

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
TOWN OF WOODBURY and the TOWN OF WOODBURY
TOWN BOARD,

Plaintiffs,

-against-

Index No. EF006036-2018

VILLAGE OF WOODBURY, VILLAGE OF WOODBURY BOARD
OF TRUSTEES and ORANGE COUNTY,

Defendants.

-----X

Monday
June 24, 2019
11:42 p.m.

EXAMINATION BEFORE TRIAL

of the Plaintiffs, TOWN OF WOODBURY and the TOWN
OF WOODBURY TOWN BOARD, by and through its witness,
FRANK J. PALERMO, held at the offices of Burke,
Miele, Golden & Naughton, 40 Matthews Street,
Goshen, New York before a Notary Public in and for
the State of New York.

ROBERTA O'ROURKE
Court Stenographer
P.O. Box 142
Cornwall, New York 12518
(845) 527-2572

2 A P P E A R A N C E S :

3

4 CATANIA, MAHON, MILLIGRAM & RIDER, PLLC
5 Attorneys for Plaintiffs
6 One Corwin Court
7 Newburgh, New York 12550
8 845-565-1100

9 BY: RICHARD M. MAHON, II, ESQ.

10 AND: JOSEPH G. MCKAY, ESQ.

11 AND: LIA FIERRO, ESQ.

12

13

14 BURKE, MIELE, GOLDEN & NAUGHTON, LLP
15 Attorneys for Defendants - Village of Woodbury
16 and Village of Woodbury Board of Trustees
17 40 Matthews Street, P.O. Box 216
18 Goshen, New York 10924
19 845-294-4080

20 BY: RICHARD B. GOLDEN, ESQ.

21

22

23 A L S O P R E S E N T:

24

25 Jacqueline Hernandez

26

27

28 N O T P R E S E N T:

29 ORANGE COUNTY DEPARTMENT OF LAW
30 Attorneys for Defendant - County of Orange
31 255-275 Main Street
32 Goshen, New York 10924
33 845-291-3150

34

35

36

2

STIPULATIONS

3

4

IT IS HEREBY STIPULATED, by and between the attorneys for the respective parties hereto, that:

5

6

7

8

9

10

11

12

13

All rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to the form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

14

15

16

17

18

19

20

21

22

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116 of the C.P.L.R., and shall be controlled thereby. The filing of the original of this deposition is waived.

23

24

25

IT IS FURTHER STIPULATED that a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FRANK J. PALERMO, the witness herein,
having been first duly sworn by Roberta O'Rourke, a
Notary Public of the State of New York, was examined
and testified as follows:

THE REPORTER: Will you state your
name, please?

THE WITNESS: Frank J. Palermo.

THE REPORTER: What is your business
address?

THE WITNESS: 615 Route 32, Highland
Mills, New York 10930.

EXAMINATION BY MR. GOLDEN:

Q Good morning.

A Good morning, Rick. How are you
doing?

Q Good. I'm going to ask you some
questions. If you don't understand the question,
please ask me to rephrase it. If you haven't heard
the question, because you've been thinking about
something else, which is very understandable I've
been in your seat and I understand that, just ask
for it to be repeated. Make all of your answers

1

2 verbal. Do you understand that?

3 A Correct.

4 Q Okay, thank you.

5 When was the first time that you heard
6 anything about a potential land swap between the
7 Town of Woodbury and the Village of Woodbury?

8 A It would have been somewhere, I'm just
9 trying to get the dates right. David had talked
10 about it, I think we voted on it in February of
11 2017, approximately around that time.

12 Q Let me take you back a little further.
13 Was that in February of 2017, and we'll go over
14 those minutes so we will refresh your recollection,
15 it certainly was discussed, but my question is when
16 did you first discuss it even before a town board
17 meeting?

18 A I don't know the exact date. It would
19 have been before that. But David had mentioned
20 something about it simply, you know, what did we
21 think of swapping the two lands. It would have been
22 a work session.

23 Q Would that have been in 2017 or 2016?

24 A Like I said I don't remember the exact
25 date. But it was definitely before the February

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

meeting, obviously.

Q And you discussed it at the February meeting, is that correct?

A Yes.

Q And it was also discussed at a later meeting in March, I believe?

A I'm not sure if I was at that meeting because I know that we talked, I know it's been discussed at -- David said he would give us information on it and all. I don't particularly remember that exactly. So I may not have been there at that time. I don't remember the exact meeting.

MR. GOLDEN: Can I have this marked as B, please?

(Whereupon, meeting minutes for the town board 2/16/17 were marked as Defendants' Exhibit B for identification, as of this date.)

Q I'm going to show you what's been marked as Defendants' Exhibit B, can you identify that generally for me, please?

A Looks like the meeting of the February 16th town board meeting.

MR. MAHON: Just to be clear, what

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

year was that, Frank?

THE WITNESS: I'm sorry, February 16,
2017.

Q Could you look on the third page of
that exhibit under the small letter C?

A Yup.

Q And does that discuss generally the
property exchange with the village?

A Well --

Q I'm just asking you yes or no does
that generally describe the property exchange with
the village?

A Oh, yes.

Q And that was the February 16th, 2017
meeting?

A Is that a question?

Q Yes.

A What was it again? I'm sorry.

Q Was that at the February --

A Yes.

Q -- 16, 2017?

A Yes.

Q And you were present at that meeting,
correct?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I think so, yes, yes.

Q And there was a motion made, if you look on the following page, there was a motion made by Supervisor Sutz, seconded by Hunter to authorize the supervisor to sign the required paperwork with respect to the exchange and that motion failed, is that correct?

A Correct.

MR. GOLDEN: Can I have this marked as C, please?

(Whereupon, meeting minutes of the town board 3/2/17 were marked as Defendants' Exhibit C for identification, as of this date.)

Q Now, I'm going to show you what's been marked as Exhibit C, could you identify that for me, please?

A Looks like the minutes at the town board meeting of March 2nd, 2017.

Q And was the issue of the land swap discussed at that meeting?

A Point me out where it is? I'm sorry.

Q At the very bottom of page one going on to page two.

1

2

A Okay. Well, yeah, obviously it was discussed there.

3

4

Q No action was taken at that March meeting, is that correct?

5

6

A On this issue? Correct.

7

Q Yes, thank you.

8

Could you please look at Exhibit 7?

9

You can take the clip off and make it easier for you.

10

11

Look at Exhibit 7, please?

12

A Okay.

13

Q And could you identify that for the record, please?

14

15

A It is the town board minutes on July 20, 2017.

16

17

Q Was the land swap discussed at that meeting?

18

19

A Yes, it was.

20

Q Was any action taken by the town board at that meeting?

21

22

A Yes, it was.

23

Q And what action was taken?

24

A The town board had motion -- had asked that the supervisor should look into the exchange.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

We gave them permission to look at the exchange. I voted no, for the record.

Q Where does it say that the supervisor was authorized to look into the exchange?

A I don't know if it exactly says it here, but that was the assumption that he was going to get all of the paperwork and bring it to the, our attorney to oversee it and then we would move forward if we decided to move forward.

Q Why don't we stick with the facts and why don't you tell me what was the motion that was authorized?

MR. MAHON: I'm going to object to the form of that question.

MR. GOLDEN: Well, it was nonresponsive but I'll make that motion at another time.

A The motion was offered by Arone, Councilman Arone, seconded by Hunter that they authorized the supervisor to sign any and all documents relating to the property exchange with the Village of Woodbury as follows, upon final preparation, review and authorized by counsel.

Q Now sometime after July 20th, 2017 you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

learned that that had actually occurred, correct?

A Correct.

Q And when did you learn that?

A When I became the supervisor 2018, if I am not mistaken January.

Q The first day?

A No, January 9th I think it was, if it's in one of these. I know it's in one of these, in my testimony, around January.

Q How did you find out?

A I happened to go up and see the assessor Laura Breslin and I happened to ask her whatever happened with the land exchange.

Q And what did she say?

A She told me it's been done.

Q And do you know when she knew?

A I don't want to assume to know what she knew.

Q I don't know whether or not she told you what she knew. I'm asking from your knowledge?

A She knew before I did, that's for sure.

Q Now, one of the parcels that the supervisor was authorized to sign any and all

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

documents upon final preparation, review and authorization by counsel, was section 19, block five, lot 21, correct? You can look at the resolution.

A I'm assuming that's the --

Q Why don't you look at the resolution.

A Okay.

Q So section 219, block five, lot 21 was one of the parcels that were involved in this swap, correct?

A I was reading so please repeat it.

Q Sure. Section 219, block five, lot 21 was one of the parcels that was included in this land swap?

A Correct.

Q And there was also included within this land swap as contemplated by the entirety of this resolution a portion of lot 20, correct?

A That's what it says.

Q Now, do you know what was included on lot 20?

A No. All I see here is highway garage and salt shed.

Q Was the senior center also included in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

lot 20?

A It was a part of lot 20.

Q So you have the senior center, also the library, you had a parking area, all of that was on lot 20 as well at that time, as was the highway garage and salt shed?

A Correct.

Q Anything else?

A Well, you've got all of that land that's in front of the salt shed. It goes all the way out to 105.

Q Now, you believe that Earl Reservoir was owned by the village and not a town water district, correct?

A Yes.

Q And in fact --

A At that time?

Q Correct. And in fact you allege that the town, former town Supervisor Sutz couldn't have transferred any village property, correct?

A Correct.

Q And therefore the transfer of the reservoir property was void for that reason?

A I believe so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Is that not what you allege in the Complaint?

A Yes.

Q And you also say that the Earl Reservoir conveyance or the town also alleges, I should say, that the Earl Reservoir conveyance is void because it alienated parkland without state approval, correct?

A That's my understanding, yes.

Q Isn't that what's alleged in the Complaint?

A Yes, yes.

Q So if that transaction is void because the water district couldn't transfer that property and because of the lack of state legislative authority then Earl Reservoir still remains today village property?

MR. MAHON: Objection to the form of the question. You can answer that question.

A I'm trying to answer it, I don't understand the question.

Q I'm trying to understand the Complaint. My understanding of the Complaint, and that's why I'm asking you to confirm that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

understanding or not --

A Okay.

Q -- the Complaint says that that transaction was void for two reasons, and you recognize that prior to that transaction Earl Reservoir was owned by the village?

A Correct.

Q So if that transaction gets voided --

A Then it would be owned by the village again, yes.

Q And that's what you're asking to happen?

A Correct.

Q The lawsuit also objects to the fact that there was no subdivision approval that was granted to lot 20, is that correct?

A Yes.

Q And do you know why the town would have any right to object to that?

A I'm not understanding. Object to what?

Q The fact that there was no subdivision, that the Village of Woodbury didn't subdivide the property?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Correctly.

Q Right.

A Yes, the town does object to that.

Q And do you know whether or not you have a right to object to that?

A It's our property, it would be nice to know that it was subdivided correctly.

Q Do you also believe that the senior center, the new senior -- the new lot that the town has that contains the senior center, the library and the parking area cannot be used at all?

A I don't think anyone said that it couldn't be used, it can be used.

Q Could you look at the Complaint, Exhibit A, paragraph 16, the last sentence?

A This new gerrymandering lot is all that is left of the land directly adjacent to the senior center and library, and this dramatically reduced lot size, upon information and belief, renders the new lot non-conforming and incapable of being used, modified or improved by the town in the future.

Q Is that correct, that it's incapable of being used?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I don't think that that was how we meant it to be. I think it was more that it can't be modified or improved.

Q It could be modified somewhat but you're saying that it's because you could put on an addition to the library and just take out some of the parking spaces, correct?

A Yes, but can I just explain something to that?

Q Sure.

A I think that the property line goes right up to the fence which makes it non-conforming. And I don't know if going before a planning board, because that's what we would do, would allow us to do all of that with the property being non-conforming. That's what was meant by us.

Q Not that it couldn't physically be modified or improved by the town?

A Correct.

Q Just that you would have to seek approval to get it done?

A Probably.

Q And if there is a mechanism under the law by which you didn't have to go to the village to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

have that done you could also do it that way then?

A We probably can, but any improvement that came out from the property now limits us on parking, so.

Q So it's really just a calculation on parking issues rather than the buildings themselves cannot be used, modified or improved?

A You can always improve the buildings going up.

Q Now, in paragraph 22 can you read the last sentence paragraph 22?

A I think it's all one sentence.

Q No, there's two sentences.

A Oh I see it. The town's parks department has continued to maintain the Earl Reservoir Park pursuant to an Intermunicipal Agreement with the village.

Q Now you're aware, are you not, that the Intermunicipal Agreement that existed between the town and village expired in 2012?

A We, the town, have a new IMA with the village that was done in 2014.

Q And that agreement is still in effect?

A Correct.

1

2

Q Turn to paragraph 40, please? Have you read that?

3

4

A Oh, I'm sorry.

5

6

Q I'm just asking you to read it to yourself, that's all.

7

A No problem. Yes.

8

Q Now, you were present before when Councilperson Hernandez testified that an effort was made to keep the town attorney from town board meetings at which you discussed the property swap as an effort that was taken in this regard, correct?

9

10

A I believe so, yes.

11

12

13

14

15

Q Do you know of any other efforts that were taken to ensure that the town board, the attorney for the town and the engineer for the town were kept out of the property exchange process all together?

16

17

18

19

20

21

22

A I believe that the fact that he wouldn't go before the planning board was a way to ensure that we did not know about it. That would be another way that I would say so. That the deeds were signed by, well, and notarized by the village clerk/town clerk and we were never notified of that which would be something that she would do all the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

time. So I find that those things are pointed in the direction that we weren't to know about what was going on.

Q Are you aware of any law whatsoever by which Earl Reservoir was made inalienable that it was made a parkland?

MR. MAHON: I object to the form of the question. You can answer the question.

A Specifically, no.

Q I have no further questions.

MR. MAHON: I have questions for this witness, I want to take a short break first.

MR. GOLDEN: Not to talk to the witness though, right?

MR. MAHON: No.

(Whereupon, a recess was taken.)

MR. MAHON: Rick, I assume that you're aware of CPLR 3113C, and I'll read it because I get this all the time at depositions, it says when the deposition of a party is taken at the instance of an adverse party the deponent may be cross-examined by his own attorney. Cross-Examination need not be limited to the subject matter of examination

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

in chief. And usual reaction is hey what are you doing, this is my deposition. So I just wanted you to be aware of that.

EXAMINATION BY MR. MAHON:

Q I'm going to show you first what's been marked as Plaintiffs' Exhibit 7, do you see that?

A Yes, I do.

Q And those are the minutes of July 20th, 2017 of the town board of Woodbury, is that correct?

A Yes.

Q Take a look at the bottom of the very first page?

A Okay, do you want me to read it or no?

Q I'm going to read a portion, I'm going to ask you a question about it. It said motion was then offered by Councilman Arone, seconded by Councilman Hunter, to authorize the supervisor to sign any and all documents relating to a property exchange with the Village of Woodbury as follows, upon final preparation, review and authorization by counsel, do you see that?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes, I do.

Q My question is this, at any time after this meeting, July 20th, 2017, to your knowledge were documents, meaning deeds, survey maps or anything of that sort presented to the attorney for the town for approval or review?

MR. GOLDEN: Objection to the form of the question.

A Are you asking me if it was given to our attorney or also the board --

Q Well --

A -- or both?

Q -- first based on your knowledge to your attorney?

A No.

Q And then after that how about to you or to any other board member?

A No.

Q Let me ask you, Mr. Palermo, that language that I just read to you, and I'll read the last portion again, upon final preparation, review and authorization by counsel, do you see that?

A Yes.

Q Why was that language included in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

this, in these minutes, do you know?

MR. GOLDEN: Objection to the form.

A Usually whenever we are doing anything that we cannot see all the total information we always request that it goes to the attorney and then he gets back to us with any legal information that he wishes to give us.

Q You were previously shown by

Mr. Golden what has been marked as Defendant's Exhibit C which is the minutes of a town board meeting held on March 2nd, 2017. I'm going to read a portion of the document, I'm going to show it to you again, okay? And I'm looking on page two of Defendants' Exhibit C, I believe you were referred generally to this section by Mr. Golden and in the minutes it states Attorney McKay is also researching what Harriman is taxed for highway property versus what they are not taxed for the park property. Supervisor Sutz noted he invited the village board members to attend a meeting once he puts together a packet for both boards with visuals of both properties. Councilman Hunter noted the board began discussing this issue in February of 2016 with Attorney McKay and does not want to see it delayed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Supervisor Sutz stated that he hopes to discuss it again at the next meeting or in April. You can take a look at the language.

The question I have is this, I just read to you from minutes of March of 2017, at any time after that point did Supervisor Sutz or anybody acting on his behalf ever deliver to you a packet of information?

A No.

Q Are you aware whether such packet of information with visuals as he indicates was ever delivered to any other member of the town board?

A Not that I know of.

Q Do you know whether that packet or anything like that was ever delivered to the town clerk?

A I don't know.

Q I'm going to show you what's been marked previously, take a look at Plaintiffs' Exhibit 3 which is a copy of the deed dated August 18th, 2017, do you see that?

A Yes.

Q Is the deed signed by somebody?

A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Who is it signed by?

A David Sutz, supervisor.

Q Did you have any conversations with Mr. Sutz about this particular deed before he signed it?

A No.

Q Were you aware that Mr. Sutz was signing such a deed on behalf of the town?

A No.

Q Now, the date of the deed is August 18th, 2017, is that correct?

A Correct.

Q And you served on the board through the very end of that year through December 31st of 2017, is that correct?

A I'm sorry, I was looking at something.

Q Well, first let me ask you this, in August of 2017 you were on the town board for the Town of Woodbury?

A Correct.

Q And you continued to serve on that board through the end of the year December 31st, 2017?

A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q My question is this, at any time after the date of this deed August 18th, 2017 through the end of the year December 31st, 2017, did David Sutz ever tell you that this deed had been executed?

A No.

Q Did he ever tell you that this deed had been recorded in the Orange County Clerk's Office?

A No.

Q And after this date August 18th, 2017 did you have any other board members for any other board meetings for the rest of the year?

A Yes, twice a month.

Q I'm going to show you what's been marked as Plaintiffs' Exhibit 6, take a moment and would you look on page three? I'm going to give the exhibit to you. I'm going to read a portion and then hand it to you. It says motion was then offered by Trustee Egan, seconded by Trustee Crouse, to authorize the mayor to sign any and all documents relating to a property exchange with the Town of Woodbury as follows, upon final preparation, review and authorization by counsel, do you see that language I just saw there?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Is that the same language that appears in the resolution of the minutes of July 20th, 2017 with respect to the town?

A Yes.

Q Do you know if that preparation, review and authorization occurred by any attorney for the village?

A Not that I'm aware of.

Q Now, Mr. Golden asked you about when you first learned of the property exchange having gone through. I believe you testified you learned that in January of 2018 --

A Correct.

Q -- is that correct? I think you also testified that you learned that from the town assessor --

A Yes.

Q -- Laura Breslin, is that correct?

A Correct.

Q When you learned that the deeds had already been recorded, what was your reaction?

A I don't know if I can legally say it.

Q Just tell us.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I was very surprised.

Q Why were you surprised?

A Because we knew nothing about it. It was news to me.

Q Looking at the July 20th resolution again, I believe you have that in front of you there?

A Yeah.

Q Now, just to be clear, these minutes were approved by your town board at the next meeting after this date, is that correct?

A Correct.

Q Did your board have a normal procedure with respect to approval of minute meetings?

A Yes.

Q And what was that procedure?

A The supervisor would ask for a motion and a second to approve the minutes.

Q And on this particular occasion on July 20th, 2017 all of the town board members were present for this vote, is that correct?

A Correct.

Q And with respect to the transfer of the town property you voted against it?

1

2

A Correct.

3

Q Why did you vote against it?

4

A I didn't think it was the right thing

5

to do.

6

Q Why?

7

A I've always felt that the town should

8

not give up its equities, I stated that many a

9

times. I also felt that the property that was being

10

exchanged was not fair exchange. We had use of the

11

land why would we want to change it.

12

Like for the reservoir, we were

13

getting a piece of property that we already had

14

complete use of, so why would we want to exchange

15

something that we've already got going for us.

16

Q Now, when this motion passed to

17

authorize the supervisor to sign any and all

18

documents relating to a property exchange at that

19

time did you have in mind who would prepare those

20

documents?

21

A I always thought it would be our

22

attorney.

23

Q Did you authorize another attorney to

24

prepare those documents?

25

A No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Did you or the board members authorize the conveyance or the transaction to go forward without the review of your attorney?

A No.

Q I just wanted to clarify something in your testimony, Mr. Golden asked you about efforts that were made. Remember he used the word efforts and he was reading from the pleadings, to keep the town's attorney out of the process, do you recall that?

A Yes.

Q And was there any effort, as far as you know, on the part of Mr. Sutz to provide you either a visual or a packet of any nature with respect to this property exchange?

A He never offered.

Q On the date of the July 20th, 2017 meeting do you know if your attorney, Joseph McKay, was present that evening?

A He was not and I questioned it.

Q Well, why was your attorney not present that evening, do you have an understanding why?

A Yes, David said that he asked him not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to be there.

Q Is that a procedure that the town would follow that the supervisor could basically tell the attorney we don't need you tonight or we don't need you for this meeting?

A I have done it on an occasion only if I knew that there were no legal things coming up for the board.

Q And less than a month after that meeting, the July 20th, 2017 meeting, the deeds for these parcels were executed, is that correct?

A Yeah. In fact, if I'm not mistaken, they were done less than a month from the village's vote. It came after ours so you figure it's three weeks almost.

Q Now, let me ask you this, and I don't believe Mr. Golden touched on this, when you were there that evening on July 20th, 2017 and you voted against it and you were the sole vote against it, and this was approved upon the review, authorization and preparation by the attorney, at that point in your mind did you have an understanding of how this would play out or how this transaction would ultimately be approved?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No. Well, let me put it this way, I didn't think it would be approved the way it was.

Q When you left the meeting did you have the understanding that Supervisor Sutz could prepare the deeds and record the deeds or file the deeds without ever coming back to the town board?

MR. GOLDEN: Objection to the form of the question.

A No.

Q Do you understand the question?

A Yes. No, I did not believe that he would do that, but he did.

Q Did you have an understanding then, just to be clear, that something would be presented to the board whether it's a deed, whether it's a survey, whether it's a plot plan, that the board could review?

A I thought we were going to get that, yes.

Q I'm going to show you what's been marked as Defendants' Exhibit B, it's the last few questions I have for you, I'm going to refer you to the top of page four, I'm going to read a portion and then I'm going to show it to you. The bottom of

1
2 page three, as Mr. Golden pointed out, there was
3 discussion of the property exchange with the
4 village. At the very top of page four it says
5 motion was then offered by Supervisor Sutz, seconded
6 by Councilman Hunter, to authorize the supervisor to
7 sign the required paperwork to be filed with the
8 county to exchange property from the town to the
9 village and from the village to town once prepared
10 and reviewed by Attorney McKay. And I want you to
11 look at that and that was a motion that was made by
12 Supervisor Sutz. Do you see that?

13 A Yes.

14 Q Do you see that Supervisor Sutz's
15 motion he included by name Attorney McKay?

16 A Yes, he did.

17 Q And ultimately that vote, that vote
18 was unsuccessful, is that correct?

19 A Correct.

20 Q I have nothing further at this time.

21

22 **EXAMINATION BY MR. GOLDEN: (CONTINUATION)**

23 Q I have just a couple of questions.

24 Hello, again.

25 A How are you?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Now, July 20th was the last town board meeting that the land swap was discussed according to you, is that correct?

A Correct.

Q Now, did you discuss it with any other town board members outside of the town board meeting context between then and the beginning of January when you said that you spoke to the tax assessor?

A I don't recall any conversations.

Q Did you discuss it with the assessor prior to the beginning of January with respect to this?

A No, no.

Q Did she discuss it with you?

A No.

Q Did you discuss it with any other person?

A No. The one thing I've learned in almost 14 years you win some, you lose some.

Q I don't know what that means.

A It means you're going to win some -- you're going to win some motions and you're going lose some motions and you just move on.

Q Even after you lose or win a motion

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

it's not unusual for you to talk about the motion after the win or the loss in your characterization?

A I really don't recall specifically talking about what happened.

Q You didn't ask any follow-up questions of David or of any of the other town board members or anybody else, the town engineer?

A No, no. The only thing I could have possibly mentioned to anyone is did you know about it, but I didn't get into anything else. And I don't even, I know the engineer knew nothing about it. But, no, no specific.

Q Did you know anything about what -- are you saying the land transfer actually happened or the July 20th discussion?

A No, just about what was going on.

Q The land swap generally?

A Yeah, generally, yeah.

Q So it was sort of a blackout between July 20th and the beginning of January?

MR. MAHON: Objection to the form of the question.

A I don't know if I would call it a blackout. I just moved on.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q So no discussion?

A Because I -- no, I just assumed that eventually we would get a copy of the stuff and we would get a chance to discuss it.

MR. GOLDEN: I'd like to have this marked, please?

(Whereupon, a voucher - 12/5/17 was marked as Defendants' Exhibit D for identification, as of this date.)

MR. MAHON: This is D, right?

MR. GOLDEN: Yes.

Q Mr. Supervisor, could you please look at what has been marked as Exhibit D and just generally describe that for me?

A Looks like a voucher for the Kiryas Joel versus Town of Woodbury by Joe McKay.

Q Can I see that, please? And what's attached to that voucher?

A It looks like itemized from Joe McKay's office correspondence of what he charged us.

MR. MAHON: I'm sorry, just for the record, attached are two pages, pages four and five and it appears to be part of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

larger document.

MR. GOLDEN: These are documents that we received under FOIL, so I don't have anything other than what was produced to me by the town.

MR. MAHON: Okay, good.

MR. GOLDEN: If you want to provide those other pages, I would be happy to look at them.

MR. MAHON: Sure.

Q The second page of Exhibit D is marked page four, is it not?

A Yes.

Q And it's a listing, typical of what you would find from an attorneys's office of the date, the initials of who worked on it, what was done, the time that was spent on it and the carrying out of the hourly rate by that time for each particular task from the office of Catania, Mahon, Milligram & Rider, correct?

A Okay.

Q Is that correct?

A Yes. I'm sorry.

Q Could you look down to the following

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

page which is numbered as page five, if you would look at July 21? Do you see that?

A Yup.

Q Do you know who LEF is?

A No.

Q Do you know who JGM is?

A That would be Joe McKay.

Q And what does that say there?

A On which one?

Q The one where July 21 LEF I'll read it, conference with JGM re property swap proposal with Village of Woodbury.

A Okay.

Q And the following one is LEF research whether proposed land swap requires permissive referendum?

A Okay.

Q Do you see both of those?

A Yes, I do.

Q And do you see down on July 25th for JGM it says review exchange of land with Village of Woodbury, do you see that?

A The 25th?

Q Yes.

1

2

A Oh, wait. Okay, yes, yes, yes, yes.

3

.80?

4

Q Yes.

5

A Okay.

6

Q Would you also look at page four on

7

July 19th?

8

A Okay.

9

Q Again by JGM it says review file re

10

Earl Reservoir properties and review prior; memo to

11

town board; analyze whether referendum and/or

12

legislative approval is required, do you see that?

13

A Yes, I do.

14

Q Did you ever get a memo with respect

15

to that issue?

16

A Not that I know of. Not that I

17

recall, no.

18

MR. GOLDEN: I ask for a production of

19

that memo, obviously blackening out the

20

substance of the memo, but simply keeping in

21

that memo the to/from and date?

22

MR. MAHON: We'll take the request

23

under advisement.

24

25

INFORMATION REQUESTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. GOLDEN: Will you mark this?
(Whereupon, a voucher - 1/29/18
was marked as Defendants' Exhibit
E for identification, as of this
date.)

Q I'm showing you what's been marked as
Defendants' Exhibit E. Can you generally describe
for me what it is?

A It is a voucher from Joe McKay general
advice 2017 Town of Woodbury.

Q And on the second page, page three of
the attorney's itemization of the bill, is that
correct, or a portion of it on page three?

A Yes.

Q Can you go down to the date of
December 14th, 2017?

A Okay.

Q There's a charge by JGM, it says
teleconference with Councilman Palermo re property
transfers?

A Okay.

Q So did you discuss property transfers
with Mr. McKay on or about December 14th, 2017?

A I would have to say I did.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Do you know whether or not that involved the solicitation for or receipt of legal advice?

A I don't think so. I don't recall, you know, what the exact conversation was about.

Q Do you know if the conversation included other than legal advice either solicited or given?

A If I were to -- is that under the attorney/client privilege?

Q Not the way I'm asking for it now.

A Okay.

Q If I ask you anything that's improper you will be directed not to answer the question. I'm being very careful trying not solicit any --

A Can you repeat it?

Q Sure. Do you recall whether during that teleconference with Mr. McKay concerning the property transfers that there was anything discussed that was not the solicitation for or the receipt of legal advice from or to Mr. McKay?

A I don't recall.

Q You obviously discussed it at least with Mr. McKay prior to the end of the year?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Well obviously --

MR. MAHON: I'm going to object to the form of the question too.

Q And that's all I have.

(Whereupon, the proceeding was concluded.)

(The jurat is on the next page.)

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEW YORK)
COUNTY OF _____)

I have read the transcript of my testimony taken at the time and place noted on the title page, and I acknowledge it to be true and correct. Any and all corrections will be put on the errata sheet included at the end of this transcript.

Frank J. Palermo

Sworn before me this
____ day of _____, 20__.

Notary Public

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

W I T N E S S I N D E X

Examination by Mr. Golden4
Examination by Mr. Mahon21
Examination by Mr. Golden - Cont'd ..33

E X H I B I T S

Defendants'	ID
B meeting minutes for the town board 2/16/17	6
C meeting minutes of the town board 3/2/17	8
D voucher - 12/5/17	36
E voucher - 1/29/18	40

I N F O R M A T I O N R E Q U E S T E D

Page 39 - Production of memo to town board July
25, 2017 blackened out.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, ROBERTA O'ROURKE, a Stenotype Reporter and Notary Public within and for the State of New York, hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn or affirmed by a Notary Public and that the transcript of said examination is a true record of the testimony given by the said witness; and

That I am not related to any of the parties in this action by blood or marriage, and I am in no way interested in the outcome of this matter.

Roberta O'Rourke

Roberta O'Rourke