyer, however, not as an employee or appointed officer, but as an independent contractor to serve as counsel to the village. Pursuant to Village Law § 4-412, all contracts must be approved by the village board of trustees. Generally, contracts entered into by the village require only a majority vote of the fully constituted board of trustees, without the approval of the mayor. Consequently, retaining a village attorney as an independent contractor has the potential to create a situation in which the village board hires a "village attorney" that the mayor does not approve. However, care must be exercised in retaining an attorney as a contractor. The Internal Revenue Service (IRS) and other governmental agencies review decisions to retain a worker as a contractor as opposed to placing the individual on a municipal payroll. For issues related to payroll and taxation, the IRS will determine whether a worker is a contractor or is properly placed on the payroll. Complete IRS Form SS-8 to obtain such a determination without charge.

The "village attorney" is generally responsible for advising and representing the mayor in carrying out his or her statutorily-imposed responsibilities and duties. Thus, even if a village retains a village attorney via an independent contract approved by the board, the village mayor should also approve the individual hired. A village board of trustees that would force the mayor to use an attorney whom (s)he does not approve of or consent to use would be unworkable, creating a conflict between the mayor and the attorney. Such an outcome would appear to violate Rules 1.2 and 1.7 of the Rules of Profession Conduct. Consequently, if the mayor and the board of trustees cannot agree on hiring the "village attorney" as an independent contractor, it is the opinion of the staff of the New York State Conference of Mayors that mayor and the board of trustees should consider retaining separate legal counsel.

Retaining Separate Counsel

To the extent that the mayor and a majority of the board of trustees cannot agree on the hiring, appointing, or contracting of one lawyer to represent both the mayor and the board, separate counsel could be retained. Moreover, even for the vast majority of villages that retain one attorney to serve as "village attorney" who is then responsible for representing the village and advising both the mayor and the board, a conflict of interest may arise, requiring the board of trustees and the mayor to retain separate lawyers to represent them in the performance of their statutory responsibilities.

Several cases address the need and propriety of retaining separate counsel. As the Court of Appeals has noted,

*Notwithstanding lack of specific statutory authority, a municipal board or officer possesses implied authority to employ counsel in the good faith prosecution or defense of an action undertaken in the public interest, and in conjunction with its or his official duties where the municipal attorney refused to act, or was incapable of, or was disqualified from, acting.*¹⁹ [emphasis added]

Perhaps the most illustrative case on this issue involved a situation where a city council in a Second Class City sought to retain its own counsel. Pursuant to Second Class Cities Law § 12, the corporation counsel is appointed solely by the mayor. However, pursuant to Second Class Cities Law § 201, the corporation counsel is the “legal adviser of the common council and of the several officers, boards and departments of the city” including the mayor. The court acknowledged, “How can [the corporation counsel] be expected to serve two masters?” before concluding,

It is further clear that the courts in this state have recognized an implied authority in municipalities for various boards or branches to appoint independent counsel in cases where there is a clear conflict of interest *despite the fact that applicable statutes make no such provision.* [emphasis mine]²⁰

Municipal officials must use caution, however, when retaining legal counsel without prior board approval, because doing so runs the risk of incurring an expense which the board may not approve as an appropriate municipal expense and which a court may disallow as reimbursable from the village.

In addition, villages frequently hire other lawyers to provide specific legal services to the village, such as bond or labor counsel or to provide counsel to the zoning board of appeals or the planning board. The retention of these other attorneys via an independent contract may or may not warrant mayoral approval. When the responsibility of a lawyer is to advise the mayor with respect to one of his or her statutory responsibilities, the mayor’s approval is generally warranted.

Factors to consider when deciding whether to retain separate lawyers are the added cost of paying two lawyers versus the confusion, conflict, and uncertainty that could arise if a single attorney becomes enmeshed in a disagreement between the mayor and the board. If a single attorney is retained to represent the mayor and the board, it is recommended that village officials have frank and open discussions about the process for retaining separate counsel should the need arise. Mayors and boards that are unable to agree on whether separate lawyers will be hired and the scope of those legal services run the risk of having to resolve the dispute in court; a proposition that is generally not inexpensive and which could potentially defeat the cost-savings of using only one attorney. Failure to do so can result in confusion about the ability to retain counsel without board approval and appropriation, an issue that was addressed in greater detail in the article, **“A Legal Conundrum: When Can a Municipal Official Retain Outside Counsel at the Expense of the Municipality Without Prior Approval?”** *NYCOM Municipal Bulletin*, March-April 2009, pp 25-26, also available on the NYCOM website at www.nycom.org in the **Members Only** section. In addition, defense and indemnification of employees is a separate but related issue and is discussed in detail in Chapter 13 Municipal Liability for Acts in Office.

Defining Scope of Legal Services

To avoid confusion and the accumulation of unnecessary legal fees, village officials should address the scope of the services to be provided by the “village attorney” or separately retained lawyers at the outset of retaining legal counsel. Questions to address when defining a lawyer’s scope of services are: who is the client, who may contact the lawyer, how may contact with the lawyer be initiated (i.e., via phone, email, and/or in writing), what topics may be covered in the correspondence, what is the extent of the services provided (i.e., attending meetings, drafting proposed laws and resolutions, legal advice, litigating cases, prosecuting cases, etc.), and what are the number of hours that may be billed per month without additional prior approval? It is essential to address these issues at the outset of legal representation to avoid confusion, conflict, and higher-than-expected legal bills.

The duties of the village attorney are not specifically set forth in statute, but the attorney usually works closely with most village departments, officers, and bodies, especially the board of trustees. The specific services which a village attorney performs are assigned by the board and may include:

- Attending regular and special board meetings;
- Preparing legal notices, contracts, and opinions;
- Acting as local or general bonding counsel;
- Providing services in connection with the acquisition of easements and title to real property, including negotiations with property owners;
- Preparing local laws, ordinances, and resolutions;
- Representing the village in eminent domain, assessment, and other court proceedings, including appeals;
- Consulting with village officials, employees, and members of the public regarding matters involving the village;
- Attending meetings of the zoning board of appeals, planning board, and other village boards and commissions and preparing legal notices and opinions for them;
- Reviewing insurance coverage; and
- Giving legal advice in contract negotiations with employee groups or acting as chief negotiator if requested to do so by the board of trustees.

Although the county district attorney is responsible for prosecuting criminal cases, district attorneys rarely involve themselves with prosecutions in village justice courts. Thus, the village attorney may, with the district attorney’s permission, prosecute violators of village laws or any person accused of committing an offense, infraction, or criminal act within the village. Additionally, the village may hire outside counsel to prosecute these cases. The board of trustees may pay reasonable compensation to either the village attorney or outside counsel for prosecuting criminal cases.

Qualifications of Village Attorney

Regardless of how a village attorney is retained, whether as an employee, a public officer, or an independent contractor, the village board of trustees, the village should expressly

address (via local law or resolution) whether the “village attorney” or any other lawyer retained must reside in the village. If a village does not expressly provide that an attorney position is a public officer of the village, it is likely to be considered a position of employment.²¹

DEPUTY OFFICIALS

The village board of trustees may create deputies for any public office and may, by resolution or local law, consolidate the offices of deputy clerk and deputy treasurer.²² When creating the office of deputy, the board should provide for a term of office. Absent a board-established term of office, the term of office is one year. Deputies are appointed public officers and possess the powers and perform the duties of the principal office when requested by or in the absence or incapacity of the principal office holder. If a vacancy occurs in the principal’s office, the deputy does not fill the office but merely performs the duties of the principal officer until the vacancy is filled.

OTHER OFFICES

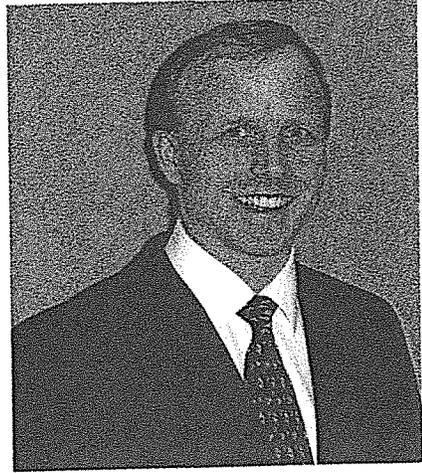
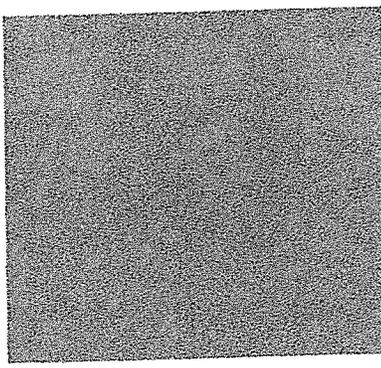
The village board of trustees may create other offices and boards it deems necessary.²³ Many villages have created public offices in addition to those required by the Village Law. If the village board wants to expand the residency requirements for these offices, it must expressly include the expanded residency requirements in the local law or resolution that creates the office.

There are many other provisions of state law that authorize the village board to create specific positions or boards. As a general rule, when a board is created locally, such as the zoning board of appeals or the planning board, its members are public officers. A state statute may provide a term of office. However, if a board is created locally for which there is no specific statutory authority, the board of trustees may determine the term of office. Similarly, the board’s duties and responsibilities may be set out in state statute or determined locally.

When a village board of trustees creates an individual position, such as village attorney, building inspector, or superintendent of public works, the board of trustees may create the position as a public office or a position of employment, unless a state statute provides otherwise. An independent contractor can be retained to perform work that would otherwise be performed by an employee but not an officer.

Street Commissioner and Superintendent of Public Works

The positions of street commissioner and superintendent of public works were both defined as public officers with a one-year term under the former Village Law. When the Village Law was rewritten by the Legislature in 1973, references to these positions were not included in the new version. However, these positions continue to exist in villages across the state. As a result, some villages treat these positions as public offices, while others treat them as positions of employment. Generally, these positions remain public offices unless the village board expressly changes them to positions of employment by eliminating duties which involve the exercise of the village’s governmental authority.



FOR THE RECORD

BY WADE BELTRAMO, NYCOM GENERAL COUNSEL

RETAINING THE VILLAGE ATTORNEY: IT'S NOT A PROBLEM UNTIL IT IS ONE

The position of "village attorney" is the source of constant confusion. It is a position which practically every village has and needs but which is not defined in any New York State law. As a result, there are several ways in which villages structure the position: as an employee, as a public officer with a term of office, or as an independent contractor. The failure of state law to address the position of village attorney and the myriad ways in which villages structure the position raise numerous questions:

- How is the village attorney hired?
- How can the village attorney be compensated?
- Whom does the attorney represent?
- What are the scope of services to be provided by the attorney?
- Who may contact the attorney for advice?

Unlike other village officers and employees, the village attorney provides legal advice to villages and represents villages in legal matters. As a result, the attorney is subject to a strict set of ethical rules that govern such concerns as conflicts of interest and zealous representation of clients. Complicating matters further, village governments are comprised of multiple public officers who have varied statutorily defined responsibilities and the potential for conflicting interests, as well as a right to legal representation. This article will address these issues and flesh out the reasons why it is the opinion of the staff of the New York State Conference of Mayors that if a village mayor and a board of trustees cannot agree on a "village attorney," then they should consider hiring separate counsel. Because cities operate under

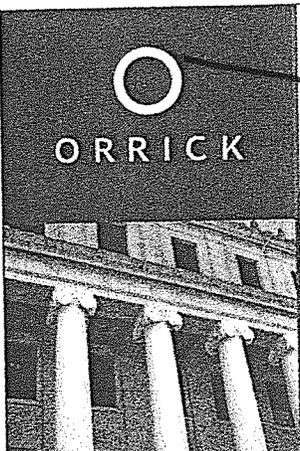
unique charters, this article does not address the issue of appointing city attorneys, although many of the issues discussed herein are relevant to cities as well.

The Mayor and the Board: Not Quite Separation of Powers, But Close Enough

Technically, the strict principles of separation of powers that are fundamental to our federal and state governments (i.e., the immunity of one branch of government from control by another) do not apply to the village mayor and the board of trustees.¹ Nonetheless, New York's village governments operate with statutorily established separate and independent executive and legislative branches that, while not necessarily equivalent to "separation of powers,"² must be recognized when addressing the issue of legal representation.³ Moreover, the ability of a village to amend the powers granted to the mayor or members of the board of trustees is restricted by Municipal Home Rule Law § 23(2)(f), which subjects any local law abolishing, transferring or curtailing any power of an elective officer to a mandatory referendum.⁴ Finally, an examination of how powers are divided between the village mayor and board of trustees reveals that there are a series of checks and balances in place on the board and mayor. Thus, a level of independence between the two branches does exist and will at times present a problem for a lawyer retained as a village attorney.

The Village Attorney: An Overview

The "village attorney" is generally the primary attorney for the village, although each village must refer to its own local laws or resolutions to determine if the position of "village attorney" has



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THOMAS E. MYERS
212-506-5212 • tmyers@orrick.com

ORRICK, HERRINGTON & SUTCLIFFE LLP
LOS ANGELES NEW YORK ORANGE COUNTY PORTLAND SACRAMENTO SAN FRANCISCO
SEATTLE SILICON VALLEY WASHINGTON DC

...that prior results do not guarantee a similar outcome

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determination without charge.

Generally, contracts entered into by the village require only a majority vote of the fully constituted board of trustees, without the approval of the mayor. Consequently, retaining a village attorney as an independent contractor has the potential to create a situation in which the village board hires a "village attorney" that the mayor does not approve. The "village attorney" is generally responsible for advising and representing the mayor in carrying out his or her statutorily-imposed responsibilities and duties. Thus, even if a village retains a village attorney via an independent contract approved by the board, the village mayor should also approve the individual hired. A village board of trustees that would force the mayor to use an attorney whom (s)he does not approve of or consent to use would be unworkable, creating a conflict between the mayor and the attorney. Such an outcome would appear to violate Rules 1.2 and 1.7 of the Rules of Profession Conduct. Consequently, if the mayor and the board of trustees cannot agree on hiring the "village attorney" as an independent contractor, it is the opinion of the staff of the New York State Conference of Mayors that mayor and the board of trustees should consider retaining separate legal counsel.

Retaining Separate Counsel

To the extent that the mayor and a majority of the board of trustees cannot agree on the hiring, appointing, or contracting of one lawyer to represent both the mayor and the board, separate counsel could be retained. Moreover, even for the vast majority of villages that retain one attorney to serve as "village attorney" who is then responsible for representing the village and advising both the mayor and the board, a conflict of interest may arise, requiring the board of trustees and the mayor to retain separate lawyers to

represent them in the performance of their statutory responsibilities.

Several cases address the need and propriety of retaining separate counsel. As the Court of Appeals has noted,

*Notwithstanding lack of specific statutory authority, a municipal board or officer possesses implied authority to employ counsel in the good faith prosecution or defense of an action undertaken in the public interest, and in conjunction with its or his/her official duties where the municipal attorney refused to act, or was incapable of, or was disqualified from, acting.*⁹ [emphasis added]

Perhaps the most illustrative case on this issue involved a situation where a city council in a Second Class City sought to retain its own counsel. Pursuant to Second Class Cities Law § 12, the corporation counsel is appointed solely by the mayor. However, pursuant to Second Class Cities Law § 201, the corporation counsel is the "legal adviser of the common council and of the several officers, boards and departments of the city" including the mayor. The court acknowledged, "How can [the corporation counsel] be expected to serve two masters?" before concluding,

*It is further clear that the courts in this state have recognized an implied authority in municipalities for various boards or branches to appoint independent counsel in cases where there is a clear conflict of interest despite the fact that applicable statutes make no such provision.*¹⁰ [emphasis added]

Municipal officials must use caution, however, when retaining legal counsel without prior board approval, because doing so runs the risk of incurring an expense which the board may not approve as an appropriate municipal expense and which a court may disallow as reimbursable from the village.

In addition, villages frequently hire other lawyers to provide

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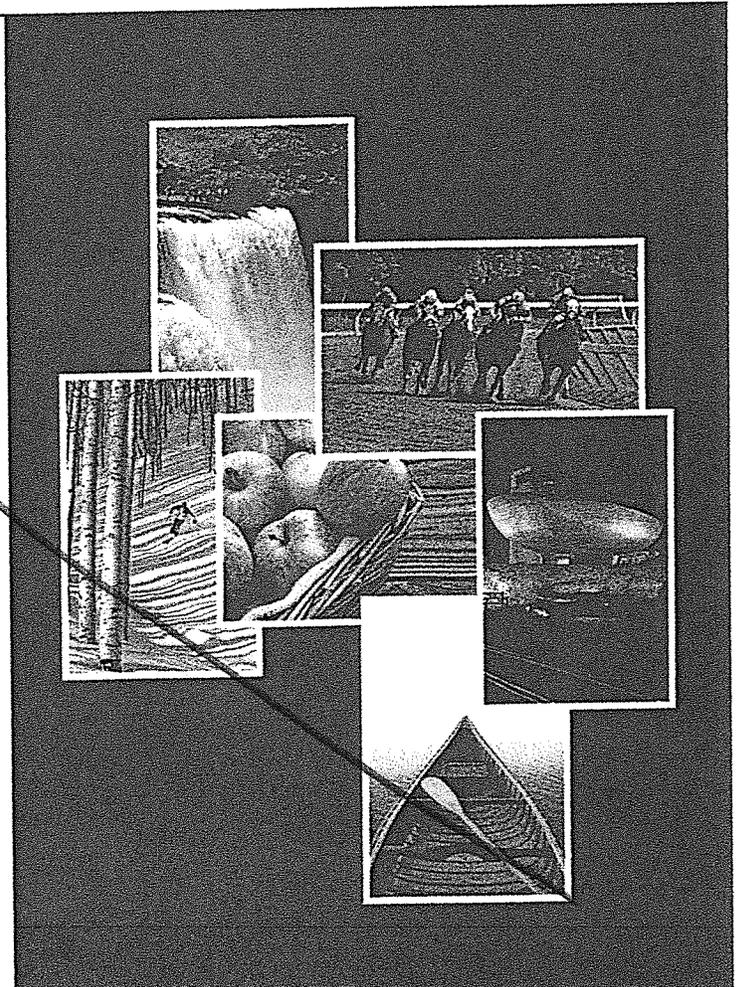


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specific legal services to the village, such as bond or labor counsel or to provide counsel to the zoning board of appeals or the planning board. The retention of these other attorneys via an independent contract may or may not warrant mayoral approval. When the responsibility of a lawyer is to advise the mayor with respect to one of his or her statutory responsibilities, the mayor's approval is generally warranted.

Factors to consider when deciding whether to retain separate lawyers are the added cost of paying two lawyers versus the confusion, conflict, and uncertainty that could arise if a single attorney becomes enmeshed in a disagreement between the mayor and the board. If a single attorney is retained to represent the mayor and the board, it is recommended that village officials have frank and open discussions about the process for retaining separate counsel should the need arise. Failure to do so can result in confusion about the ability to retain counsel without board approval and appropriation, an issue that was addressed in greater detail in the article "A Legal Conundrum: When Can a Municipal Official Retain Outside Counsel at the Expense of the Municipality Without Prior Approval?," NYCOM *Municipal Bulletin*, March-April 2009, pp 25-26, a copy of which is available in the 'Members Only' section of the NYCOM website www.nycom.org. In addition, defense and indemnification of employees is a separate but related issue and is discussed in detail in NYCOM's *Handbook for Village Officials*. Mayors and boards that are unable to agree on whether separate lawyers will be hired and the scope of those legal services run the risk of having to resolve the dispute in court; a proposition that is generally not inexpensive and which could potentially defeat the cost-savings of using only one attorney.

Defining Scope of Legal Services

To avoid confusion and the accumulation of unnecessary legal fees, village officials should address the scope of the services to be provided by the "village attorney" or separately retained lawyers at the outset of retaining legal counsel. Questions to address when defining a lawyer's scope of services are: who is the client, who may contact the lawyer, how may contact with the lawyer be initiated (i.e., via phone, email, and/or in writing), what topics may be covered in the correspondence, what is the content of the services provided (i.e., attending meetings, drafting proposed laws and resolutions, legal advice, litigating cases,

prosecuting cases, etc.), and what are the number of hours that may be billed per month without additional prior approval? It is essential to address these issues at the outset of legal representation to avoid confusion, conflict, and higher-than-expected legal bills.

Qualifications of Village Attorney

Regardless of how a village attorney is retained, whether as an employee, a public officer, or an independent contractor, the village board of trustees should expressly address (via local law or resolution) whether the "village attorney" or any other lawyer retained must reside in the village. If a village does not expressly provide that an attorney position is a public officer of the village, it is likely to be considered a position of employment.¹¹

Conclusion

The silence of New York State law regarding the position of village attorney is both a blessing and a curse. It provides villages with significant flexibility when structuring the position. At the same time, if a village fails to adequately address the role of the village attorney and how the position is to be filled, retaining a lawyer can become a contentious process. Village officials are encouraged to discuss these issues with their attorney. If that is not a possibility, officials may contact the NYCOM staff at 518-463-1185.

Endnotes

1. See *Di Prima v. Wagner*, 27 Misc.2d 380 (New York Co. Sup. Ct. 1961), citing *La Guardia v. Smith*, 288 N.Y. 1, 6-7 (1942).
2. Village Law §§ 4-404 & 4-412 are the primary provisions of New York State Law that delineate the powers of the mayor and board of trustees respectively, although these sections of statute are by no means the only provisions of law that set forth the powers of these public offices.
3. One may argue that there is little separation between the village mayor and village board of trustees because the mayor sits as a voting member of the board. The mayor does not exercise any more power on the board than any of the trustees, however. Thus, while there is a cross-over of mayoral power into the board of trustees, because the village mayor does not have the power to veto votes of the board of trustees, in some respects the village mayor's power is even more separated from the village board of trustees than the executive branches of the federal and state governments are from their legislative equivalents because of their veto powers.
4. Note that the Village Law may not be amended via resolution.
5. The Rules of Professional Conduct have been adopted via a state rule making. The citation for the Rules is 22 NYCRR 1200.0. The Rules may be viewed online at the Department of State website (www.dos.state.ny.us/info/nyer.html), the New York State Unified Court System website (www.courts.state.ny.us/rules/jointappellate/index.shtml), or the New York State Bar Association website (www.nysba.org).
6. See Comment 18 to Rule 1.7, the New York Rules of Professional Conduct with Comments, p.39.
7. While the Rules of Professional Conduct have been adopted by the State of New York via a rule making, the commentary are not part of the official rules. The Rules with commentary may be viewed online at the New York State Bar Association website at www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm.
8. *Haller v. Carlson*, 42 AD2d 829 (4th Dept. 1973).
9. *Cahn v. Town of Huntington*, 29 NY2d 451, 455 (1972).
10. *Hanna v. Reukowski*, 81 Misc.2d 498 (Sup. Ct. Onondaga Co. 1975).
11. See *Senecal v. City of Cohoes*, 27 A.D.2d 773 (3d Dept. 1967); *Rappel v. Roberts*, 79 Misc.2d 201 (Sup. Ct. Nassau Co. 1973); see also *Fisher v. City of Mechanicville*, 225 N.Y. 210 (1919).

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