

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of the
SUZANNE MCCRORY,

Petitioner,

VERIFIED PETITION

For a Judgment Pursuant to Article 78 of the CPLR

INDEX NO: 23-2027
ASSIGNED JUDGE:

--against--

VILLAGE OF MAMARONECK BOARD OF TRUSTEES
AND VILLAGE MANAGER, JEROME BARBERIO

Respondents.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Pro Se Petition of SUZANNE MCCRORY (McCrory) in this proceeding, under and pursuant to article 78 of New York Civil Practice Laws and Rules (CPLR), to invalidate the March 3, 2023 "Village Manager Executive Retention Agreement," discussed and executed in a non-public meeting, in violation of New York State's Open Meeting Law; and to obtain further relief in the form of recovery by the Village of Mamaroneck of excess wages paid under the invalid contract, and Petitioner's attorney's fees and costs for this proceeding.

BACKGROUND STATEMENT OF FACTS

1. Public Officers' Law Article 7, commonly known as "Open Meetings Law" or "OML" gives the public the right to attend meetings of public bodies, listen to the debates, and watch the decision-making process in action. It requires public bodies to provide notice of the times and places of meetings, and keep accurate minutes of all actions taken.

2. Petitioner received a March 1, 2023 email notice of a "Board of Trustees Special Emergency Meeting" to be held on Friday March 3, 2023 at 5:00 pm.

3. The notice informed the public that it was "anticipated that the Board will convene to executive session in accordance with OML §105(1)(f) to discuss **the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation** in the manager's office." Exhibit 1, the words in bold match those from the statute.

4. There was no agenda published for this special meeting; Barberio's 2024-2028 contract proposal was not provided pursuant to OML §103(e), a provision of law requiring that documents to be discussed and considered be made available to the public at or before the meeting.

5. Prior to the notice of the special meeting Village Respondent Village Manager Jerry Barberio (Barberio) sent an email on February 27, 2023 to the Mayor and trustees which was also copied to many Village employees' and officials' email addresses with the subject line "Withdrawal of 2024 to 2028 Executive Retention Contract Proposal." In this email, Barberio reported that he would not seek to renew his current contract after January 2024. ["In my opinion, tonight was the third and final discussion of my contract renewal. I officially withdraw consideration....Continuing to stall my contract renewal is your decision. My decision will be to run my current contract out to the end of my four-year-term and move on."] Exhibit 2.

6. Petitioner personally attended the March 3, 2023 special meeting, where the language listed in the public notice was read in the form of a motion to enter executive session and passed with a vote of 4-1, with Trustee Nora Lucas voting "nay" and reporting that she deemed the matter not to be an emergency given the amount of time remaining on Barberio's current contract (10+

months).

7. Petitioner and other residents in attendance filed out of the meeting room when the Board entered executive session.

8. When the executive session ended after more than one hour, Petitioner re-entered the meeting room with other members of the public and Mayor Tom Murphy announced that the Board of Trustees had executed a new 4-year contract with Village Manager Jerry Barberio, effective immediately, on a vote of 4-1. Individual votes were not disclosed. The minutes can be found at Exhibit 3.

9. Petitioner believed that the undisclosed Barberio contract proposal, the secret negotiation and deliberation, and the contract execution were done in violation of Open Meetings Law and were anathema to its principles.

Contract details

10. The Village Manager's "Executive Retention Agreement" was initially a 4-year agreement entered into on January 22, 2020 and is shown at Exhibit 4.

11. Published agendas of the Work Sessions of the Board of Trustees showed "executive sessions" agenda items on February 27, 2023 and February 13, 2023 where the executive session was listed as "Village Manager Contract Renewal - It is anticipated that a motion will be offered to enter into Executive Session pursuant to §105(1)(f) to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation." Exhibit 5.

12. Mr. Barberio's February 27, 2023 email implies that the matter was also discussed on a third occasion but Petitioner has been unable to identify that date.

13. The March 3, 2023 Executive Retention Agreement is shown at Exhibit 6 and altered the former January 22, 2020 contract in the following ways:

14. The compensation increased for the existing term and for future terms. Specifically, the \$226,150 salary that previously became effective on January 28, 2023, was increased to \$235,200 effective on March 3, 2023; the subsequent annual salaries were to be \$244,600 (effective March 3, 2024); \$254,400 (effective March 3, 2025) and \$264,000 (effective March 3, 2026).

15. Compensation related to moving expenses was deleted (Barberio had previously relocated).

16. The provision for a Village-provided vehicle had previous limitations for local travel of up to 60 miles from the Manager's residence. That 60 -mile limit was eliminated.

17. Details involving a performance evaluation were eliminated with the new agreement saying simply that the Village Board of Trustees will meet annually at the last meeting in October to review the manager's performance in a closed session.

18. A new section entitled "Outside Employment" was added. "If the Manager considers future outside employment, they [*sic*] must first discuss the proposed outside employment with the Board of Trustees and demonstrate that the outside employment will not conflict with the Village of Mamaroneck Code of Ethics and/or interfere with the duties of the Manager enumerated in this agreement."

19. The March 3, 2023, agreement included a paragraph on its effective date ["when it is approved by the Board of Trustees"] and a paragraph noting that the agreement "shall supersede and replace all prior agreements between Jerome Barberio and the Village of Mamaroneck."

20. In sum, the contract changes made at the March 3, 2023 executive session principally

involved salary and outside employment details that involve no privacy matters.

21. Mr. Barberio's proposal for his revised compensation package, how the Board of Trustees responded, and what, if any, counter-offers were made --were kept from Petitioner and other members of the public.

LEGISLATIVE INTENT AND REQUIREMENTS OF OPEN MEETINGS LAW

22. "It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it" (Public Officers Law § 100).

23. NY Courts have made clear that OML requires transparency of all aspects of decision-making not just the outcome:

We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this [Open Meetings Law.] *Orange County Publications v. Council of the City of Newburgh*, 60 AD 2d 409, aff'd 45 NY 2d 947 (1978)

24. Under the law, “a public body may conduct an executive session for the below enumerated purposes only, provided, however, that *no action by formal vote shall be taken to appropriate public moneys.*” Public Officers Law §105, emphasis added.

25. In this case, the Village of Mamaroneck Board of Trustees claimed the exemption at OML §105(1)(f) using the statutory boilerplate language and adding that the matter involved a particular person in Manager’s office. See paragraph 3 above.

26. Missing from the motion to enter executive session was the particular topic that would qualify the matter to be discussed in a non-public session:

...the public body must identify the subject matter to be discussed (See, Public Officers Law § 105 [1]), and it is apparent that this must be accomplished with some degree of particularity, i.e., merely reciting the statutory language is insufficient (see, Daily Gazette Co. v Town Bd., Town of Cobleskill, 111 Misc 2d 303, 304-305). Additionally, the topics discussed during the executive session must remain within the exceptions enumerated in the statute (see generally, Matter of Plattsburgh Publ. Co., Div. of Ottaway Newspapers v City of Plattsburgh, 185 AD2d §18), and these exceptions, in turn, ‘must be narrowly scrutinized, lest the article’s clear mandate be thwarted by thinly veiled references to the areas delineated thereunder’ (Weatherwax v Town of Stony Point, 97 AD2d 840, 841, quoting Daily Gazette Co. v Town Bd., Town of Cobleskill, supra, at 304; see, Matter of Orange County Publs., Div. of Ottaway Newspapers v County of Orange, 120 AD2d 596, lv dismissed 68 NY 2d 807.

27. “Employment contracts” and/or “retention agreements” or “salary determinations” are not among the particular topics presented in OML §105(1)(f) as eligible for executive session [“the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation”].

PRESS REPORTS HIGHLIGHT THE OML VIOLATION

28. Press accounts highlighted the expenditure of public moneys in secret as a plain violation of Open Meetings Law. Specifically, David McKay Wilson of the LoHud /Journal News arm of US Today reported expert comments from NYS Committee on Open Government:

Kristin O'Neill, assistant director of New York Committee on Open Government, said the state's Open Meetings Law is crystal clear: You can't approve the expenditure of public funds in private.

"If you are going to vote to expend public monies, the vote has to occur in public," she said.

Mayor Tom Murphy, however, insisted that they could do the village's business behind closed doors, as long as what they decided in the backroom was announced in public after the vote took place. Minutes of the private "executive session," which were provided to the USA TODAY Network through a Freedom of Information request, detailed the 4-1 vote, with Trustee Nora Lucas the sole trustee voting against the pact.

"It's perfectly OK to do that," Murphy said. "Personnel matters are never discussed in the open. There's an exemption in the law for that. There's a lot of people with opinions who are uninformed."

O'Neill acknowledged that New York's Open Meetings Law allows public bodies to discuss personnel matters in private. But the decision to ratify a contract must be made in public.

"You have to vote in a public session," she said.
Source: LoHud article 3/16/2023 reproduced at Exhibit 7.

29. An online local news outlet, the Mamaroneck Observer raised similar concerns.
<https://www.mamaroneckobserver.org/post/legality-test-did-they-pass> Exhibit 8.

30. Mayor Tom Murphy did not dispute that public moneys would pay Barberio's increased salary; rather he claimed that public could be barred from deliberations and decision-making when the matter involved a "personnel matter" of any type.

31. A follow-up Journal News article on March 20, 2023, termed the agreement a four - year, \$1 million extension, provided details on Barberio's second job at Englewood Cliffs, NJ, and

indicated that the participants had not agreed on the purpose of the executive session when they entered it. [“Lucas showed up for the emergency meeting with the understanding that the board would review Barberio’s recent outbursts” and “Trustee Leilani Yizar -Reid said she called the emergency meeting to review Barberio’s behavior, not thinking that the trustees would end up approving the \$1 million contract extension that night.”] Exhibit 9.

32. Petitioner hoped that the Board of Trustees would voluntarily correct its OML violation in the wake of the adverse press and public dissatisfaction.

33. Rather than remedial action, it appeared that more unlawful conduct followed.

34. Upon information and belief, in mid-April 2023, the Village of Mamaroneck hired Yusef Yizar, believed to be the brother of Leilani Yizar-Reid, in apparent violation of the Code of the Village of Mamaroneck §21-4 (1)(e) ethics law prohibiting nepotism.¹ Barberio has appointment authority for such hires (see Exhibits 4 and 6, ¶1(b) “duties”) and such hiring gives the appearance that Yizar-Reid was “rewarded” for her support of Barberio.

35. Petitioner filed an ethics complaint and the instant action.

PARTIES, VENUE AND TIMING

36. Petitioner Suzanne McCrory is a resident of the Village of Mamaroneck who joined another resident, Stuart Tiekert, in a 2017 article 78 petition to challenge repeated Board of Trustee failures to comply with Open Meetings Law. In turn, Village of Mamaroneck officials moved to dismiss that 2017 petition on standing grounds.

¹ Village of Mamaroneck Code 21-4 Nepotism “(1)Policy. Employees' relatives will not be employed by the Village on a full-time basis under any of the following circumstances:... (e) Where one of the parties is an elected official, except when the family member is currently employed by the Village prior to the elected official obtaining office or if the family member is currently employed by the Village and becomes a family member of an official.”

37. The lower court held that being a member of the general public, a taxpayer, or resident of the municipality, in and of itself, was insufficient to confer standing to raise an alleged Open Meetings Law violation and dismissed the petition.

38. On appeal, the Appellate Division reversed and found that the petitioners needed no particular injury to have standing to challenge an OML violation.

The purpose of the Open Meetings Law and the intent of the Legislature in enacting that law dictate that the harm or injury is the alleged unlawful exclusion of the public from a municipal meeting. The Open Meetings Law plainly confers upon the public the right to attend certain meetings of public bodies. Consistent therewith, the harm or injury of being excluded from municipal meetings that should be open to the public is sufficient to establish standing in cases based upon the alleged violations of the Open Meetings Law.” *McCrory and Tiekert v. Village of Mamaroneck* [Appellate Division Second Judicial Department, 2020 NY Slip Op 00864]².

39. McCrory is aggrieved in the instant matter because she has once again been excluded from a municipal meeting on an important public topic that should have been open to public.

40. Petitioner attended the March 3, 2023 meeting until she was barred from the executive session portion in which the Village Manager contract was discussed and executed. When the executive session ended, Petitioner was permitted to return to the meeting and she stayed until the final adjournment. From the Mayor’s announcement, McCrory learned that the vote was 4-1 without learning how each member voted or why.

41. The Board of Trustees is named as the Respondent obliged to follow Open Meetings Law in its discussion and decision on the Village Manager. It is composed of 5 members—Mayor Thomas Murphy, and four trustees, Nora Lucas, Lou Young, Leilani Yizar-Reid and Emmanuel (Manny) Rawlings.

² Petitioners never re-noticed the 2017 petition for a decision on the merits because the only outcome would have been court-ordered training for the trustees and it seemed clear that the trustees were uninterested in such training.

42. Jerome Barberio, the "Village Manager" for the Village of Mamaroneck, is named a Respondent because his income will be affected by invalidation of the contract executed in an unlawful executive session on March 3, 2023. Specifically, were the contract in question invalidated, Mr. Barberio's Village of Mamaroneck salary and associated benefits would decrease to its former contractual level and he would be obliged to repay excess compensation to avoid an unconstitutional gift to him.

43. The venue for this proceeding is Westchester County where petitioner resides, where Respondent Jerome Barberio resides, and where the Village of Mamaroneck is located.

44. The statute of limitations for this proceeding is 4 months from the release of the minutes related to the emergency session of March 3, 2023. See CPLR §217 and OML §107 [3].

VILLAGE OF MAMARONECK VIOLATED NYS OPEN MEETINGS LAW BY EXECUTING THE MARCH 3, 2023 VILLAGE MANAGER EMPLOYMENT RETENTION AGREEMENT IN AN EXECUTIVE SESSION

45. Petitioner repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 44 of this petition with the same force and effect as though more fully set forth herein.

46. The discussion and execution of the Village Manager Employment Retention Agreement on March 3, 2023 violated Open Meetings Law.

47. First, there was no "emergency." More than ten months remained on the Village Manager's existing contract so the short notice of the meeting was improper although it did not prevent Petitioner from attending.

48. Second, the 2024-2028 contract proposal made by Mr. Barberio was withheld from the public in contravention of OML §103(e).

49. Third, the members of the Board of Trustees failed to identify the "particular" purpose

of the executive session to assure that the matter qualified for a non-public discussion.

50. Fourth, neither an "employment retention agreement" nor an employment contract nor salary/contract negotiations is a specific topic eligible for executive session under OML §105(f)(1), making entry, discussion and executive of these contract details behind closed doors unlawful in the instant matter.

51. Finally, the adoption of this agreement obligated the Village of Mamaroneck to pay the Village Manager a higher salary than had previously been budgeted under the former contract, and effectively appropriated public moneys in an executive session when such action is expressly prohibited by OML.

MARCH 3, 2023 RETENTION AGREEMENT SHOULD BE INVALIDATED & ATTORNEYS FEES AWARDED

52. Petitioner repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 51 of this petition with the same force and effect as though more fully set forth herein.

53. The employee retention agreement should be invalidated because the public body failed to comply with its lawful obligations under OML.

54. The enforcement provisions of OML state the following:

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, or an action for declaratory judgment and injunctive relief. In any such action or proceeding, if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article. If the court determines that a public body has violated this article, the court may require the members of the public body to participate in a training session

concerning the obligations imposed by this article conducted by the staff of the committee on open government...

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. *If a court determines that a vote was taken in material violation of this article, or that substantial deliberations relating thereto occurred in private prior to such vote, the court shall award costs and reasonable attorney's fees to the successful petitioner, unless there was a reasonable basis for a public body to believe that a closed session could properly have been held.* OML §107 [1] and [2] emphasis added.

55. There is good cause to invalidate the unlawfully executed March 3, 2023 Village Manager Executive Retention Agreement.

56. First, invalidation of the agreement will counter and correct the mayor's false and disturbing claims that expenditures of public moneys can be made privately without disclosure to the taxpaying public.

57. Invalidation will reinforce the Board of Trustees obligations with respect to Open Meetings Law—in particular, that the public's business and the expenditure of taxpayer funds must be done in public.

58. Second, were the March 3, 2023 agreement invalidated, there will be no adverse employment action insofar as Village Manager will simply be compensated at the salary level that he previously agreed to accept beginning on January 28, 2023.

59. Furthermore, invalidation of the March 3, 2023 agreement would not interfere with Barberio's outside employment with Englewood Cliffs NJ where he earns estimated income of \$50,000. Exhibit 7, p.5 and Exhibit 9.

60. In the previous 2017 OML matter, the Board of Trustees would not agree to participate in OML training, preferring instead to spend tens of thousands of taxpayer dollars arguing that Petitioners had no standing to challenge OML violations.³

61. That decision to spend significant public dollars on a standing challenge in lieu of training was also made in the backroom under the “litigation” exemption for executive sessions. Like the instant contract extension, that expenditure was deliberated outside the public eye, with the public having no insight into the financial consequences of the decision.

62. Using “executive sessions” to hide the deliberative process and the attendant commitment of expenditures of taxpayer moneys is fundamentally contrary to Open Meetings Law and only invalidation of such decisions will lead to the needed reform.

63. Finally, Petitioner seeks recovery of her costs and any attorneys’ fees she expends in this matter.

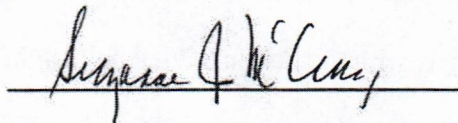
WHEREFORE, Petitioner urges this court to invalidate the Village Manager Executive Retention Agreement, executed on March 3, 2023 in violation of Open Meetings Law, to order the Village of Mamaroneck to recover excess salary and benefits paid to Mr. Barberio under the invalid contract, and to award Petitioner her costs and any attorneys’ fees that she incurs.

³ Mayor Tom Murphy personally reported expenditures of \$60,000 by October 2019 for a simple pre-answer motion to dismiss rather than agreeing to take a brief training session.

OATH OF TRUTH

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

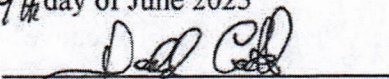
SUZANNE MCCRORY, being duly sworn, says that she is a Petitioner in the within action, that she has read the foregoing Petition and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.



SUZANNE MCCRORY

Petitioner Pro Se
720 The Crescent
Mamaroneck, NY 10543
914 698-5686

Sworn to before me this
9th day of June 2023


NOTARY PUBLIC

DONALD GOLDSMITH
Notary Public, State of New York
No. 01GO5021034
Qualified in Westchester County
Commission Expires Dec. 6, 20 25

CERTIFICATION

I, SUZANNE MCCRORY, HEREBY CERTIFY, under penalty of perjury, to the best of my knowledge and upon information and belief, formed after an inquiry reasonable under the circumstances, that the foregoing Petition Pursuant to CPLR 5531 is not frivolous pursuant to Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

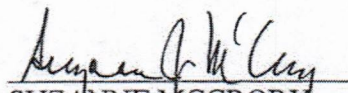

SUZANNE MCCRORY

EXHIBIT LIST

- 1 March 1 2023 Village of Mamaroneck Board of Trustees Special Emergency Meeting Notice
- 2 Barberio Email re: Withdrawal of 2024 to 2028 Executive Retention Contract Proposal
- 3 Minutes of Special Emergency Meeting of the Village of Mamaroneck Board of Trustees, Friday, March 3, 2023 at 5 pm
- 4 Village Manager's Executive Retention Agreement of January 22, 2020
- 5 Work Session Agendas of February 12, 2023 and February 27, 2023 showing agenda item for Executive Retention Agreement
- 6 March 3, 2023 Village Manager's Executive Retention Agreement
- 7 *Lo Hud* Article on Village Manager's Contract—March 16, 2023
- 8 Mamaroneck Observer article, "Legality Test: Did They Pass?"
- 9 *Lo Hud* Article on Village Manager's Contract—March 20, 2023: "Mamaroneck doubles down on backroom vote for manager's \$1 million contract package. Here's why."

Mayor Murphy
Trustee Lucas
Trustee Young

Office of the Clerk- Treasurer

Trustee Yizar-Reid
Trustee Rawlings
Village Manager
Village Attorney
Clerk-Treasurer
Police Chief
Press
LMC-TV

Village of Mamaroneck

Village Hall
Mamaroneck, NY 10543

Telephone 914/777-7722

March 1, 2023

BOARD OF TRUSTEES SPECIAL EMERGENCY MEETING NOTICE

PLEASE TAKE NOTICE THAT THERE WILL BE A **SPECIAL EMERGENCY MEETING OF THE BOARD OF TRUSTEES** HELD ON **FRIDAY, MARCH 3, 2023, AT 5:00 P.M.** AT THE REGATTA AT 123 MAMARONECK AVENUE AT WHICH TIME IT IS ANTICIPATED THAT THE BOARD WILL CONVENE TO EXECUTIVE SESSION IN ACCORDANCE WITH OML §105(1)(F) TO DISCUSS THE MEDICAL, FINANCIAL, CREDIT OR EMPLOYMENT HISTORY OF A PARTICULAR PERSON OR CORPORATION, OR MATTERS LEADING TO THE APPOINTMENT, EMPLOYMENT, PROMOTION, DEMOTION, DISCIPLINE, SUSPENSION, DISMISSAL OF REMOVAL OF A PARTICULAR PERSON OR CORPORATION IN THE MANAGER'S OFFICE.

THANK YOU.
AGOSTINO A. FUSCO, CLERK TREASURER

EXHIBIT 1

Re: Withdrawal of 2024 to 2028 Executive Retention Contract Proposal

Jerry Barberio <jbarberio@vomny.org>

Wed 3/1/2023 8:49 AM

To: Thomas A. Murphy <tmurphy@vomny.org>

Cc: Mayor and Board <MayorandBoard@vomny.org>; Department Heads
<DepartmentHeads@vomny.org>; VOM Personnel <VOMPersonnel@vomny.org>; FloodMitigation
<FloodMitigation@vomny.org>; BoardOfTraffic <BofTraffic@vomny.org>; BoardOfEthics
<BofEthics@vomny.org>; PlanningBoard <PlanningBoard@vomny.org>; BoardOfAppeals
<ZoningBoard@vomny.org>; Harbor & Coastal Zone Mamageent
<hczm@vomny.org>; BudgetCommittee <BudgetCommittee@vomny.org>; Arts Council
<ArtsCouncil@vomny.org>; BoardOfArchitecturalReview <BofArchRev@vomny.org>; Committee for the
Enviroment <cfe@vomny.org>; TreeCom <TreeCom@vomny.org>; Rec&Parks <Rec&Parks@vomny.org>
Good morning Mayor,

You know that is not true. The deal cannot be finalized in March because you agree to bring in a lawyer, at Nora's requests (AGAIN) to stall and stall again. Just like my performance review which was a total S show. I want to remind you and the others you voted for this exact wording on my contract, which is public TWICE. Come on now. All of a sudden, Nora needs a lawyer. By the way, we had a lawyer in the room that night. So much for talking out of both sides of

How ridiculous that you all think I am not aware of the stall tactics!!!

Thanks Mayor for all you do. You work really hard for the people of this community and get re-elected over and over again. I wish I had that level of support... but this is Mamaroneck so its wishful thinking.

Please start the search for a new Manager or better yet elevate Dan to the place he has earned in January 2024. Dan Sarnoff has my full support!! See it is possible to support people who work hard and have a proven track record of accomplishment.

JB

Jerry Barberio
Village Manager
Village of Mamaroneck
123 Mamaroneck Avenue
Mamaroneck, NY 10543
Phone 914-777-7703
Fax 914-777-7760
E-mail jbarberio@vomny.org



Village of Mamaroneck
Parks & Recreation

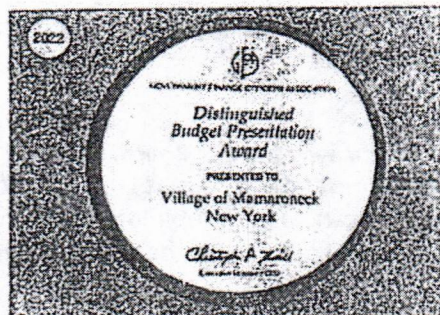
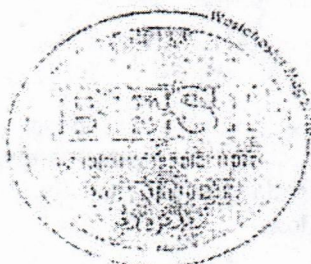


EXHIBIT 2

CONFIDENTIALITY NOTICE: This e-mail may be privileged communication and may contain information that is confidential and is therefore subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient you are prohibited from copying, forwarding, distributing, disseminating, or otherwise viewing this e-mail and any attachments hereto. Please notify the sender and delete this e-mail if you are not the intended recipient.

From: Thomas A. Murphy <tmurphy@vomny.org>

Sent: Wednesday, March 1, 2023 6:10 AM

To: Jerry Barberio <jbarberio@vomny.org>

Cc: Mayor and Board <MayorandBoard@vomny.org>; Department Heads <DepartmentHeads@vomny.org>; VOM Personnel <VOMPersonnel@vomny.org>; FloodMitigation <FloodMitigation@vomny.org>; BoardOfTraffic <BofTraffic@vomny.org>; BoardofEthics <BofEthics@vomny.org>; PlanningBoard <PlanningBoard@vomny.org>; BoardOfAppeals <ZoningBoard@vomny.org>; Harbor & Coastal Zone Management <hczm@vomny.org>; BudgetCommittee <BudgetCommittee@vomny.org>; Arts Council <ArtsCouncil@vomny.org>; BoardOfArchitecturalReview <BofArchRev@vomny.org>; Committee for the Environment <cfe@vomny.org>; TreeCom <TreeCom@vomny.org>; Rec&Parks <Rec&Parks@vomny.org>

Subject: Re: Withdrawal of 2024 to 2028 Executive Retention Contract Proposal

Dear Jerry,

I was surprised to receive this email yesterday morning. In my opinion we were not very far apart on the proposal. I think a deal definitely could have been finalized in March. That would be long before your contract expires at the end of the year.

I personally will be very sorry to see you leave but I understand that you must do what you deem best for you and your family. If you reconsider I think that the Board would be open to further discussion on the matter. If you remain resolute in your current position on contract renewal we must still work together for the good of the community in the time that remains on your contract.

Whatever you decide I wish you all the best in the future. I won't respond to further emails on this thread but I am always open to personal dialogue if you wish.

Respectfully,

Tom Murphy

Mayor, Village of Mamaroneck

On Feb 27, 2023, at 11:30 PM, Jerry Barberio <jbarberio@vomny.org> wrote:

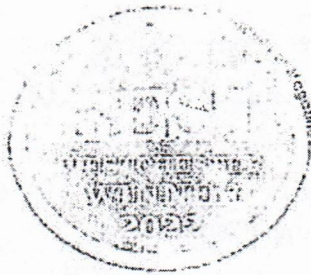
As is the way for this Board, and past Boards, to kill any proposal, I find myself involved in the same awful tactics as I experienced last year during my review/non-review of my performance. In my opinion, tonight was the third and final discussion of my contract renewal. I officially withdraw consideration.

Continuing to stall my contract renewal is your decision. My decision will be to run my current contract out to the end of my four-year term and move on.

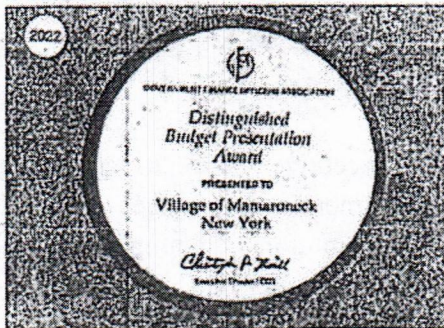
No one was blind copied. Everyone I want to send this to is listed.

Thank you. JB

Jerry Barberio
Village Manager
Village of Mamaroneck
123 Mamaroneck Avenue
Mamaroneck, NY 10543
Phone 914-777-7703
Fax 914-777-7760
E-mail jbarberio@vomny.org



Village of Mamaroneck
Parks & Recreation



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SPECIAL EMERGENCY MEETING OF THE VILLAGE OF MAMARONECK
BOARD OF TRUSTEES
FRIDAY, MARCH 3, 2023, AT 5:00 P.M.
REGATTA CONFERENCE ROOM AT 123 MAMARONECK AVENUE

PRESENT:	Mayor	Thomas A. Murphy
	Trustee	Lou Young
		Nora Lucas
		Leilani Yizar-Reid
		Emmanuel Rawlings
	Clerk-Treasurer	Agostino A. Fusco
	Village Manager	Jerry Barberio (attended a portion)
	Deputy Village Attorney	Mary Desmond

ABSENT: Village Attorney Robert Spolzino

OPEN MEETING

Trustee Young made a motion to open the meeting, which was seconded by Trustee Rawlings:

Ayes: Rawlings, Yizar-Reid, Young, Murphy

Nays: Lucas

EXECUTIVE SESSION

On motion of Mayor Murphy, seconded by Trustee Young:

RESOLVED that the Board of Trustees hereby convene to Executive Session in accordance with Public Officers Law, Article 7, Section 105(f) matters leading to the appointment or employment of a particular person, or corporation or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person in the Village Manager's Office.

Ayes: Rawlings, Yizar-Reid, Young, Murphy

Nays: Lucas

On motion of Trustee Yizar-Reid, seconded by Trustee Rawlings:

RESOLVED that the Board of Trustees be and they hereby authorize the execution of a contract with the Village Manager, Jerome Barberio, as presented and discussed at this meeting.

Ayes: Rawlings, Yizar-Reid, Young, Murphy

Nays: Lucas

On motion of Trustee Young, seconded by Trustee Rawlings:

RESOLVED that the Board of Trustees end Executive Session, reconvene the Special Meeting.

Ayes: Rawlings, Yizar-Reid, Young, Lucas, Murphy

Nays: None

EXHIBIT 3

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ADJOURN

Upon rejoining the open session, Mayor Murphy announced that the Board voted 4-1 authorizing the execution of Mr. Barberio's contract.

There being no further business to come before the Board, on motion duly made and seconded the March 3, 2023, Special Meeting was adjourned at 6:20 p.m.

Ayes: Rawlings, Yizar-Reid, Young, Lucas, Murphy

Nays: None

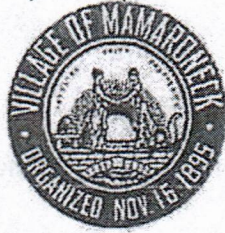
PREPARED BY:
SALLY J. ROBERTS
SECRETARY

RESPECTFULLY SUBMITTED BY:
AGOSTINO A. FUSCO
CLERK-TREASURER

EXHIBIT 3

2/12

Village of



Mamaroneck

OFFICE OF
JERRY BARBERIO
VILLAGE MANAGER

Village Hall At The Regatta
P.O. Box 369
123 Mamaroneck Avenue
Mamaroneck, N.Y. 10543
<http://www.villageofmamaroneck.org>

Tel (914) 777-7703
Fax (914) 777-7760

Village Manager's Executive Retention Agreement

This agreement is entered into on the 22 day of January, 2020, between the Village of Mamaroneck (the "Village"), acting by and through its Board of Trustees, and Jerome Barberio (the "Manager").

The Board of Trustees of the Village employs the Manager to serve as Manager and Chief Executive Officer of the Village and the Manager agrees to serve as Manager and Chief Executive Officer of the Village upon the following terms and conditions.

1. Duties. The Manager will faithfully exercise all of the powers and perform all of the duties of the office of Village Manager, as set forth in Village Code § 76-1(A) and all other applicable laws. Specifically, and unless the applicable laws and ordinances are to the contrary, the Manager will, in a manner consistent with all applicable laws and the policies established by the Board of Trustees:

a. attend all meetings of the Board of Trustees, both public and closed, unless otherwise directed by the Board of Trustees;

b. appoint on behalf of the Village all other employees of the Village, other than elected officials, the Village Attorney, the Village Clerk-Treasurer, the officers and members of the Police Department;

c. direct, assign, reassign, evaluate, discipline and terminate, in accordance with applicable law, all of the Village's employees and others subject to the Manager's power of appointment;

d. organize, reorganize and arrange the Village's staff;

f. develop and establish internal rules, regulations and procedures necessary for the efficient and effective operation of the Village; and

g. perform all of the other duties customarily performed by the chief executive officer of an organization comparable to the Village.

2. Term. The term of this agreement will begin on January 28, 2020. This agreement will remain in full force and effect until the day it is terminated by either the Board of Trustees or the Manager in accordance with paragraph 9.

3. Compensation and Benefits. Salary:

a. \$193,600 effective January 28, 2020;

b. \$209,000 effective January 28, 2021;

c. \$217,450 effective January 28, 2022;

d. \$226,150 effective January 28, 2023.

Compensation for related moving expenses: The Manager will be reimbursed \$13,500 in moving expenses incurred from January 28, 2019 to September 30, 2019. The reimbursement will be paid on January 28, 2020 in one lump sum.

The Manager will also receive \$8,500 in annual compensation for serving as Executive Director of the Larchmont-Mamaroneck Cable TV Board of Control. Except as otherwise provided in this agreement, the Village will provide to the Manager all other compensation and benefits at the highest level provided to management employees of the Village. In addition, the Manager will earn credit in an employment security fund, which will be paid in accordance with paragraph 10, as follows: (i) on the first day of the Manager's employment, a credit in an amount equal to three month's gross compensation; (ii) on the first day of each of the next succeeding years of the Manager's employment, a credit in an amount equal to 1.5 month' gross compensation.

4. **Health insurance.** In addition to any other compensation due the Manager, the Village will provide the Manager, upon the Manager's request, health, hospitalization, surgical, vision, dental, optical and comprehensive medical insurance for the Manager and the Manager's family, equal to the most favorable coverage, and upon the same terms, provided to any new full-time employee of the Village at the time the Manager requests coverage.

5. **Vacation, sick and personal leave.** The Manager will accrue vacation leave at a rate of four weeks per year and sick leave at a rate of 1.25 days per month of employment. The Manager may accrue sick leave up to a maximum of 260 days and may carry over into the succeeding year one week of vacation leave, up to a maximum accrual of eight weeks of vacation leave. The Manager will be entitled to personal leave upon same terms as other Village employees.

6. **Retirement.** Village will enroll the Manager in the applicable state or local retirement system and will make all appropriate contributions on the Manager's behalf.

7. **Automobile.** The Managers duties require that he shall have use of a vehicle provided to him by the Village for Village business and local travel up to 60 miles to and from the Manager's residence. The Village shall be responsible for paying liability, property damage, and comprehensive insurance, and for purchase, operation, maintenance, fuel, repair and necessary replacement of said vehicle.

8. **Professional expenses.** The Village will budget, and pay, for up to \$6,500 per year, and subject to state and local ethics laws and purchasing policies, the Manager's:

a. membership in professional organizations, including the International City Managers' Association (ICMA), New York Pest Management Association (NYPMA), International Society of Arborist (ISA), New York State County/City Management Association (NYSCCMA) and other related associations;

b. travel to and attendance at annual meetings of the professional organizations of which the Manager is a member and travel to and attendance at courses, seminars and institutes necessary for the Manager's professional development;

c. meals where the business of the Village is discussed or conducted and participation in social events of various organizations when representing the organization; and

d. membership in local civic organizations as approved by the Board of Trustees.

9. Termination. The Manager's employment is terminated when:

- a. a majority of the Board of Trustees votes to terminate the Manager's employment at a properly posted and duly authorized public meeting;
- b. the Board of Trustees, or the voters who elect that board or any other body having authority to do so acts to amend any of the provisions of law pertaining to the role, powers, duties, authority or responsibilities of the Manager's position or otherwise substantially changes the form of government of the Village and the Manager elects to treat that amendment or change as an act terminating the Manager's employment;
- d. the Manager resigns following an offer from the Board of Trustees of the Village to accept the Manager's resignation, whether formal or informal, or suggests that the Manager resign and the Manager elects to treat that action as an act terminating the Manager's employment;
- e. the Manager dies or becomes totally disabled, which means that the Manager is unable on a continuous basis perform the obligations required of the Manager under this agreement, and the disability continues for a period of 260 consecutive work days;
- f. the Board of Trustees of the Village determines after a public hearing and based upon clear and convincing evidence that the Manager has failed or refused comply with its lawful directives on at least three separate and unrelated occasions and that the Manager has persisted in each failure or refusal despite having been given reasonable notice of the alleged failure or refusal and a reasonable opportunity to comply;
- g. the Manager is convicted of a crime or offense involving the misuse or misappropriation of public funds; or
- h. the Manager resigns upon not less than 30 days' notice to the Board of Trustees.

10. Obligations of the parties upon termination. Upon termination, the Manager will be paid the compensation due the Manager through the date of termination and the amount due the Manager for the Manager's accrued vacation leave and sick leave. If the Manager's employment is terminated under subparagraph 9(a), (b), (c), (d) or (e), the Village will also pay to the Manager the earned balance which has accrued in the Manager's employment security fund. If the Manager's employment is terminated under subparagraph 9(f), (g) or (h), the Manager forfeits the balance in the Manager's employment security fund.

11. Performance evaluation. The Village will review the Manager's performance annually within 30 days of the anniversary of the effective date of this agreement. The evaluation will be conducted by whatever process and in whatever form the parties may agree, but, unless the parties agree in writing otherwise, the evaluation will include an initial session at which the Board of Trustees and the Manager discuss the extent to which the Manager has accomplished the goals and objectives established by the Board of Trustees for the preceding year a written evaluation setting forth the results of that discussion. Unless the Manager requests otherwise in writing, the evaluation will at all times be conducted in executive session of the Board of Trustees and will be confidential to the extent permitted by law.

12. Hours of work. The Village recognizes that the Manager must devote a great deal of time outside the normal office hours on business for the Village and to that end the Manager will be allowed

to establish a work schedule appropriate to the needs of the Manager and the Village.

13. **Ethical commitments.** The Manager will at all times uphold the tenets of the ICMA Code of Ethics. Specifically, the Manager will not endorse, contribute to or sign or circulate petitions for candidates for public office, participate in fundraising for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The Board of Trustees will not request the Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for any individual seeking or holding political office, nor to handle any personnel matter on a basis other than fairness, impartiality or merit.

14. **Indemnification.** The Village will defend, save harmless and indemnify the Manager against any obligation to pay money or perform or refrain from performing any act, including any and all losses and damages, including punitive damages, judgments, interest, settlement, penalties, fines, costs and expenses, including attorneys' and investigators' fees and litigation expenses, and any other costs or liabilities incurred by, imposed upon or suffered by the Manager resulting from or in connection with any investigation, claim, action, suit or proceeding, whether civil, criminal, arbitative, administrative or investigatory, actual or threatened, pending or completed, whether groundless or otherwise, arising out of or in connection with any act or omission, including reckless and intentional acts, related in any way to the performance of the Manager's duties or the exercise of judgment or discretion in connection with those duties. the Manager must co - operate in the defense of any investigation, claim, action, suit or proceeding that falls within the Village's obligations under this paragraph, but the Village may not settle or compromise any investigation, claim, action, suit or proceeding in which the Manager is a defendant or target without the Manager's consent. If the Manager requests, the Village will provide independent legal representation for the Manager at the Village's expense. The obligations or proceeding, including any appeals and will survive the termination of the Manager's employment.

15. **Bonding.** If the Village requires the Manager to obtain a fidelity or other bond, the Village will pay all costs associated with the bond.

16. **Entire Agreement.** This document sets forth the entire agreement between the Village and the Manager. It supersedes all prior agreements and understandings, whether oral or written, between them with respect to the terms of the Manager's employment. The failure of either party to enforce any right or remedy on any given occasion or under any specified circumstance will not be construed as or constitute a waiver of the right or remedy on any other occasion or under any other circumstances. No waiver of any right or remedy under this agreement will be effective unless it is set forth in a writing signed by the party which is claimed to have waived the right.

17. **Section headings.** The section headings in this agreement are provided for convenience only and will not affect its construction or interpretation.

18. **Construction.** All words used in this agreement are intended to be construed, in all cases, according to their fair meaning, and not for or against either party. The parties acknowledge that they have each reviewed this agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied in interpreting this agreement.

19. **Governing law.** This agreement will be governed by and construed in accordance with the laws

of the State of New York, without reference to its conflicts of laws principles. Venue for all actions arising under this agreement shall be in the state and federal courts in the State of New York and in the county in which the Village is located.

20. **Further assurances.** Each party will furnish any additional information, execute and deliver to any additional documents and do any other acts or things as the other may reasonably request for the purpose of carrying out the intent of this agreement.

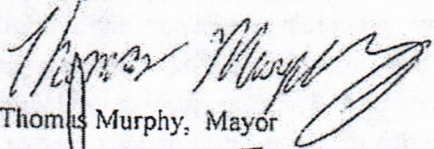
21. **No assignment.** This agreement may not be assigned or assumed.

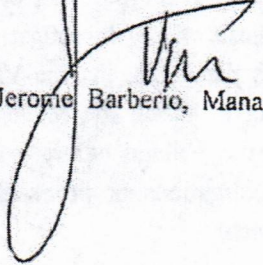
22. **Amendment.** This agreement may be amended only by a writing signed by or on behalf of each of the parties.

23. **Effective Date.** This agreement is effective when it is approved by the Board of Trustees.

The Village of Mamaroneck

By:


Thomas Murphy, Mayor


Jerome Barberio, Manager

Village of Mamaroneck

123 Mamaroneck Ave., Mamaroneck, NY 10543
ph: (914) 777-7700

Board of Trustees Agenda

VILLAGE OF MAMARONECK BOARD OF TRUSTEES WORK SESSION AGENDA
February 13, 2023 AT 5:15 PM - Courtroom at 169 Mount Pleasant Avenue
NOTICE OF FIRE EXITS AND REQUEST TO
SILENCE ELECTRONIC DEVICES

OPEN MEETING

1. OLD BUSINESS

- A. (November 9, 2020) Review of Village Code to include requirements for Fair And Affordable Housing for all zones in the Village (Trustee Lucas)
- B. (November 14, 2022) Building and Fire Code Administration (Village Attorney) To Be Held Until February 27, 2023
- C. (November 14, 2022) First Amendment to Wireless Telecommunications Facility Lease Agreement for the Fenimore Road Cell Tower (Manager's Office) To Be Held Until February 27, 2023
- D. (November 28, 2022) Taylors Lane Encroachment (Manager's Office) To be held until March 13, 2023 Meeting
- E. (January 23, 2023) Partial Property Tax Exemption for Volunteer Firefighters and Ambulance Workers For February 27, 2023 Regular Meeting to Schedule a Public Hearing (Trustees Lucas & Young)
- F. (January 23, 2023) Establishing a Designated Reserve Fund for Supplemental Income Fund for Volunteer Firefighters Injured in the Line of Duty For February 27, 2023 Regular Meeting (Manager's Office)
- G. (January 23, 2023) Traffic Commission Recommendations For February 27, 2022 Regular Meeting (Manager's Office)
 - 1. Rescind "No Parking" Restriction on the North Side of Stuart Avenue between South Barry Avenue and Guion Drive
 - 2. Removal of Parking Spaces on Mount Pleasant Avenue to enhance site visibility in the vicinity of the intersection with Stanley Avenue
- H. (January 23, 2023) Resuming Village Operation of Housing Choice (Section 8) Voucher Program (Manager's Office)
- I. (January 23, 2023) Legislation to Regulate the Removal of Double Poles (Manager's Office)
- J. (January 23, 2023) Business Recruitment for the Village of Mamaroneck (Trustee Young)

2. NEW BUSINESS

EXHIBIT 5

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- A. Fire Department Presentation - Replacement of Engine 41 For February 27, 2023 Meeting (Fire Department)
- B. Policy to Install Solar Panels on Future Roof Replacement Projects for Village-owned Buildings (Trustee Young)
- C. Request for Budget Committee to Review Consolidation of Port Chester Court with Town of Rye (Mayor Murphy)
- D. LMC Board of Control (Mayor Murphy)
- E. Poetry Garden (Trustee Lucas)
- F. Adoption of FY 2023/24 Capital Budget and Plan For February 13 Regular Meeting (Manager's Office)
Capital Budget & Plan Available by clicking [here](#)
- G. Memorial Day Parade For February 13, 2023 Regular Meeting (Manager's Office)
- H. Decommissioning of Police Vehicle 323 For February 27, 2023 Regular Meeting (Police Chief)
- I. Fiscal Year 2023/24 Budget Calendar For February 27, 2023 Regular Meeting (Manager's Office)
- J. Design & Engineering Services for Sanitary Sewer Replacements for Grove, Hill Street, and Carroll Avenue (Subject of a Public Health Emergency Declaration) For February 27, 2023 Regular Meeting (Manager's Office)
- K. Transfer Station Roof For February 27, 2023 Regular Meeting (Village Engineer)
- L. Professional Services Agreement to Provide Engineering & Design Services for PIN 8762.92 - Halstead Avenue Safety Improvements Project For February 27, 2023 Regular Meeting (Manager's Office)
- M. Land Use Process Improvements (Manager's Office)
- N. Flood Mitigation - Portable Hydraulic Pumps for Confluence of Mamaroneck and Sheldrake Rivers (Trustee Young)
- O. Review of Village's Housing Discrimination Law (Trustee Yizar-Reid)
- P. Review of Adjusted Median Income Requirements in Village Code (Trustee Yizar-Reid)

3. EXECUTIVE SESSION - ADVICE OF COUNSEL

- A. Appointment of Member to the Committee for the Environment - It is anticipated that a motion will be offered to enter into Executive Session pursuant to §105(1)(f) of the New York State Public Officers Law to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment of a member to the Committee for the Environment
- B. Village Prosecutor - It is anticipated that a motion will be offered to enter into Executive Session pursuant to §105(1)(f) to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation
- * C. Village Manager Contract Renewal - It is anticipated that a motion will be offered

EXHIBIT 5
2 PC

to enter into Executive Session pursuant to §105(1)(f) to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation

ADJOURN

ANY HANDICAPPED PERSON NEEDING SPECIAL ASSISTANCE IN ORDER TO ATTEND THE MEETING SHOULD CALL THE VILLAGE MANAGER'S OFFICE AT 914-777-7703

All Board of Trustee Regular, ZBA, Planning Board, and HCZM Meetings are Broadcast Live on LMC-TV:

Verizon FIOS Channels 34, 35 & 36

Cablevision Channels: 75, 76 & 77

And Streamed on the Web: www.lmc-tv.org

EXHIBITS
315

Village of Mamaroneck

123 Mamaroneck Ave., Mamaroneck, NY 10543
ph: (914) 777-7700

Board of Trustees Agenda

VILLAGE OF MAMARONECK BOARD OF TRUSTEES WORK SESSION AGENDA

February 27, 2023 AT 4:00 PM - Courtroom at 169 Mount Pleasant Avenue

NOTICE OF FIRE EXITS AND REQUEST TO
SILENCE ELECTRONIC DEVICES

OPEN MEETING

1. OLD BUSINESS

- A. (November 9, 2020) Review of Village Code to include requirements for Fair And Affordable Housing for all zones in the Village (Trustee Lucas)
- B. (November 14, 2022) Building and Fire Code Administration (Village Attorney) To Be Held Until February 27, 2023
- C. (November 28, 2022) Taylors Lane Encroachment (Manager's Office) To be held until March 13, 2023 Meeting.
- D. (December 12, 2022) Elimination of Off-Year Elections (Awaiting Revised Laws)
- E. (January 23, 2023) Resuming Village Operation of Housing Choice (Section 8) Voucher Program (Manager's Office)
- F. (January 23, 2023) Legislation Regarding the Safety and Maintenance of Utility Poles (Manager's Office)
- G. (January 23, 2023) Business Recruitment for the Village of Mamaroneck (Trustee Young)
- H. (February 13, 2023) Policy to Install Solar Panels on Future Roof Replacement Projects for Village-owned Buildings (Trustee Young)
- I. (February 13, 2023) Request for Budget Committee to Review Consolidation of Port Chester Court with Town of Rye (Mayor Murphy)
- J. (February 13, 2023) Flood Mitigation - Portable Hydraulic Pumps for Confluence of Mamaroneck and Sheldrake Rivers (Trustee Young)
- K. (February 13, 2023) Review of Village's Housing Discrimination Law (Trustee Yizar-Reid)
- L. (February 13, 2023) Review of Adjusted Median Income Requirements in Village Code (Trustee Yizar-Reid)


2. NEW BUSINESS

- A. Fiscal Year 2023/24 Budget Discussion (No Backup)
 - 1. Board of Trustees Vision for FY 2023/24 Budget
- B. Supporting Village Staff from Harassment and Bullying (Mayor Murphy)

EXHIBITS
4 & 5

- C. Presentation from Community Counseling Center - Dr. Mark Levy to Present (Counseling Center)
- D. Appeal of False Alarm Fines
 - 1. Bullseye Glass, 115 Hoyt Avenue
 - 2. Sarah Neuman,
- E. Design Services Proposal - Repairs to Stormwater Infrastructure on Gertrude & Ralph Avenues For February 27, 2023 Regular Meeting (Manager's Office)
- F. Replacement of Pavilion Doors For February 27, 2023 Regular Meeting (Parks & Recreation Departments)
- G. Agreement with South East Consortium for Special Services For March 13, 2023 Regular meeting (Recreation Department)

3. EXECUTIVE SESSION - ADVICE OF COUNSEL

- A. McCrory & Tiekert vs. Board of Appeals, Ian & Jessica Sigalow
-  B. Village Manager Contract Renewal - It is anticipated that a motion will be offered to enter into Executive Session pursuant to §105(1)(f) to discuss the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation

ADJOURN

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Village Manager's Executive Retention Agreement

This agreement is entered into on the 3rd day of March, 2023, between the Village of Mamaroneck (the "Village"), acting by and through its Board of Trustees, and Jerome Barberio (the "Manager").

The Board of Trustees of the Village employs the Manager to serve as Manager and Chief Executive Officer of the Village and the Manager agrees to serve as Manager and Chief Executive Officer of the Village upon the following terms and conditions.

1. Duties. The Manager will faithfully exercise all of the powers and perform all of the duties of the office of Village Manager, as set forth in Village Code § 76-1(A) and all other applicable laws. Specifically, and unless the applicable laws and ordinances are to the contrary, the Manager will, in a manner consistent with all applicable laws and the policies established by the Board of Trustees:

- a. attend all meetings of the Board of Trustees, both public and closed, unless otherwise directed by the Board of Trustees;
- b. appoint on behalf of the Village all other employees of the Village, other than elected officials, the Village Attorney, the Village Clerk-Treasurer, the officers and members of the Police Department;
- c. direct, assign, reassign, evaluate, discipline and terminate, in accordance with applicable law, all of the Village's employees and others subject to the Manager's power of appointment;
- d. organize, reorganize and arrange the Village's staff;
- f. develop and establish internal rules, regulations and procedures necessary for the efficient and effective operation of the Village; and
- g. perform all of the other duties customarily performed by the chief executive officer of an organization comparable to the Village.

2. Term. The term of this agreement will begin on March 3, 2023. This agreement will remain in full force and effect until the day it is terminated by either the Board of Trustees or the Manager in accordance with paragraph 9.

3. Compensation and Benefits. Salary:

- a. \$235,200 effective March 3, 2023.
- b. \$244,600 effective March 3, 2024.
- c. \$254,400 effective March 3, 2025.
- d. \$264,500 effective March 3, 2026.

EXHIBIT 6
175

The Manager will also receive \$8,500 in annual compensation for serving as Executive Director of the Mamaroneck Cable TV Board of Control. Except as otherwise provided in this agreement, the Village will provide to the Manager all other compensation and benefits at the highest level provided to management employees of the Village. In addition, the Manager will earn credit in an employment security fund, which will be paid in accordance with paragraph 10, as follows: (i) on the first day of the Manager's employment, a credit in an amount equal to three month's gross compensation; (ii) on the first day of each of the next succeeding years of the Manager's employment, a credit in an amount equal to 1.5 month' gross compensation.

4. Health insurance. In addition to any other compensation due the Manager, the Village will provide the Manager, upon the Manager's request, health, hospitalization, surgical, vision, dental, optical and comprehensive medical insurance for the Manager and the Manager's family, equal to the most favorable coverage, and upon the same terms, provided to any new full-time employee of the Village at the time the Manager requests coverage.

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d. membership in local civic organizations as approved by the Board of Trustees.

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- a. a majority of the Board of Trustees votes to terminate the Manager's employment at a properly posted and duly authorized public meeting;
- b. the Board of Trustees, or the voters who elect that board or any other body having authority to do so acts to amend any of the provisions of law pertaining to the role, powers, duties, authority or responsibilities of the Manager's position or otherwise substantially changes the form of government of the Village and the Manager elects to treat that amendment or change as an act terminating the Manager's employment;
- d. the Manager resigns following an offer from the Board of Trustees of the Village to accept the Manager's resignation, whether formal or informal, or suggests that the Manager resign and the Manager elects to treat that action as an act terminating the Manager's employment;
- e. the Manager dies or becomes totally disabled, which means that the Manager is unable on a continuous basis perform the obligations required of the Manager under this agreement, and the disability continues for a period of 260 consecutive work days;
- f. the Board of Trustees of the Village determines after a public hearing and based upon clear and convincing evidence that the Manager has failed or refused comply with its lawful directives on at least three separate and unrelated occasions and that the Manager has persisted in each failure or refusal despite having been given reasonable notice of the alleged failure or refusal and a reasonable opportunity to comply;
- g. the Manager is convicted of a crime or offense involving the misuse or misappropriation of public funds; or
- h. the Manager resigns upon not less than 30 days' notice to the Board of Trustees.

10. Obligations of the parties upon termination. Upon termination, the Manager will be paid the compensation due the Manager through the date of termination and the amount due the Manager for the Manager's accrued vacation leave and sick leave. If the Manager's employment is terminated under subparagraph 9(a), (b), (c), (d) or (e), the Village will also pay to the Manager the earned balance which has accrued in the Manager's employment security fund. If the Manager's employment is terminated under subparagraph 9(f), (g) or (h), the Manager forfeits the balance in the Manager's employment security fund.

11. Performance evaluation. The Village Board of Trustees will meet annually at the last meeting in October to review the Manager's performance in a closed session meeting. The discussion will include past performance and goals/objectives for the upcoming year.

12. Hours of work. The Village recognizes that the Manager must devote a great deal of time outside the normal office hours on business for the Village and to that end the Manager will be allowed to establish a work schedule appropriate to the needs of the Manager and the Village.

13. Ethical commitments. The Manager will at all times uphold the tenets of the ICMA Code of Ethics. Specifically, the Manager will not endorse, contribute to or sign or circulate petitions for candidates for public office, participate in fundraising for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential

information or misuse of public time. The Board of Trustees will not request the Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for any individual seeking or holding political office, nor to handle any personnel matter on a basis other than fairness, impartiality or merit.

14. Outside Employment. If the Manager considers taking future outside employment, they must first discuss the proposed outside employment with the Board of Trustees and demonstrate that the outside employment will not conflict with the Village of Mamaroneck Code of Ethics and/or interfere with the duties of the Manager enumerated in this agreement.

15. Indemnification. The Village will defend, save harmless and indemnify the Manager against any obligation to pay money or perform or refrain from performing any act, including any and all losses and damages, including punitive damages, judgments, interest, settlement, penalties, fines, costs and expenses, including attorneys' and investigators' fees and litigation expenses, and any other costs or liabilities incurred by, imposed upon or suffered by the Manager resulting from or in connection with any investigation, claim, action, suit or proceeding, whether civil, criminal, arbitral, administrative or investigatory, actual or threatened, pending or completed, whether groundless or otherwise, arising out of or in connection with any act or omission, including reckless and intentional acts, related in any way to the performance of the Manager's duties or the exercise of judgment or discretion in connection with those duties. The Manager must co-operate in the defense of any investigation, claim, action, suit or proceeding that falls within the Village's obligations under this paragraph, but the Village may not settle or compromise any investigation, claim, action, suit or proceeding in which the Manager is a defendant or target without the Manager's consent. If the Manager requests, the Village will provide independent legal representation for the Manager at the Village's expense. The obligations or proceeding, including any appeals and will survive the termination of the Manager's employment.

16. Bonding. If the Village requires the Manager to obtain a fidelity or other bond, the Village will pay all costs associated with the bond.

17. Entire Agreement. This document sets forth the entire agreement between the Village and the Manager. It supersedes all prior agreements and understandings, whether oral or written, between them with respect to the terms of the Manager's employment. The failure of either party to enforce any right or remedy on any given occasion or under any specified circumstance will not be construed as or constitute a waiver of the right or remedy on any other occasion or under any other circumstances. No waiver of any right or remedy under this agreement will be effective unless it is set forth in a writing signed by the party which is claimed to have waived the right.

18. Section headings. The section headings in this agreement are provided for convenience only and will not affect its construction or interpretation.

19. Construction. All words used in this agreement are intended to be construed, in all cases, according to their fair meaning, and not for or against either party. The parties acknowledge that they have each reviewed this agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be applied in interpreting this agreement.

20. Governing law. This agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws principles. Venue for all actions arising under this agreement shall be in the state and federal courts in the State of New York and in the county in which the Village is located.

21. Further assurances. Each party will furnish any additional information, execute and deliver to any additional documents and do any other acts or things as the other may reasonably request for the purpose of carrying out the intent of this agreement.

22. No assignment. This agreement may not be assigned or assumed.

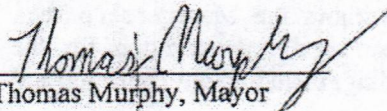
23. Amendment. This agreement may be amended only by a writing signed by or on behalf of each of the parties.

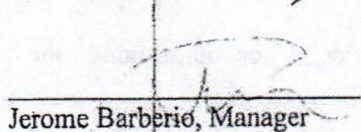
24. Effective date. This agreement is effective when it is approved by the Board of Trustees.

25. Supersedes prior agreements. This agreement shall supersede and replace all prior agreements between Jerome Barberio and the Village of Mamaroneck.

The Village of Mamaroneck

By:


Thomas Murphy, Mayor


Jerome Barberio, Manager

TAX WATCH

Mamaroneck village manager Barberio's contract ratified in secret behind closed doors



David McKay Wilson

Rockland/Westchester Journal News

Published 5:10 a.m. ET March 16, 2023 | Updated 9:36 a.m. ET March 16, 2023

In an emergency meeting one Friday evening in early March, the Mamaroneck Village board met behind closed doors to approve a four-year contract extension for Village Manager Jerry Barberio.

The contract made Barberio, who moonlights as part-time administrator of the borough of Englewood Cliffs, New Jersey, Westchester County's highest paid village administrator.

But that action on March 5, which jacked up Barberio's annual pay to \$243,700, was never approved in public, raising questions about the validity of the backroom action.

Revelations about the village manager's contract comes during national Sunshine Week, which in mid-March commemorates the signing of the federal Freedom of Information Law on March 16, 1966.

Kristin O'Neill, assistant director of New York Committee on Open Government, said the state's Open Meetings Law is crystal clear: You can't approve the expenditure of public funds in private.

"If you are going to vote to expend public monies, the vote has to occur in public," she said.

Mayor Tom Murphy, however, insisted that they could do the village's business behind closed doors, as long as what they decided in the backroom was announced in public after the vote took place. Minutes of the private "executive session," which were provided to the

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USA TODAY Network through a Freedom of Information request, detailed the 4-1 vote, with Trustee Nora Lucas the sole trustee voting against the pact.

"It's perfectly OK to do that," Murphy said. "Personnel matters are never discussed in the open. There's an exemption in the law for that. There's a lot of people with opinions who are uninformed."

O'Neill acknowledged that New York's Open Meetings Law allows public bodies to discuss personnel matters in private. But the decision to ratify a contract must be made in public.

"You have to vote in a public session," she said.

Barberio complaint: Manager files discrimination complaint against trustee

Flooding: Mamaroneck Flats hit hard in Ida

Federal money: Relief aids flows to communities with flooding issues

The Mamaroneck Village Board's action on March 5 capped a tumultuous campaign by Barberio to convince the panel to extend his contract, which was to expire at the end of 2023. It showcased Barberio's hardball approach to public service.

Former Trustee Daniel Natchez learned about Barberio's tactics in 2021 when the village manager filed a complaint against him with the federal Equal Employment Opportunity Commission. It alleged that Natchez had sexually harassed him by offering him a spare room in his home when Barberio started his job, and had criticized him too harshly as a board trustee. Natchez denied the allegations and Barberio said he subsequently withdrew the case.

By February 2022, the complaint was obtained by The Journal News/lohud. And in June Barberio was quoted saying he "accidentally" sent the complaint to public officials and journalists two weeks before the June 2022 Democratic primary, according to New Rochelle journalist Robert Cox, who received the document.

Natchez, one of Barberio's most vocal critics, subsequently lost in the primary.

Village split over Barberio

Mamaroneck residents are decidedly split on Barberio's tenure in the village. At the Village Board's March 13 meeting, volunteer board members Gail Koller and Carlo Recca sang Barberio's praises, with Koller lauding Barberio for his work on tree issues in the village and Reci saying that the village manager had delivered great service to the community.

"Retaining him will be beneficial," Reci said. "He's a godsend."

But progressive activist Amy Siskind and Barberio critic Stuart Tiekert thought otherwise. Siskind, who sat outside the closed meeting on March 5 when the contract was ratified in private, said she felt the village was run like a "dictatorship." Tiekert, who was named in Barberio's human rights complaint, and is a thorn in Barberio's side with a steady flood of public records requests, called him a "pathological liar."

"Our village deserves a manager who tells the truth, acts professionally and is civil," Tiekert said.

Barberio said he pushed for the new contract because his lease was coming up at the Avalon apartment complex in Mamaroneck and he had to decide whether to renew his lease.

The backroom contract deal on March 3 provided his second raise in Mamaroneck in 2023. On Jan. 1, under his old contract, Barberio's pay rose 3.8% to \$234,650, which includes \$8,500 for his role as executive director of the Larchmont-Mamaroneck Cable TV Board of Control. Then his pay rose an additional 3.8% to \$243,700 with the new pact.

His new contract placed him slightly above the pay of Rye Brook Village Manager Chris Bradbury, whose salary was \$242,460 in 2023, according to a Tax Watch survey of the county's 19 villages. The survey found the average Westchester village administrator's pay was about \$185,000.

Mayor Murphy said Barberio was worth it, noting his work reorganizing departments, empowering village employees to do tasks ones assigned to outside consultants, and holding evening office hours for Spanish-speaking residents.

He said Barberio's 2023 draft budget had a tax levy increase of just 1%, far below the tax cap.

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"He's a leader who is very determined that every member of our community gets treated equally and with fairness," he said. "Jerry's a leader."

Negotiating a new contract

Barberio's bargaining for a contract extension became public in late February after negotiations broke down with the board. He announced in a Feb. 27 email to scores of Mamaroneck employees and appointed public officials that he would not seek to renew his contract.

In an email to Mayor Tom Murphy two days later, Barberio railed against Trustee Nora Lucas for requesting that the panel bring an attorney to help with the negotiations.

"The deal cannot be finalized in March because you agree to bring in a lawyer, at Nora's request, (AGAIN) to stall and stall again," wrote Barberio. "How ridiculous that you all think I am not aware of the stall tactics!!!"

The contract was voted on behind closed doors, with village attorney Robert Spolzino absent from the meeting.

Moonlighting in Englewood Cliffs

Barberio, 55, is a public administrator in great demand. He came to Mamaroneck in 2019, after serving as the administrator for seven years in the Jersey Shore town of Hammonton, New Jersey, and four years as assistant director of public works in New Jersey's Atlantic County.

On Jan. 11, the borough of Englewood Cliffs hired Barberio as the municipality's part-time administrator until a fulltime replacement for his predecessor gets hired. The borough, with a population of about 5,300, has an annual budget of about \$20 million. The borough, which is four miles north of the George Washington Bridge, is under state order to build 650 units of affordable housing, Barberio said.

Mamaroneck, with a population of 20,000, has an annual budget of \$45 million.

"I'm a hardworking guy," said Barberio. "I work in Englewood either before I get to Mamaroneck or in the evenings. They need some help getting into compliance on the

housing issue.”

Barberio's new contract states that he must consult with the Village Board if he considers "future outside employment" and demonstrate that the side gig does not interfere with his duties in Mamaroneck. That provision was ratified several weeks after he landed the job in Englewood Cliffs, so it's grandfathered in.

Barberio, who owns a home in New Jersey, said he works between 10 and 15 hours a week in New Jersey, where he's paid \$65 an hour, with that rate going up to \$80 in June. On Wednesday morning, Barberio picked up the phone when Tax Watch called borough hall.

If he worked 15 hours a week at \$65 an hour, Barberio could earn an extra \$50,000 a year.

He said he typically puts in up to four hours in the morning in New Jersey before heading up Interstate 95 to Mamaroneck, where he often works late into the evening attending an array of village meetings – from the Village Board to its Parks & Recreation Commission to the village's Tree Committee.

“I've got eight village meetings upcoming in the evening,” he said, “And one recently went until 11 p.m.”

Follow David McKay Wilson on Twitter @davidmckay415 or email him at dwilson3@lohud.com.

Subscribers can sign up for his weekly newsletter.

Legality Test: Did They Pass?

By Kathy Savolt -

On Friday night, March 3, 2023, the Board of Trustees held an emergency meeting and immediately went into Executive Session to discuss the employment of the Village Manager, Jerry Barberio. After about an hour, the Board came out of Executive Session and announced they had voted to offer Barberio a new four-year contract effective immediately. See the contract [HERE](#).

Since then, there has been much discussion about whether the vote was legal and therefore, whether the contract is legal. Some claim that the New York State Open Meetings Law requires any vote resulting in the appropriation of public funds must be taken in a meeting open to the public.

Mayor Tom Murphy disagrees and claims that if the vote results were announced at a public meeting, the Board followed the law. Murphy is quoted in the March 20th Journal News article as saying "the voting procedures of the Village of Mamaroneck strictly follow the laws of New York State." The NY Committee on Open Government completely disagrees. See LoHud article [HERE](#).

Robert Spolzino, the Village Attorney, whose firm is paid \$165,000/year for his services, said that the vote in Executive Session was legal because the board did not appropriate the money.

The Mamaroneck Observer decided to look more closely at these claims.

[HERE](#)'s the New York State Open Meetings Law Section 105.1 (emphasis added):

§105. Conduct of executive sessions.

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a **public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:** (a list of exceptions, none of which seem to apply, follows which can be viewed by clicking the above link.)

So, did the Board "appropriate" the funds necessary to execute the contract which was effective immediately upon the vote?

EXHIBIT 8 1/2

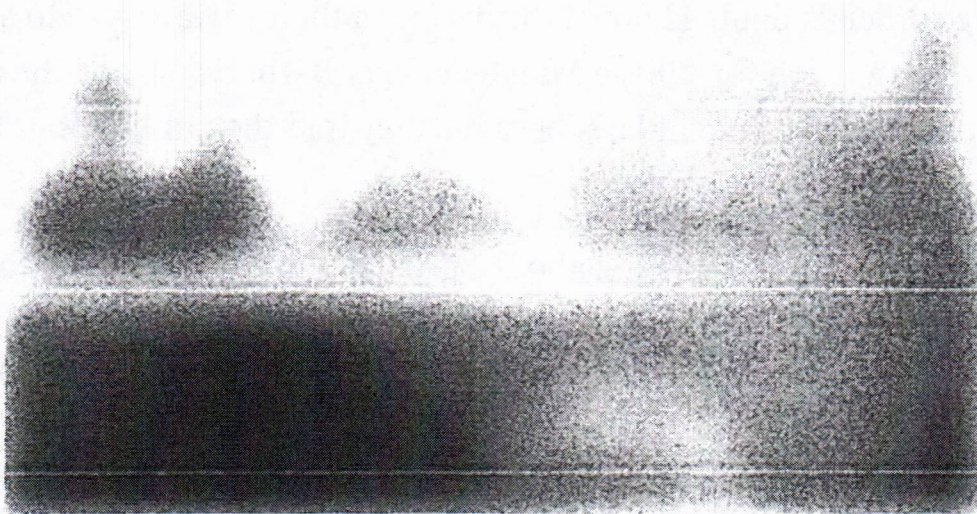
Here's the definition of "Appropriation" included in NY State law (emphasis added):

Appropriation

Statutory authorization to make expenditures during a specific State fiscal year and to make disbursements for the purposes designated up to the stated amount of the appropriation.

Appropriations are authorizations, rather than mandates, to spend.

What do you think? Did the Board violate the Open Meetings Law? Did they appropriate, i.e., spend, public moneys when they voted behind closed doors to increase Barberio's salary and benefits effective immediately? And, if the money wasn't "appropriated" does that mean Barberio isn't getting paid?



TAX WATCH

Mamaroneck doubles down on backroom vote for manager's \$1M contract package. Here's why

David McKay Wilson

Rockland/Westchester Journal News

Published 5:08 a.m. ET March 20, 2023 | Updated 2:16 p.m. ET March 27, 2023

Mamaroneck village officials doubled down this week on their private vote to approve a four-year, \$1 million extension for Village Manager Jerry Barberio, saying the action complied with state open government laws because they told the public about the private vote after it took place behind closed doors.

Their defense came as questions emerged about Barberio's part-time status during regular business hours, with Westchester's highest-paid village administrator also working several mornings a week as administrator of Englewood Cliffs, New Jersey, 25 miles west of Mamaroneck.

The four-year contract was approved in a private executive session at an emergency Friday evening meeting on March 3. The pact put his salary at \$243,700 in 2023, rising to \$273,000 by 2026.

The contract, which was approved by the all-Democratic board, had no prohibition on his side gig as the administrator of the borough of Englewood Cliffs, New Jersey. The new pay rate was effective March 3, the date of the emergency meeting.

While a top official at the state Committee on Open Government said a public vote was required to appropriate funds for Barberio's new salary, Mamaroneck Mayor Tom Murphy said there was nothing wrong about voting behind closed doors.

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• He acknowledged, though, that the board does not typically vote in private to approve new spending such as Barberio's contract extension, which included a 4% raise in March, on top of a 4% raise he received in January.

"The voting procedures of the Village of Mamaroneck strictly follow the laws of New York State," said Murphy.

Keeping the vote private spared the board from hearing from irate residents, who under the village's rules, are allowed to speak publicly on any agenda item. Taxpayers may also have learned the specifics of Barberio's \$1 million deal that night. It took citizen activist Stuart Tiekert 10 days after the vote for the village to make it public, after Tiekert filed an appeal of Freedom of Information Law over what he saw as foot-dragging by village officials.

"It's par for the course," he said.

Absent a lawsuit challenging the vote in state Supreme Court, the private vote on the contract will stand.

Backroom: Mamaroneck votes behind closed doors for Barberio's contract

Filtration Plant: Opposition grows for Westchester Joint Water Works filtration plan in Purchase

Quakers: Purchase group opposes Westchester Joint Water Works plant

What's the big deal?

Village Attorney Robert Spolzino said the vote behind closed doors was legal because the board did not vote to "appropriate" the money. He declined to say how a contract pledging to pay Barberio \$1 million over 4 years did not constitute appropriating public funds.

"If you can discuss the terms of employment in an executive session, then you can vote on it," said Spolzino, a former justice at the state Supreme Court's Appellate Division in Brooklyn. "What's the big deal?"

Mamaroneck Trustee Nora Lucas, the lone board member to oppose Barberio's contract, said her colleagues wanted to keep the vote private.

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"I think that was an error," she said. "In my opinion, we should have had the vote in an open meeting."

Lucas showed up for the emergency meeting with the understanding that the board would review Barberio's recent outbursts as its contract negotiations on his contract extension had reached the breaking point.

The meeting came four days after Barberio sent a late-night email to many town officials and volunteers. He complained about the "awful tactics" by the village board, then withdrew from consideration for a contract renewal.

"His email was intemperate and insubordinate," said Lucas.

Lucas said she saw no reason to move so quickly on the new contract, as the old contract had 10 more months before its expiration. She said the new contract wasn't even on the agenda.

Barberio, who subsequently apologized, owns a home in New Jersey and rents a one-bedroom flat at the Avalon in Mamaroneck for \$3,250 a month. He said his landlord needed to know if he wanted to renew his lease.

"I inappropriately accused them of stall tactics," he said. "I was hurt. I couldn't understand why they weren't interested in advancing it. But I had a lease to deal with."

Trustee Leilani Yizar-Reid said she called the emergency meeting to review Barberio's behavior, not thinking that the trustees would end up approving the \$1 million contract extension that night. Barberio attended the meeting as well, and they ended up hammering out an agreement.

"I'm happy we decided to keep Jerry," Yizar-Reid said. "His skills are needed here. His behavior can be rectified."

Englewood Cliffs commute

The new contract stated that any future side jobs sought by Barberio needed board review. But his Englewood Cliffs part-time gig was grandfathered in.

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Barberio told Tax Watch he was able to fit both jobs into his busy schedule, with 10 to 15 hours of work each week in Englewood Cliffs, with that assignment usually done during the morning. Then he'd drive his 2022 Audi A-5 coupe 25 miles across the George Washington Bridge to Mamaroneck. He said he puts in full-time hours in Mamaroneck because he attends so many evening meetings.

At 1 p.m. Friday, Barberio said he'd put in 49 hours already for the village.

"I work my tail off," he said.

In Larchmont, the town of Mamaroneck's other village, the municipality's administrator, Jordan Corcoran-Datino, is required to be present at Village Hall during regular business hours, as well as evening meetings, after-hours emergencies, and community events. His salary of \$185,000 includes double-duty as the village clerk as well as administrator.

Lucas dislikes that Barberio splits his daytime work with another municipality.

"I don't think it's responsible for him to have a part-time job elsewhere," she said. "It's not fair to the village."

But Yizar-Reid noted that the contract provides flexibility, allowing him to "establish a work schedule appropriate to the needs of the Manager and the Village."

"If his schedule doesn't affect the running and governance of our village, it's not a problem for me," she said.

Follow David McKay Wilson on Twitter @davidmckay415 or email him at dwilson3@lohud.com.

Subscribers can sign up for his weekly newsletter

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