

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

x Index No.

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F. WARREN BENTON, MICHAEL P. WEINER, JANICE:  
A. RING, FRANCES P. O'CONNOR, ANTHONY C. :  
PAVIN, NORA J. CARLSON, and JOHN TROY :

Petitioners, :

-against- :

ELIZABETH N. FELD, Mayor, MARLENE KOLBERT, :  
Trustee, ANNE McANDREWS, Trustee, JIM :  
MILLSTEIN, Trustee, RICHARD WARD, Trustee, :  
constituting the Village of Larchmont Board of Trustees, :  
and EILEEN A. FINN, Clerk of the Village of Larchmont, :

Respondents

SUPPLEMENTAL  
AFFIDAVIT OF  
F. WARREN BENTON

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F. WARREN BENTON, being duly sworn, deposes and says:

1. I have lived at 149 Beach Avenue in Larchmont, New York, since 1979. I served as an active volunteer member of the Village of Larchmont Fire Department for ten years, until last July. I am now a lifetime member of Larchmont Engine Company No 1 but am no longer an active volunteer firefighter.
  
2. I have read the Defendants' memorandum of Law and the Affidavit by Richard Heine, both of which raise and refer to Fire Department operational issues. I and others have responded extensively to these statements in another case. I have been advised by Petitioners' attorneys that these statements about operational issues are irrelevant to this case because this case only concerns whether an election should take place. However, there are several statements that should be responded to in this affidavit so that the court is not left with an inaccurate impression.

### **The Heine Affidavit**

3. Mr. Heine states, in paragraph 2, that “the provision of emergency fire service to the Village has not diminished in any respect since I became Chief on May 17, 2007.” (Emphasis added.) He also states in paragraph 3 that there are at least 29 participating volunteer members and 15 career members of the fire department.
4. Only 3-4 of the 15 career firefighters are on duty at any time.
5. I possess copies of alarm response attendance sheets, completed by volunteer firefighters at alarms, from before and after May 17, 2007.<sup>1</sup>
6. During the period including April 2007 through May 2007 up to May 17<sup>th</sup>, an average of 7.5 volunteers responded per alarm – considering only alarms and not meetings, training activities or social events, and including only volunteer firefighters who are qualified as interior firefighters. During the months of July, August and September 2007, an average of 2.3 interior firefighter volunteers responded to similar alarms. This represents a 69% diminution in alarm response by interior volunteer firefighters.
7. Comparing the same periods on the same basis, before May 17<sup>th</sup> no alarms were responded to by only one volunteer; only 6.6% were responded to by only two, and four or more volunteers responded to 72.7% of alarms. During July-September, 47.4% of alarms were responded to by fewer than three interior volunteer firefighters, and 22.4% were responded to by only one.
8. Prior to May 17, the two responses with the most respondents involved a major storm to which 27 interior-qualified volunteers responded, and a serious house fire to which 19

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<sup>1</sup> I obtained the reports for the period following May 17, 2007 by filing for them under the Freedom on Information Law.

interior-qualified volunteers responded. During July-September, the two alarms with this highest response yielded five interior-qualified volunteers. This would represent approximately an 80% diminution in alarm response by interior volunteer firefighters.

9. The form used for attendance during September contains 29 names, which is apparently the basis for Heine's statement (affidavit Paragraph 3) that "there are currently at least 29 participating volunteer members." However, the list of 29 names include only 7 interior-qualified volunteer firefighters who actually responded to more than one alarm during September.<sup>2</sup> The list also includes at least 6 "explorers" who are teenagers participating in a program generally affiliated with scouting.
10. Should the residents ultimately vote to in opposition to the two resolutions, there are several very experienced former volunteer chiefs who continue to be members of the department who could assume the responsibility of chief.

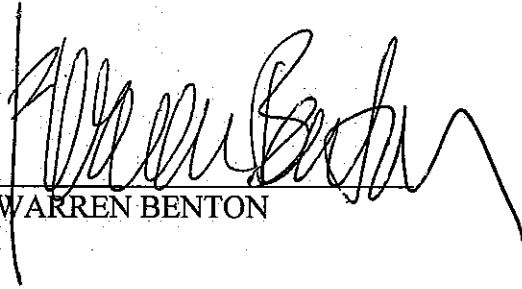
#### **Statements Citing the Affidavit of Elizabeth Feld in Another Case**

11. Memorandum of Law page 9, quotes Elizabeth Feld to the effect that Deputy Chiefs are still elected by the members and still have the same incident command authority that they previously had. In fact there are no deputy chiefs in the Larchmont Fire Department. The Deputy Chiefs elected by the members have resigned and joined other fire departments. No replacement elections have been held, and no Deputy Chiefs appointed.
12. In fact, the Village of Larchmont Fire Department official website page shows the official

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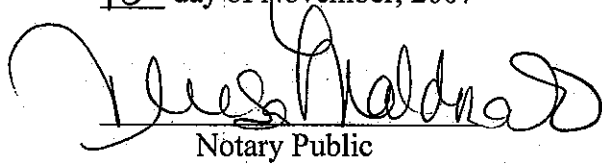
<sup>2</sup> One of the seven interior-qualified volunteer firefighters is Michael P. Wiener, who is a Plaintiff in this case and who is a former Fire Chief of Larchmont and a former Village Trustee.

command structure of the Larchmont Fire Department and there is no listing for  
Deputy Chiefs (see Exhibit "A").



F. WARREN BENTON

Sworn to before me this  
12<sup>th</sup> day of November, 2007



Notary Public

TERESA L. MALDONADO  
Notary Public, State of New York  
No. 01MA6056317  
Qualified in Westchester County  
Commission Expires 03/19/2011



# Appendix One

The screenshot shows a web browser window with the URL <http://www.larchmontfire.org/commandstructure.html>. The page title is "Village of Larchmont Fire Department" and the tagline is "Protecting Your Life With Ours". The main heading is "The Command Structure of the Larchmont Fire Department". The structure is as follows:

- Chief of Department**  
Richard Heine
- Career Captains**  
Steve Epstein Thomas Andersen
- Career Lieutenants**  
Wayne Sternemann John Veteri
- Career Firefighters**  
David Scholz Thomas O'Connor Jack Yannuzzi Anthony Martyn  
Steve Forrest Bryan Doherty John Caparelli Donn Andersen  
Alex Augsburg John Moreno
- Volunteer Captain**
- Volunteer Lieutenant**  
Joe Carrara
- Volunteer Firefighters**

The footer of the page reads "The Official Website of The Larchmont Fire Department".

Retrieved  
November 12, 2007, 4:30 pm

<http://www.larchmontfire.org/commandstructure.html>