

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of

NORMAN S. ROSENBLUM, as MAYOR OF THE
VILLAGE OF MAMARONECK,

Petitioner,

Index No.: 3054/16

For a Declaratory Judgment for an Order Declaring
the September 6, 2016 Village Board Meeting Void

Assigned to:
Justice Lawrence H. Ecker

-against-

VILLAGE CLERK OF THE VILLAGE OF
MAMARONECK and THE VILLAGE OF
MAMARONECK BOARD OF TRUSTEES

**AFFIDAVIT OF TRUSTEE
LEON POTOK**

-and-

WESTCHESTER COUNTY BOARD OF ELECTIONS,:

Respondents.
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STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Leon Potok, being first duly sworn, deposes and says:

1. I am a duly-elected member of the Board of Trustees of the Village of Mamaroneck. I make this affidavit in opposition to the petition of Mayor Norman Rosenblum requesting a declaration that the notice of the meeting of the Board of Trustees held on September 6, 2016 did not comply with the requirements of Municipal Home Rule Law § 20, Public Officers Law § 104 and the Meeting Procedures of the Board of Trustees of the Village of Mamaroneck and enjoining the Board of Elections from placing the two local laws which the Board of Trustees

adopted at that meeting on the ballot for a referendum on November 8, 2016.

2. The two local laws at issue are Local Law T of 2016 and Local Law U of 2016. Local Law T of 2016 changes the Code of the Village of Mamaroneck to provide that the members and chairpersons of the Planning Board and the Zoning Board of Appeals will be appointed by the Board of Trustees, rather than by the Mayor, subject to the approval of the Board of Trustees. Similarly, Local Law U of 2016 provides for the appointment of the Village Attorney by the Board of Trustees, rather than by the Mayor, subject to the approval of the Board of Trustees.

3. The Board of Trustees is authorized by Municipal Home Rule Law §10 to supersede the Village Law of the State of New York to make these changes. But because both local laws would have the effect of curtailing the power of an elected official, i.e., the Mayor, Municipal Home Rule Law §23(2)(f) provides that the laws are not effective until they are approved by the voters at a public referendum. That referendum is currently scheduled to be held at the general election in 15 days, on November 8, 2016.

4. Both local laws were adopted by a majority vote of the Board of Trustees at a public meeting held on September 6, 2016, immediately after a duly-noticed public hearing on those laws. Mayor Rosenblum was in the minority. He asks this Court to set the two local laws aside because the Village Clerk failed to give separate notice of a special meeting of the Board of Trustees, after the public hearing, to adopt the laws. For the reasons set forth in the accompanying memorandum of law, I respectfully submit, on behalf of the majority of the Board of Trustees, that the petition must be dismissed, for four reasons. First, Mayor Rosenblum knew about the meeting, attended the meeting and voted at the meeting, so he suffered no injury-in-fact by reason of the alleged failure of notice and therefore has no standing to raise that claim. Second, the Mayor knew about this claim on September 6th, but waited nearly six weeks to bring

this action. That delay bars his claim under the doctrine of laches. Third, the public notice of the meeting that the Village Clerk gave satisfies all of the requirements of Municipal Home Rule Law § 20, Public Officers Law § 104 and the Board of Trustees' Meeting Procedures. There is no support in either of those statutes, or in the Board's rules of procedure, for Mayor Rosenblum's argument that Board of Trustees cannot vote on the local laws immediately after holding the public hearing on those laws. And fourth, even if there had been a technical failure of notice, the undisputed facts show that the failure to notice a separate special meeting was inadvertent. An inadvertent failure to give notice is not a lawful basis for invalidating the action of a municipal governing body. For all of these reasons, therefore, which are discussed more fully in the accompanying memorandum of law, the petition should be dismissed.

5. Mayor Rosenblum has no standing to sue here because he was not injured by the failure of the notice that he is now complaining about. Although there was some confusion about whether the public hearing would be held at 5:30 p.m. or 7:30 p.m. on September 6th, Mayor Rosenblum knew, because he was present at the meeting of the Board of Trustees on August 15, 2016, when the public hearing was scheduled, that the public hearing would be held at 7:30 p.m. He also knew that there would be a special meeting of the Board of Trustees. The minutes also reflect that there would be a vote on the proposed local laws after the public hearing. I specifically said so said at that meeting, as the minutes reflect: "Trustee Potok stated this will have to go to the residents to be voted. Trustee Potok said that this will be done at a Special Meeting at 7:30 p.m. to be held after the Work Session." Certified Transcript, Exhibit D, page 18.

6. There is also other clear evidence that Mayor Rosenblum knew before September 6th that there would be a special meeting of the Board of Trustees that evening. First, the agenda for

the 7:30 meeting specifically identifies the meeting as a “Special Meeting” of the Board of Trustees. Second, prior to the meeting, Mayor Rosenblum sent out a notice to his supporters by email, asking that they gather to support him in front of the Village of Mamaroneck courtroom, where the Board of Trustees’ meeting was to take place, at 6:30 p.m. “one hour prior to a ‘SPECIAL’ Board of Trustees meeting at which the above named Trustees will attempt to FURTHER disempower the Mayor.” A copy of the notice is attached as Exhibit A. His email, which was sent out on September 6, 2016, at 12:08 p.m., and includes a copy of the notice is attached as Exhibit B. He posted the same notice on Facebook. Exhibit C. His supporters picked it up and shared it. Exhibit D. The notice, email and Facebook posting make no sense if Mayor Rosenblum did not understand that there would be a special meeting to act on the proposed local laws.

7. It is not just Mayor Rosenblum who understood that there would be a special meeting. Members of the public also understood that the Board of Trustees would hold a special meeting on September 6th. One of Mayor Rosenblum’s supporters, Andres J. Bermudez Hallstrom, wrote on September 5th, again referring to the meeting to be held as a “special meeting”:

ATTENTION ALL MAMARONECK RESIDENTS . . .

Our faithful mayor Norman Rosenbloom needs our support tomorrow night, Tuesday September 6, 2016 at the Village Court (169 Mt. Pleasant Ave.) for a special BoT meeting.

The BoT Dems are trying to take away most of the Mayor’s duties and in essence do away with the Mayor’s position.

Exhibit E. Mr. Bermudez Hallstrom was present and spoke at the meeting on September 6th.

8. Mayor Rosenblum also knew, before September 6th, that the original meeting notices had erroneously stated that the public hearings would start at 5:30 p.m. and that new notices,

with the correct time for the public hearings, had been published and posted. In a 3:22 p.m. email on August 31, 2016 to Mayor Rosenblum and the Board of Trustees, the Village Manager acknowledged the mistake. His email stated as follows:

Everyone:

Since the Work Session had been published for 5:30 p.m., I recommended changing the hearing notices to 5:30 p.m., as I thought the time was an accidental oversight.

Per the will of the majority of the Board, the Work Session will remain at 5:30 p.m., and the public hearing has been noticed for 7:30 p.m.

Per Bob Freeman, the times may be changed, and circulating and posting the notices today is definitely adequate to comply with the Open Meetings Law.

My apologies for any difficulties in this regard.

Certified Transcript of Record, Exhibit R.

9. After opening the work session at 5:30 p.m., Mayor Rosenblum stated that the public hearings had been placed on that agenda in error and moved on to other business. Certified Transcript of Record, Exhibit T. No members of the public attended the 5:30 p.m. meeting, but the 7:30 p.m. meeting was well attended, as the attached photo taken by Trustee Ilissa Miller, which accurately depicts the room at the time, demonstrates. Exhibit F.

10. Although Mayor Rosenblum initially objected to the meeting, and much of the beginning of the meeting is taken up with a discussion of the legality of the meeting, he conceded at the conclusion of the public hearing with respect to Local Law T-2016, that he would not pursue the issue, stating, "I will not continue the abuse of what I consider political politics and I withdraw my objection." He then moved to close the public hearing and voted in favor of doing so. He also acknowledged that the referendum would go forward. When Trustee Finch moved to adopt the proposed local law, and before he voted against the proposed law, Mayor Rosenblum stated: "Before I cast my vote, I have the fullest confidence that the people

will vote regardless of what the intent and the underlying cause is. I vote no. I look forward to the referendum.” Certified Transcript of Record, Exhibit Y, at 94:45 to 97:21.

11. For all of these reasons, it is disingenuous for Mayor Rosenblum to claim now, as he must if he is to have standing to assert his claim, that he did not know about the correct time of the meeting or that the Board of Trustees would vote on the proposed local laws after the public hearings. As set forth more fully in the attached memorandum of law, since he did know there would be such a meeting, he is not injured by any failure to give notice and cannot sue to set aside the adoption of the laws on that basis. Moreover, there is no one who is injured because not one member of the public appeared for the 5:30 p.m. work session to participate in the public hearing that had erroneously been scheduled for that time. The 7:30 p.m. meeting, however, was packed. The petition, therefore, must be dismissed.

12. The second reason the complaint must be dismissed is that Mayor Rosenblum waited too long to assert his claim. He knew on September 6th that, in his view, proper notice of the meeting had not been given. He said so at the beginning of the meeting, as the minutes reflect. Certified Record, Exhibits X, Y. He then waited for nearly six weeks, until October 17, 2016, to commence that action. The prejudice to the public from his delay is demonstrable. While Mayor Rosenblum failed to assert his claim, the Board of Elections, the Village’s officials and the voters have been proceeding on the understanding that the referenda on the local laws would be on the ballot. The Board of Elections has sent out absentee ballots. Voters have been returning them. For the reasons set forth more fully in the accompanying memorandum of law, the petition should be dismissed on that basis alone.

13. In any event, there was no violation of any notice requirement with respect to the meeting at which Local Law T-2016 and Local Law U-2016 were adopted. Municipal Home

Rule Law § 20 requires notice of the public hearing not less than five days in advance. That notice was given. The Open Meetings Law, Public Officers Law § 104, requires no more than one week's notice to the media and 72 hours notice to the public of a public meeting. That notice was also given. Critically, however, Public Officers Law § 104 does not limit what can be discussed or what action can be taken at a public meeting once it is duly noticed. It does not even require that there be an agenda for the meeting. So the failure to give a separate notice of a special meeting after the public hearing is not a violation of the Open Meetings Law. The Board's Rules of Procedure distinguish a special meeting from a regular meeting, but do not limit what action can be taken at which. They also define as a special meeting "all of those Board meetings other than regular meetings." So the meeting at which the public hearings were held was a "special meeting," whether it was noticed as such, or not. And, in any event, any item can be added to the agenda of any meeting by a majority of the members of the Board of Trustees. A majority of the Board's members went forward with voting on the proposed local laws despite Mayor Rosenblum's objections. If anything was missing at all, it was a formal motion to add the adoption of the local laws to the agenda. That cannot be a legal basis for setting aside the action of the Board of Trustees and cancelling the referenda on those laws.

14. Finally, even if there were some technical basis for Mayor Rosenblum's argument, that is still not a ground for this Court to give him the relief he requests. As set forth more fully in the accompanying memorandum of law, the inadvertent failure to give the statutorily required notice is not, by itself, a basis for the Court to invalidate the act of a local governing board.

15. The issue here is very direct. A majority of the Board of Trustees believes that the residents of the Village of Mamaroneck will be better served if members and chairpersons of the Planning Board and Zoning Board of Appeals, and the Village Attorney, are appointed by the

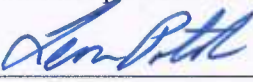
Board of Trustees, rather than by the Mayor subject to the approval of the Board of Trustees. That was the way appointments to the Planning Board and Zoning Board of Appeals were made in the Village of Mamaroneck prior to the 2010 amendments to the Village Law. Local Law T-2016, thus, not only returns the appointment process to where it has historically been, it also prevents the Mayor from making unilateral appointments to fill vacancies on the Planning Board and Zoning Board of Appeals which then effectively become permanent when the Board of Trustees fails to approve those appointments and the appointees remain in office as holdovers, which, unfortunately, has been happening.

16. The majority of the Board of Trustees believes that the Mayor's right to nominate the Village Attorney subject to the approval of the Board of Trustees and the Mayor's right to unilaterally discharge of the Village Attorney creates an unseemly conflict of interest. Although the Village Attorney provides legal advice to all five members of the Board of Trustees, he or she is beholden to only one member of the Board, the Mayor, to retain his position. That creates a conflict of interest and undermines the confidence of the Board and the public in the advice provided by the Village Attorney.

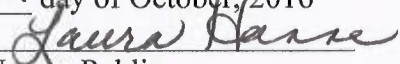
17. The majority of the Board of Trustees has therefore exercised its authority under the Municipal Home Rule Law to change the Village Code so that the appointments are made in the manner the majority feels is best for the Village. The voters will ultimately decide, since the local laws have to be approved in a referendum before they can become effective. Mayor Rosenblum disagrees with the majority, but he did not have the votes on the Board of Trustees to defeat the local laws. So, instead, he is trying to find a legal technicality to block the voters from having the final say on the proposed changes. I submit, for the reasons which have been stated, that there is no technicality which should defeat that vote and that, even if there were, the voice

of the people should not be defeated on a technicality. The petition should be dismissed and the voters should decide.

WHEREFORE deponent respectfully requests that the petition be dismissed.



Leon Potok

Sworn to before me this
24th day of October, 2016


Notary Public

LAURA HANNA
Notary Public, State of New York
No. 01HA6035322
Qualified in Westchester County
Commission Expires Dec 27, 2017



Exhibit A



On Tuesday, September 6, at 6:30 PM, friends and supporters of Mayor Norman S. Rosenblum will gather in front of the Village of Mamaroneck courtroom building to show peaceful support for the Mayor, and displeasure with actions being taken by Trustees Potok, Miller and Finch, to strip him of his mayoral powers.

This gathering will take place one hour prior to a "SPECIAL" Board of Trustees meeting at which the above named Trustees will attempt to FURTHER disempower the Mayor.

All of those wishing to support our Mayor are invited to join the gathering in front of the courtroom building PROMPTLY at 6:30 PM.



Exhibit B