

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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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
2:30 p.m.

EXAMINATION BEFORE TRIAL

of the Plaintiffs, TOWN OF WOODBURY and the TOWN OF
WOODBURY TOWN BOARD, by and through its witness,
TIMOTHY ARONE, 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

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STIPULATIONS

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

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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.

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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.

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

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T. Arone

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TIMOTHY ARONE, 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: Timothy Arone.

THE REPORTER: What is your business address?

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

EXAMINATION BY MR. GOLDEN:

Q My name is Rick Golden, as you know, and I'm representing the Village of Woodbury in the lawsuit brought by the Town of Woodbury against the Village of Woodbury.

I'll be asking you several questions about this. If you don't understand my question, please let me know and I'll rephrase the question. I want to make sure that you understand it.

A Okay.

Q If you didn't hear the question or a

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part of the question for any reason, just ask that the question be repeated or we can have it read back from the stenographer, okay?

A Okay.

Q And finally the only thing the stenographer can take down are verbal responses, no shakes of the head or groans or sighs or whatever, okay?

A Understand, understood.

Q Can you look at Exhibit 7 that's before you? Exhibit 7 is over here.

A Is Exhibit 7 the whole thing or just the top?

Q Exhibit 7. That's Exhibit 1. Exhibit 7 is in this pile. It's been identified that these are meeting minutes of the town board held on July 20th, 2017. And you will see on the first page under old business it discusses exchange of land with Village of Woodbury. Do you recall that meeting?

A Yes.

Q And that was the meeting in which a motion was offered by you to authorize the supervisor to sign any and all documents relating to

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2 a property exchange with the Village of Woodbury as
3 follows, upon final preparation, review and
4 authorization by counsel from the town to the
5 village, I'm just going to paraphrase here, lot 21
6 and a portion of lot 20 and going on to the next
7 section from the village to the town, Earl's
8 Reservoir, is that correct?

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A Yes.

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Q Now, if you look on the first page
11 about halfway down in that paragraph on the exchange
12 of land the sentence starts Councilman Arone stated,
13 it's about 10 lines down or so, do you see that yet?

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A Councilman Arone stated he, that
15 sentence?

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Q Yes. So it says Councilman Arone
17 stated he spoke with Superintendent Wyatt (phonetic
18 spelling) and the village has budgeted for some
19 minor and major repairs that are needed to the
20 building. And then there was something else, maybe
21 that was it? What were you making reference to
22 there?

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A In regards to the sentence Councilman
24 Arone stated he spoke with Superintendent Wyatt?

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Q Yes.

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A Superintendent Wyatt stated that he, since the building was owned by the town, that he had --

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Q Which building are we talking about now?

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A The garage and the salt shed was owned by the town, that he wanted to do some repairs but it was, but the repair work was budgeted in the village budget not the town budget.

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Q And what was the consequence of that?

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A Basically he was saying that he has to go, because he has to do the repairs because we own the building, we have to get permission -- we have to give him permission to do the repairs because we are the building owner.

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Q Was that a problem?

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A He never approached us to ask us in regards to if he wanted to do any repairs or not.

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Q Did you foresee that or did you see that as a problem that the village would have to come to the town for permission to do repairs?

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A I really can't answer that because it was never brought to me, that question was never said hey could you, do you have a problem with it or

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hey we want to do X, Y, Z repair, never came to us so.

Q When did you first learn of the land swap?

A The problem with the land swap or the initial discussion of the land swap?

Q The initial discussion of the land swap.

A Supervisor Sutz said at a meeting, I don't know the exact day, I know when I found out that there was the transfer happened, I know that date, I don't remember exactly when we had the discussions of the start of the conversations of the potential swap.

Q When did you find out what had happened?

A April of 2018. So after Supervisor Sutz was out of office.

Q And what was the circumstances there in April of 2018 that you found out about it?

A We had an executive session and I learned about it in executive session.

Q Now, is it your understanding that before the land swap that Earl Reservoir was owned

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by the Village of Woodbury?

A The way -- I never saw the deed so I don't know who the exact owner was, but it was approached to us that the village owns the water and the town owned the, the town owned the rest. And the swap would have just been this goes to the village and then this goes to the town.

Q Did that make general sense to you that swap, you voted for it a couple of times?

A I only voted for -- what I voted for was to have it go, to take it to the next step.

Q No, I understand.

A And then based off of that then I would have made a final decision. I didn't want to be a cod in the wheel to stop the process because we were looking to build a building up there.

Q Well, in the July minutes --

A Uh-hum.

Q -- you voted in favor of it going forward subject to review by counsel, correct?

A That's correct.

Q So there wasn't anything further substantive wise, it's just a document is going to be prepared by an attorney?

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A The point was it never went to the attorney and we never got, we always get a memo from our law firm of here's what it is, what legal consequences there are, and then we always have a meeting before the final vote. So it's not just a paperwork issue in my opinion, that was a substantive thing that never happened. All I voted for was to have it go to Attorney McKay's office referring to you.

Q Will you look at Exhibit 7 again?

A Sure.

Q Does that motion at the bottom of page one just say the motion by you was simply to send it to counsel, is what you're testifying now?

A Well, upon final preparation, never took place, review and authorization by counsel, never took place. So that never, that never occurred, so.

Q Assuming, without agreeing with you, that that never occurred, this was a motion by you to authorize the supervisor to sign any and all documents relating to a property exchange with the village with specifically, specific properties noted below, and that is upon final preparation, review

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and authorization by counsel of the documents. And you're saying that you didn't think it was a good idea for the property exchange at that point in time?

A I'm saying I voted to move it to the next step which would be review by the attorney, is all I'm simply saying.

Q I'm sorry, I interrupted, I apologize, go ahead.

A All I'm saying is I gave you authorization to take it to the next step which was take it to the attorney which once again never happened.

Q You gave authorization for the supervisor to sign any and all documents that were prepared?

A You are missing the point.

Q I'm not missing anything.

A The last thing upon final preparation, review and authorization, that never occurred. So the motion, that's what we authorized to do. So we did part A and then part B never occurred.

Q Let's get back to my initial question.

A Okay.

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Q Did you think that the swap was a good idea? I'm not talking about whether or not the attorney ever looked at it, I didn't ask that question, do you think that it's a good, it was a good idea?

A I did not have all of the facts to -- what was told to us was one thing and then what was fact to be able to make the final determination, that didn't, that didn't occur.

Q So you had no idea whether it's a good deal or a terrible deal?

A I wanted, once again, to deal with the entire facts because there was some legal questions, debate on regards to the transfer of the water.

Q What were the legal questions that were in debate?

A Some people said you had to get state legislation because it's parkland, supervisor Sutz said no. People called the Association of Towns or somebody said the Association of Towns said something different. There were different things. So there were legal things of oh okay I'm not a lawyer I'm just a Joe insurance guy. So that's where we would have to rely on Attorney McKay's

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office for an opinion on that.

Q Have you ever taken any other motion or made any other motion yourself in which you've authorized the supervisor to sign something in which you have no clue whether or not you want to go forward with the action or not?

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

MR. GOLDEN: That's fine.

Q I'm sure you understand the question, right?

A Can you repeat it?

(Whereupon, the last question was read back.)

MR. MAHON: The same objection. If you understand the question you can answer it.

A Past supervisors would always go ahead if there was, if they are telling us we're supposed to -- supposed to get a packet to review and all I'm asking is to take it to the next step and then we'll make the final determination, yes, I have, I have done that before.

Q On what other occasion have you done that?

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A I've been in office for seven and a half years, I can't remember off the top of my head.

Q In which you were promised packets you didn't get and therefore you just voted to go to the next step?

A We have been promised in regards to authorizations subject to attorney approval and then Supervisor Burke would say hey board members we would get a memo from Attorney McKay's office and then Supervisor Burke would say you know guys now we got this, any questions, you know, I'm going to go ahead and sign this.

Q But the form of the motion initially was to give the supervisor authority to sign those documents?

A Pending legal approval or if there's an insurance renew we would have a discussion to go ahead and, you know, authorize the supervisor to sign the insurance renewal, is an example.

Q All of those were recorded in minutes, right, so we'll be able to check that?

A Sure, go for it.

Q I have no further questions.

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EXAMINATION BY MR. MAHON:

Q I have some questions for you, Tim.

A Okay.

Q The Defendants' in blue here,
Plaintiffs' Exhibits in yellow. These are numbers,
these are letters.

A Okay.

Q Would you first take a look at
Defendants' Exhibit B? And just for the record
Defendants' Exhibit B is a copy of the town board
minutes from February 16th, 2017. Do you see that?

A Yes.

Q I'm going to refer you to page two,
take a look at page two?

A I am.

Q I'm sorry, the beginning of page
three, in the middle of the page. Do you see that
there's an agenda item that says property exchange
with village?

A Yes.

Q And there's a discussion and it
carries over onto the next page?

A Yes.

Q And then after the discussion there

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2 was a motion made, I'm going to reeled it and ask
3 you a question about it, it says motion was then
4 offered by Supervisor Sutz seconded by Councilman
5 Hunter to authorize the supervisor to sign required
6 paperwork to be filed with the county to exchange
7 property from the town to the village and from the
8 village to the town once prepared and reviewed by
9 Attorney McKay, do you see that?

10 A Yes.

11 Q And you recall that that was
12 Supervisor Sutz's own motion?

13 A Yes.

14 Q And you were present for that?

15 A Yes.

16 Q And ultimately that motion did not
17 carry, is that correct?

18 A Correct. Can I point something out at
19 that meeting?

20 Q Sure.

21 A If you also notice too Councilman
22 Arone suggested the topic be discussed further --
23 actually hold on, where was it. Councilman Arone
24 suggested the mayor come to a meeting.

25 MR. GOLDEN: Objection, this is beyond

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the question. No narratives are allowed here.

MR. MAHON: Unless he was clarifying his testimony.

MR. GOLDEN: He wasn't, he wasn't clarifying, it was to add something.

MR. MAHON: I'll ask him a question.

Q Take a look at page four at the top of the page and it says Councilman Arone suggested the village mayor come to a meeting to speak to the board about the proposal, do you see that?

A Yes.

Q So that was a suggestion that you made to the board, is that correct?

A That's correct.

Q Did the village mayor actually come to a later meeting of the board?

A He did not, nor did any other village representative.

Q Do you know if a request was made for that purpose by the town to the village?

A I made the suggestion and Supervisor Sutz said he was going to prepare a packet and he was going to have a representative from the village

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come to a meeting, which never occurred either.

Q Now take a look at Exhibit C? You've got Exhibit C there as well. And take a look at page two of Exhibit C? Actually if you look at the very bottom of the first page it says old business and it says extra item pre-fab building at Earl's Reservoir, and that discussion carries over to page two.

A Uh-hum.

Q At the top of the page first sentence it says Supervisor Sutz stated that he spoke with Attorney McKay this morning about the land swap issue. Attorney McKay will investigate the issue and see if he can locate a recent survey done on the property.

And my question is if you can, down to the end of that paragraph, I think it's the third sentence, it says Supervisor Sutz noted he invited the village board member to attend a meeting once he puts together a packet for both boards with visuals for both properties, is that what you're referring to?

A Yes.

Q And did Supervisor Sutz ever provide

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you with that packet?

A No.

Q And, to your knowledge, did Supervisor Sutz ever invite the village board to come and discuss this issue together?

A Not to my knowledge.

Q Take a look at Exhibit 7, that's Plaintiffs' Exhibit 7. Those exhibits right there, the yellow ones. In Plaintiffs' Exhibit 7 take a look at the first page down on the bottom of the page and Mr. Golden asked you some questions about this. It said motion was then offered by Councilman Arone, meaning you, 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, and then it says upon final preparation, review and authorization by counsel, that last phrase there, upon final preparation, review and authorization by counsel did you have an understanding of what that meant?

A Yes.

Q What was your understanding?

A Is it would have been done like any other time a memo, we always get a memo and, from

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Attorney McKay or somebody from his firm, that outlines what the issue is, what are the, any legal ramifications. Also to, you know, always usually setup a meeting. You know, if we go into executive session to go ahead and discuss the matter. Would have all the documents available just so we would know as a board this is exactly what's going to occur.

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MR. GOLDEN: I ask for copies of all

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of those memos blacked out with respect to

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content, but noting the subject matter and

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the dates of every single one of those memos

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that have just been referred to by Mr. Arone.

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MR. MAHON: Are you talking about

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memos on unrelated matters?

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MR. GOLDEN: He's the one that is

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trying to come up with this course of

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conduct. And so, yes, I want to it on all of

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that because he's the one that has brought

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this into supposedly being a material issue.

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MR. MAHON: We'll take that under

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advisement.

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INFORMATION REQUESTED

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Q So let me ask you this question, Mr.

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Arone, after this vote was taken did you have an

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understanding of what would happen next with respect

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to the land exchange?

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A Yes, that it would go, it would be

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referred to Attorney McKay's office for review and

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preparation with the memo, we would get the survey

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with the plot lines, so we'd have a whole packet.

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Q So at this meeting after you voted

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that the supervisor can sign "any and all documents

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relating to a property exchange", did you have the

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intention that he could independently and without

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counsel prepare deeds and have them recorded

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himself?

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A No, it had to go to counsel.

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Q I want to show you what's been marked

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as first Plaintiffs' Exhibit 3. Take a moment to

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look at that? Do you recognize that document?

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A I've never seen it before. This looks

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like, according to this, it's something from the

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county clerk's office.

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Q Well, take a look at the second page

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and by counsel we've been talking about deeds in

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this case that have been recorded. Do you see on

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the second page it says the word deed and there's a date of August 18th, 2017? Do you see that?

A Yes.

Q And do you see that there's a signature line there and underneath the line there's the printed name and the signed name David Sutz?

A Yes.

Q Do you see on the left-hand margin there's a section, block and lot 204-1-30, do you see that?

A I see a 219-5-20. Referring to this right here?

Q You're right, I'm looking at a different one. 219-5-20, okay, do you see that? I'm going to show you also what has been marked as Plaintiffs' Exhibit 5, take a look at that, which also purports to be a deed dated August 18th, 2017. And do you see that that also identifies property on the left-hand margin, there's a tax number there?

A Yes, 204-1-30.

Q So before these deeds were actually recorded in the clerk's office had you seen them?

A No.

Q I think you told Mr. Golden that you

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learned for the first time that the transaction had been completed in April of 2018, is that correct?

A Correct.

Q And when you learned this had happened, that these deeds were recorded and you had not received a packet, what was your reaction?

A Mad, upset.

Q Why?

A Angry. Because that's not what I voted for. I voted for it to go to the next step to be reviewed by Attorney McKay's office and that never happened.

Q So, Mr. Arone, you originally voted in favor of this transaction in July of 2017 with the condition of attorney review, approval, authorization, is that correct?

A I think it's pretty clear, yes.

Q Both of these deeds are dated in August of 2017. Were you continuously on the board from July of 2017 through the end of the year?

A Yes.

Q And was David Sutz continually serving as supervisor from July 2017 through the end of the year?

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A Yes.

Q And after July we looked at meeting minutes for July 20th, 2017. Did the board have other meetings throughout the year?

A The board meets the first and third Thursday of every month. I don't know if you're referring to that. And then we would have work sessions as needed on the first and third Monday or the Monday preceding the board meeting on the first and the third.

Q So if you met twice a month?

A A minimum.

Q A minimum. And how many workshop sessions did you have generally per month?

A I don't recall. We usually didn't have that many under Supervisor Sutz.

Q So in all of the meetings subsequent to July 20th, 2017 did David Sutz ever bring up anything about the land exchange again, not just the documents but anything about the land exchange again?

A Not that I remember.

Q Do you know who Steven Green is?

A From reading the Complaint I do.

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Q And --

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A And I found out who he was when I found out about the transfer.

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Q Is he somebody that the town has worked with before in terms of doing survey work for the town property?

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A Since I've been on the board, no.

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Q Before coming here today have you talked to Mr. Green?

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A I don't even know who he -- no, I've never met him before.

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Q Before coming here today have you talked to the village Mayor Michael Queenan?

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A I saw him at a picnic this weekend.

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Q What I'm saying is have you ever discussed with him the land exchange transaction?

A We met to try and resolve the issue.

Q Okay.

A So it was myself, Councilman Essig, Mayor Queenan. Well, first it was -- actually it's Supervisor Palermo, myself, we met at Attorney McKay's office, Mayor Queenan -- actually no, it was Councilman Essig, myself, Mayor Queenan and Deputy Mayor Egan met at Attorney McKay's office to try and

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resolve it.

Q Those were settlement meetings then, right?

A Yes.

Q I don't want to ask you what was said at settlement meetings.

A Okay.

Q Okay?

A But outside of that, outside of that meeting and the meeting that we had to talk about a proposed settlement, I haven't had a discussion with him.

Q I have no further questions.

EXAMINATION BY MR. GOLDEN:

Q Mr. Arone, once you got back this anticipated memo from Mr. McKay on the land swap, what would happen then?

A I would read it, review it. If I had any questions I would give Mr. McKay a call. And generally speaking there would be an executive session to discuss the matter with the entire board.

Q And then if everything was all right then you'd vote to go ahead and authorize it?

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A If there were, if there were no questions then somebody would make a motion and people would decide yea or nay.

Q Yea or nay or going forward with the transaction?

A If after all of the legal review and there were no questions then it would go up for a vote. I don't know what I would have voted for because that second step never took place.

Q So it was at that meeting that you would authorize the transaction?

A It would actually be in the public meeting, it wouldn't be in an executive session that we would authorize it.

Q What's the purpose of authorizing the supervisor's signed documents before then?

A If there was an estimate or a bill or something that we needed to, for Attorney McKay to actually do his job, that's, you know, the supervisor needed to sign something to make the next step forward then.

Q That's what your motion was, your motion was for bills and things like that and not deeds and documents, the transfer documents, that

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was your motion?

A My motion was to have it go to the next, have it go to the next step which never took place.

Q Your motion said that the supervisor was authorized to sign any and all documents, what did you mean by that?

A If there was a document that needed to be signed to take it to the next step for legal review.

Q So it wasn't a deed, you weren't talking about him signing a deed then?

A I was talking about having it go to Joe for review.

Q I understand that but you're talking about the second half of that resolution, I'm talking about the first half where you authorized the supervisor to sign any and all documents.

What did you mean when you used the words any and all documents? What documents were you envisioning when you made that motion?

A Documents that I was envisioning, if there was anything that Attorney McKay needed signed to go ahead and do his legal review is what I'm

1

T. Arone

29

2 referring to.

3 Q Not the deeds?

4 A The deeds weren't in play then because
5 it wasn't even attorney review. It had to go to
6 attorney review. You see --

7 Q But this is the process that you
8 normally followed is to authorize the supervisor to
9 sign some interim documents but not any final
10 documents?

11 A Sometimes, yeah.

12 Q I thought this was a common practice
13 that was consistent?

14 A Well, you're not going to, an
15 insurance renewal form is not going to be an interim
16 document that he needs to sign for that. When
17 something big like a transfer or a, you know,
18 something else in regards to Caesar's casino.

19 Q I have nothing else.

20

21 **EXAMINATION BY MR. MAHON: (CONTINUATION)**

22 Q I just have one more question, I just
23 want to be crystal clear. So before that motion is
24 made you had nothing before you, you had no survey,
25 you had no deed, you had no lot line, you had no

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plot plan, is that fair to say?

A Correct.

Q That's it.

(Whereupon, the proceeding was concluded.)

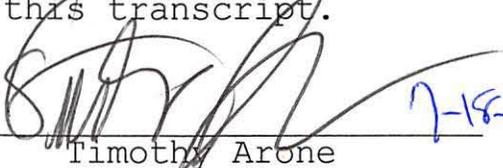
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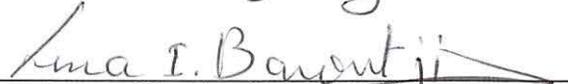
STATE OF NEW YORK)
COUNTY OF _____)

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.



Timothy Arone

Sworn before me this
18th day of July, 2019.



Notary Public

LENA I. BAROUTJIAN
Notary Public, State of New York
No. 01BA6285672
Qualified in Orange County
Commission Expires July 8, 2021

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

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Examination by Mr. Mahon - Cont'd ...29

E X H I B I T S

NONE

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

Page 20 - Production of copies of all of memos
blacked out with respect to content, but noting the
subject matter and the dates of every single one of
those memos that have just been referred to by
Mr. Arone.

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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