



**VILLAGE BOARD OF TRUSTEES WORKSHOP MEETING AGENDA
MONDAY, AUGUST 31, 2020 AT 7:00 P.M.**

Pledge of Allegiance and Moment of Silence

ROLL CALL

1. UPCOMING MEETINGS:

- a. A Regular Meeting of the Board of Trustees will be held on Tuesday, September 8, 2020. (Please note the meeting was rescheduled from Monday, September 7, 2020 due to Labor Day Holiday)
- b. A Workshop Meeting is scheduled for Monday, September 28, 2020 at 7:00 p.m. (Please note Village Board Workshop Meetings will now be held on the last Monday of the month.)

2. INFORMAL PRESENTATION:

- a. Informal Presentation by Sam Rottenberg and Robert Bernstein representing Le Chocolate

3. FIRE DEPARTMENT:

- a. Update
- b. Accepting New Member: Suffern Hook & Ladder - Emily Guerin (Over 18 Member)
- c. Update on 19-Tower repair

4. CULTURE AND RECREATION:

- a. Update
- b. September 11th Ceremony

5. DEPARTMENT OF PUBLIC WORKS:

- a. Update
- b. Discussion – Amending Resolution 124 of 2020 Establishing the Position of Clerk in the DPW Administration and Appointing Danielle Curtain to the Position of Clerk Effective July 7, 2020, to reflect that the appointment was authorized by the Rockland County Department of Personnel using the updated certification of eligible for Exam Number 19137
- c. Discussion – Temporary reassignment of Street Department Laborer, Michael Augustin, to the Water and Sewer Department for approximately 90 days
- d. Discussion – Hiring of a Seasonal Laborer for the Street and Refuse Department to temporarily replace 90-day transfer of Michael Augustin including review of methods of funding to be utilized

6. POLICE DEPARTMENT:

- a. Update
- b. Accepting letters of retirement from:
 1. Sgt. Michael Fennessey as of August 27, 2020
 2. Sgt. Deirdre Smith as of August 31, 2020

7. **TREASURER:**
 - a. Update
 - b. Resolution amending Resolution 144 adopted August 3, 2020
 - c. Discussion – Village Treasurer recommendation to establish a General Municipal Law Section 6-P Employee Benefits Reserve Fund

8. **ATTORNEY:**
 - a. Public Hearing - Tuesday, September 8, 2020 at 7:10 p.m. to consider a special permit for a private club at 85 Lafayette Avenue (475 Beacon Partners, LLC)
 - b. Public Hearing - Tuesday, September 8, 2020 at 7:15 p.m. to authorize the Village to address property maintenance conditions at 27 Hillside Drive
 - c. Discussion – Establishing a Code of Conduct for public comment during Regular Village Board Meetings

9. **TRUSTEES:**
 - a. Updates

10. **MAYOR:**
 - a. Discussion – Reopening of Village Hall to the public during the COVID-19 Pandemic and the associated health and safety monitoring procedures required to ensure employee safety

11. **ADJOURNMENT:**



501 CHESTNUT RIDGE ROAD / SUITE 301 / CHESTNUT RIDGE, N.Y. 10977 / 212.381.0670

February 5, 2020

Steve Conlee
Chief Building Inspector
Village of Suffern
61 Washington Avenue
Suffern, NY 10901

Re: Le Chocolate
1 Ramapo Avenue
Suffern, NY 10901

Mr. Conlee,

Le Chocolate is a manufacturer of fine chocolates and is currently located at 1 Ramapo Avenue in the Village of Suffern. The existing building consists of 2 portions. Along Ramapo Avenue the front portion is one-story above grade with a basement. This portion is located on a steep slope to the west and the basement is completely out of the ground on the north and west sides. The building is approximately 10,500 sf on the first floor with the basement of equal size. The rear portion of the building is one story on grade with no basement and approximately 14,500 sf. Due to the grade, rear portion is located at the existing basement level of the front portion on 1 Ramapo Avenue. Mr. Rottenberg, the owner of the building as well as Le Chocolate, is looking to expand their operations, add needed warehouse storage space and small retail stores along Ramapo Avenue.

Bild Architecture has been retained to develop a proposed concept to integrate the existing facility into a mixed-use building with the village in mind. The concept includes retail space, offices, warehousing and manufacturing for Le Chocolate and a multi-level parking garage. The concept includes adding two-stories to both portions as shown on the renderings. Although both building portions will be three stories in height, due to the existing grading of the site the rear portion will be one story lower than the front portion. The building will not be more than three stories at any point and is in line with other projects in the village.

Retail Spaces

The concept is to add five small retail establishments in the front portion of the building of approximately 1,800 sf each that will serve those who commute. Food and coffee establishments such as those that would sell pizza, coffee and breakfast, lunch or dinner items. Seating would be limited as ownership would be catering to the commuter; however, limited seating would be provided and serve commuters waiting in between trains or buses.

Office Space

The third floor of the front portion along Ramapo Road would contain approximately 10,500 sf of rentable office space. The third floor of the rear portion of the building will contain approximately 14,500 sf of rentable office space.

Warehousing and Manufacturing

As part of the project scope, Le Chocolate needs to expand its operations within the existing building envelope. Le Chocolate will be utilizing the balance of the first floor space of the front portion of the building behind the proposed retail stores, the entire basement and second floors of both the front and rear portions of the building for their offices, storage and manufacturing space.

Parking

On the south side of the site along West Park Place, there is an existing dwelling along with vacant land owned by Mr. Rottenberg and Le Chocolate. There is a paved area along West Park Place which is striped for 16 vehicles. Ownership is proposing to demolish the dwelling and excavate the site to the lowest level of the basement. We are proposing to construct a multi-level parking structure up to 4 stories with two level below ground and one level above the street. Although some parking will be utilized by the employees and for deliveries, ownership would like to establish a venture with the village to increase commuter parking and utilize the garage for those who use the baseball fields and recreational areas around the site.

The concept would greatly enhance the area and add curb appeal along Ramapo Avenue. The additional parking for the village will reduce parking congestion in the area and create easier access to public transportation. Mr. Rottenberg and Bild architecture are looking forward to working with the village to present this mixed-use concept which will enhance the area, alleviate parking congestion, and add revenue to the village.

Sincerely,



Rob Bernstein, Principal Architect





BILD
ARCHITECTURE



BILD
ARCHITECTURE







Fire Dept: Suffern NY
 HS# 3731
 Truck Type Aerial TS95

Description of work being done:

Requested quote for repair of cracks in aerial bucket where cracks have started to form. All lower flooring in the bucket will need to be removed. All rivets will be drilled out and replaced with 10/32 screws to re install. Once flooring is removed, all welds that have been cracked will be ground out to prep for new welding. All existing welds on bucket will be further inspected for any damage. Once cleaned out and preped all necessary welds will be done. After welding all removed items will be reinstalled as necessary. Bucket will then need to be third party tested.

Parts: _____

Labor: _____

Description	Part #	Qty	Each Pricing	Total Pricing
misc shop/welding supplies	006120	1	350.00	350.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00

Description	Qty	Rate Per Hour	Total
removal of pannels, welding, installation of removed parts	50	125.00	6250.00
			0.00
			0.00
			0.00
			0.00
			0.00
			0.00
			0.00
			0.00
			0.00
			0.00

Parts Total: 350.00
 Labor Total: 6250.00
Total: 6600.00

Please note, Sutphen reserves the right to withdraw this quote if not accepted within 30 days. Also Sutphen reserves the right to adjust item pricing if not all items are accepted.

Respectfully submitted,
 Brent Frey
 Sutphen East Service Manager
 Phone: 844-776-2889
 Email: Brent@sutpheneast.com

Recreation Update **September Workshop**

- **Chair Exercise Classes at the Gazebo:**
Mondays, Wednesdays at 10am

 - **Chair Yoga at the Gazebo**
Tuesdays and Thursdays at 10am
Zoom (not at Gazebo) - Fridays at 10am

 - **Walking Club at Yorkshire Park**–
Wednesdays at 10am

 - **Storytime at the Gazebo:**
Ms. Jennifer from the Suffern Library continues to join us at the Suffern Gazebo on Wednesdays at 11am. Families enjoy an afternoon in the heart of Suffern with their kids

 - **Movie Night at the Gazebo:**
Next movie – Drive In – Dr. Doolittle – August 27 – 8pm (showing around 8:15pm)

 - Suffern Fire Department – Summer Softball League into playoffs

 - Suffern Football started August 17

 - Working with the Rockland County Health Department on Grant – “Complete Streets Policy” –.
- More to come...
- ❖ Chalk contests and other home contests
 - ❖ Artytime for Adults at the Gazebo
 - ❖ Kickball Game at the ballfields
 - ❖ Car Show with Suffern FD



Village of Suffern

RESOLUTION NO. XXX OF 2020

AMENDING RESOLUTION NO. 124 OF 2020 TO REFLECT THE APPOINTMENT OF DANIELLE CURTAIN WAS MADE IN ACCORDANCE WITH THE UPDATED LIST OF CERTIFICATION OF ELIGIBLES FOR EXAM NUMBER 19137

RESOLVED, Resolution No. 124 of 2020 is amended to reflect that the appointment of Danielle Curtain to the position of Clerk in DPW Administration, effective July 7, 2020, was made in accordance with the updated Certificate of Eligibles provided to the Village of Suffern by the Rockland County Office of Personnel for Exam Number 19137.

Michael Fennessey <fenn140@icloud.com>

8/20/20 11:00 am

Retirement

To chiefosborn@optonline.net • John Mallon <johnmallon@optonline.net>

Chief,

As per our conversation last month I will be retiring from the Suffern Police Department on August 28, 2020. My last official day at Suffern PD will be August 27, 2020. I would like to thank the administration, the members of the Suffern PD, and the village board for their continued support, professionalism, and friendship over the years. I can not thank you enough for all of the support you have given me and my family throughout my career. It has been my privilege and honor to have worked for the Suffern Police Department since 1999.

I wish all of you and your families health and happiness, and please stay safe especially during these dire times.

Thank you and stay safe,

Sergeant Michael J Fennessey

Sent from my iPhone

August 21, 2020

Chief Osborn,

This letter is to inform you of my pending retirement from the Village of Suffern Police Department, effective August 31st, 2020.

It has been a privilege to work for the Suffern Police Department for the majority of my law enforcement career. Being a Police Officer is easily one of the things I am most proud of in my life. I will miss the camaraderie that I have shared with my coworkers over the years.

I take this opportunity to thank you for your leadership and friendship. I wish you and all the members of the Department a safe and rewarding career.

Sincerely,

Sgt Deirdre M Smith #139

Sgt. Deirdre M. Smith, Shield #139



Village of Suffern

RESOLUTION NO. XXX OF 2020

AMENDING RESOLUTION 144 OF AUGUST 3, 2020 AUTHORIZING TRANSFER OF UNSPENT PROJECT FUNDS FROM CAPITAL PROJECTS FUND TO GENERAL FUND

WHEREAS, on August 3, 2020, the Village Board of the Village of Suffern adopted Resolution No. 144 (the "Resolution") authorizing the transfer of \$37,550 from Project 2016-009 2016 Village Hall Improvements (the "Project") and to finance the replacement of a fire ladder truck bucket (the "Bucket"); and

WHEREAS, subsequent to the adoption of the Resolution, the Fire Chiefs of the Village of Suffern advised the Village Board that the Bucket could be repaired at the cost of \$7,350 rather than be replaced at the cost of \$37,550.

NOW THEREFORE BE IT RESOLVED that the Village Board amends Resolution 144 of August 3, 2020 to state that the Bucket will be repaired at the cost of \$7,350 rather than replaced at the cost of \$37,550 and that the transfer from the Capital Projects Fund Project 2016-009 will be \$7,350 rather than \$37,550.

A motion to approve the foregoing resolution was made by Trustee _____ and seconded by Trustee _____.

AYES:

NOES:

Adopted September 8, 2020

A RESOLUTION ESTABLISHING AN EMPLOYEE BENEFIT ACCRUED LIABILITY RESERVE FUND

RESOLVED, that pursuant to Section 6-p of the General Municipal Law, as amended, there is hereby established an "Employee Benefit Accrued Liability Reserve Fund" (hereinafter "Reserve Fund") for the payment of the monetary value of accrued and accumulated but unused and unpaid sick leave, personal leave, holiday leave, vacation time, time allowances granted in lieu of overtime compensation and any other forms of payment for accrued but unliquidated time earned by and payable to Village of Suffern employees upon termination of service; and

BE IT FURTHER RESOLVED that the Village Treasurer is hereby directed to deposit \$520,000 of General Fund unassigned fund balance into the Reserve Fund as an initial deposit; and

BE IT FURTHER RESOLVED that the Village Treasurer is hereby authorized to maintain the balance in the Reserve Fund at a level that is equal to at least 33% (one-third) of the total monetary value of all accrued but unliquidated time earned by and payable to Village of Suffern employees; and

BE IT FURTHER RESOLVED that no expenditure shall be made from this Reserve Fund without the approval of the Village of Suffern Board of Trustees and without such additional actions or proceedings as may be required by section 6-p of the General Municipal Law.

Employee Benefit Accrued Liability Reserve Fund (GML Section 6-p)

- Purpose:** To pay for any accrued “employee benefit” due an employee on termination of the employee’s service.¹⁶
- Expenditures may be made from an employee benefit accrued liability reserve fund for the payment of all or part of the cost, including interest, of:
- (a) The cash payment of the monetary value of accumulated or accrued and unused sick leave, holiday leave, vacation leave, time allowance granted in lieu of overtime compensation and other forms of payment for accrued leave time and benefits due to a municipal employee upon termination of municipal employment and separation from service “as required by ordinance, local law, collective bargaining agreement or Section six of the civil service law”
 - (b) The reasonable costs of the administration of the reserve fund
 - (c) Expert or professional services rendered in connection with the investigation, adjustment or settlement of claims, actions or judgments relating to claims for accrued employee benefits.
- Who May Create:** Municipal corporations (counties, cities, towns, villages), fire districts and other district corporations, school districts (except a school district in a city with a population of 125,000 or more), boards of cooperative educational services, and special improvement districts governed by a separate board of commissioners.
- How to Create and Use:** Created by resolution of the governing board. A referendum is not required either to create or expend moneys from the reserve.
- Sources of Revenue:** Budgetary appropriations, amounts from certain other reserve funds subject to permissive referendum, other funds that may be legally appropriated.
- Special Provisions:** No expenditure shall be made from an employee benefit accrued liability reserve fund for any employee benefit for which a reserve fund has already been established under any other provision of law. However, if a municipal corporation has previously established a reserve fund for a type of accrued employee benefits for which expenditures may be made from the employee benefit accrued liability reserve fund, the municipal corporation may, by resolution, discontinue such other reserve fund and transfer any unexpended balance to the employee benefit accrued liability reserve fund, subject to certain limitations.

¹⁶ “Employee benefits” for this purpose means the authorized “cash payment of the monetary value of accrued and accumulated but unused and unpaid sick leave, personal leave, holiday leave, vacation time, time allowances granted in lieu of overtime compensation and any other forms of payment for accrued but unliquidated time earned by municipal employees and payable to municipal employees upon termination of service, whether by retirement or otherwise ...” (GML Section 6-p[1][b]). Note that lump sum payments upon separation from service that are calculated in a manner unrelated to accrued, unliquidated leave time credits are not payable from the employee benefit accrued liability reserve fund (2006 Op St Comp No. 2006-8, at 19). The fund also may not be used to pay a local government’s cost for health insurance for retirees (see 2004 Ops St Comp No. 2004-8, at 23).

Use of Unexpended Balances: If the governing body determines that such fund is no longer needed, any remaining moneys may be transferred to any other reserve fund authorized by the General Municipal Law (supported by the same tax base) or, in the case of school districts, a reserve fund established under Education Law Section 3651, but only to the extent that the moneys in the employee benefit accrued liability reserve fund exceed a sum sufficient to pay all liabilities incurred or accrued against the employee benefit accrued liability fund, as certified to the governing board by the fiscal and legal officers of the local government prior to the discontinuance of the fund.

Retirement Contribution Reserve Fund (GML Section 6-r)

Purpose: For the payment of “retirement contributions,” which are defined as all or any portion of the amount payable to either the New York State and Local Employees’ Retirement System or the New York State and Local Police and Fire Retirement System, pursuant to Sections 17 or 317 of the Retirement and Social Security Law.

Who May Create: Municipal corporations (counties, cities, towns, villages), school districts (except a school district in a city with a population of 125,000 or more), boards of cooperative educational services, fire districts and other district corporations, police districts, and special improvement districts governed by a separate board of commissioners, which are “participating employers,” as defined in Retirement and Social Security Law Sections 2(20) or 302(20).

How to Create and Use: Created, and expenditures authorized, by resolution of the governing board to finance retirement contributions. A referendum is not required either to create or expend moneys from the reserve.

Sources of Funds:

- (a) Budgetary appropriations or taxes raised for the reserve
- (b) Revenues that are not required by law to be paid into any other fund or account
- (c) Amounts from reserve funds established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law (supported by the same tax base), or pursuant to Education Law Section 3651 subject to public hearing requirements
- (d) Other funds that may be legally appropriated.

Use of Unexpended Balances: The board may authorize the transfer of a portion of the moneys in the retirement contribution reserve to a reserve fund established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law (supported by the same tax base), or in the case of a school district, a reserve fund established pursuant to Section 3651 of the Education Law. Such a transfer is subject to a public hearing. If the board determines that the retirement contribution reserve is no longer needed, the board may terminate the fund by resolution. The resolution must transfer any moneys remaining in the retirement contribution reserve to one or more reserve funds established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law (supported by the same tax base), or in the case of a school district, one or more reserve funds established pursuant to Section 3651 of Education Law.

**VILLAGE OF COOPERSTOWN
RULES OF PROCEDURE
BOARD OF TRUSTEE MEETINGS**

REGULAR MEETINGS:

The Board of Trustees shall hold regular meetings on the 4th Monday of each month. Such regular meetings shall commence at 6:30 p.m. and be conducted in the Village Office Building, downstairs meeting room, 22 Main Street, Cooperstown, New York.

Any deviation of the foregoing paragraph shall be determined by the Board of Trustees.

SPECIAL MEETINGS:

Special meetings of the Board of Trustees are all those Board meetings other than regular meetings.

A special meeting may be called by the Mayor or two or more Trustees, upon notice to the entire Board of Trustees. Notice shall be given by telephone, in person, or in writing at least 24 hours in advance unless an emergency exists.

QUORUM:

A quorum shall be required to conduct business. A quorum of the (6) six member board of trustees shall be (4) four. In the absence of a quorum, a lesser number may adjourn and compel the attendance of absent members.

EXECUTIVE SESSIONS:

Executive sessions shall be held in accordance with NYS Public Officers Law §105. All executive sessions shall be commenced in a public meeting.

AGENDAS:

The agenda shall be prepared by the Clerk at the direction of the Mayor. The Mayor, any Trustee, or member of the Public at large may have an item placed on the agenda. Items for the agenda shall be given to the Clerk at least two (2) business days before the meeting however, items may be placed on the agenda at anytime, including during the meeting by the Mayor or any Trustee.

VOTING:

Pursuant to Village Law each member of the Board shall have one vote. The Mayor may vote on any matter but **must** vote in case of a tie.

A majority of the totally authorized voting power is necessary to pass a matter unless otherwise specified by State law.

An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

A vote upon any question shall be taken by ayes and nays, and the names of the members present and their votes shall be entered in the minutes.

MINUTES:

Minutes shall be taken by the Clerk.

Minutes shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. Minutes shall be taken at executive session of any action that is taken by formal vote, which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the NYS Freedom of Information Law. Meetings will normally be taped for use as a backup record keeping and the tape will be filed for a period of one year. Executive sessions will not be taped.

Minutes shall also include the following;

- Name of the Board
- Date, place and time of meeting
- Notation of presence or absence of Board members and time of arrival or departure if different from time of call to order and adjournment.
- Name and title of other village officials and employees present and approximate number of attendees.
- Record of communications presented to the Board
- Record of reports from Board/committee meetings or other village personnel
- Time of adjournment
- Signature of Clerk or person who took the minutes if not the Clerk.

Minutes shall not contain a summary of the discussion leading to action taken or include verbatim comments unless a majority of the Board shall resolve to have the Clerk do so.

Minutes shall be approved at the next board meeting. Amendments to the minutes shall require Board approval.

ORDER OF BUSINESS:

Call to order

Pledge
Public comment
Public Hearing(s) if applicable
Correspondence
Approval of minutes of previous meeting
Reports of officer, committees, boards
New business
Adjournment

This order is subject to change from time to time.

GENERAL RULES OF PROCEDURE:

The Mayor shall preside at meeting. In the Mayor's absence, the Deputy Mayor shall preside.

The presiding officer may debate, move and take other action that may be taken by other members of the Board.

Board members are not required to rise but must be recognized by the presiding officer before making motions.

Motions must have a second to proceed with debate.

A member, once recognized shall not be interrupted when speaking unless it is to call him/her to order. If a member, while speaking, is called to order, they shall cease speaking until the question of order is determined, and, if in order, he/she shall be permitted to proceed. A member may not be limited in the number of times they speak on a question.

Motion to close or limit debate requires a majority vote.

GUIDELINES FOR PUBLIC COMMENT:

The public shall be allowed to speak only during the Public Comment period of the meeting or at such other time as the presiding officer shall allow.

Speakers may be required to step to the front of the room.

Speakers must give their name, address, and organization, if any.

Speakers must be recognized by the presiding officer.

Speakers must limit their remarks to 5 minutes on a given topic.

Speakers may not yield any remaining time they may have to another speaker.

Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.

All remarks shall be addressed to the Board as a body and not to any member thereof.

Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste.

Interested parties or their representatives may address the Board by written communications.

GUIDELINES FOR USE OF RECORDING EQUIPMENT:

All members of the public and all public officials are allowed to tape or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner that does not interfere with the meeting. The mayor may make the determination that the recording is being done in an intrusive manner taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the village board, size of the equipment, and the ability of the public to still participate in the meeting. If the mayor makes the determination that the recording is intrusive and has the effect of interfering with the meeting, the mayor may request an accommodation to avoid the interference and if not complied with ask the individual to leave the meeting room.

ADJOURNMENT:

Meetings shall be adjourned by motion.

AMENDMENTS TO THE RULES OF PROCEDURE:

The foregoing procedures may be amended from time to time by a majority vote of the Board.

Revised and Adopted: February 27, 2012

Re-adopted:

Rules of Procedure:

- Forum participants are allotted five minutes to address the entire board. The presiding official may allow more time at his/her discretion.
- The speaker must address the board as a body.
- The speaker may not single out board members or staff members with comments or questions
- The speaker may not address the audience.
- The speaker may not address personnel or other confidential topics

2 – 5 OPEN TO THE FLOOR (PUBLIC COMMENT/CALL-IN) SECTION AT VILLAGE BOARD MEETINGS

1. The Village of Webster Board values public input. The Board welcomes public participation within certain guidelines.
2. Persons wishing to address the Board must do so directly during the Public Comment portion of the Board meeting. Persons must direct their comments and questions to the entire Board, not the individual members or employees of the Village of Webster.
3. Persons must speak from the podium placed at the front of the room and shall give their name and address.
4. Persons are permitted to address the Board for up to five minutes. Persons addressing the Board may do so once per meeting.
5. Persons should address the Board on business relevant to the Board.
6. Any person addressing the Board in an indecent manner or who uses profanity will be in violation to the Meeting Conduct Rules and subject to removal from the meeting. Speeches of an overtly political nature or of a personal attack are discouraged.
7. The Village Board recognizes the purpose of the public call-in is to allow for members of the public, viewing the meeting from home, to interact with the Board. Members of the public calling the Board should not have been in attendance at the meeting. Callers must be civil. Any use of profanity, or disparaging comments directed toward a Board member, group, or any specific member of the public will result in the call being immediately terminated.
8. In order to allow for maximum public input the Board, unless the matter is on the agenda or is of an emergency nature, as a matter of practice, will not respond to public comment. The matter may appear on future agendas.

2-6 MEETING CONDUCT

1. Residents and guests are welcome at every meeting of the Webster Village Board. All participants at Board meetings, including members of the Board and members of the public, should recognize Village Board meetings are convened to conduct Village business. The meetings are held in public but are not public meetings.
2. Board members and audience members must conduct themselves in a civil manner.
3. There will be no obtrusive and/or disruptive behavior or talking permitted from the audience. Any discussions between audience members should be conducted outside the Board room.
4. There will be no shouting out from audience members, or use of profanity by audience or Board members.
5. A recess, upon majority vote, may be requested at any time by any Board member, if violation of the Meeting Conduct Rules is observed, or obtrusive and/or disruptive behavior by the audience occurs.
6. Any Board member may request to have removed from the meeting any person, or persons, whose actions are in violation of Meeting Conduct Rules, obtrusive, or disruptive upon a majority vote. Should such person, or persons, refuse to leave the meeting, 911 will be called to request the assistance of the Town of Webster Police Department.
7. All Public Hearings will be conducted in accordance with applicable New York State Law.
8. The Village Board will carefully consider all public input. However, the fact that an issue is brought forward, or a question is asked, does not imply that it must be acted upon or immediately answered.



**State of New York
Department of State
Committee on Open Government**

One Commerce Plaza
99 Washington Ave.
Albany, New York 12231
(518) 474-2518
Fax (518) 474-1927
<http://www.dos.ny.gov/coog/>

OML-AO-4044

September 30, 2005

E-MAIL

TO:

FROM: Robert J. Freeman, Executive Director

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear

As you are aware, I have received your letter. Please accept my apologies for the delay in response.

You wrote that Barbara Strangfeld, a member of the Schenectady City Council, informed you that I:

"...agreed with the council's attempts to add 'structure and order:' to their meetings/ did you realize that President Blanchfield now demand we must sign in to speak, that we must write down what we plan to say,. And tha [sic] if he feels it is not Council business, he will not call on someone?"

You added that you:

"...may not tape committee meetings, and they are trying to eliminate televised coverage of privilege of the floor, or even the meetings themselves."

In this regard, I offer the following comments.

First, while the Open Meetings Law clearly provides the public with the right "to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" (see Open Meetings Law, §100), the Law is silent with respect to public participation. Consequently, by means of example, if a public body, such as the City Council, does not want to answer questions or permit the public to speak or otherwise participate at its meetings, I do not believe that it would be obliged to do so. On the other hand, a public body may choose to answer questions and permit public participation, and many do so. When a public body does permit the public to speak, I believe that it should do so based upon reasonable rules that treat members of the public equally.

Although public bodies have the right to adopt rules to govern their own proceedings (see e.g., Education Law, §1709), the courts have found in a variety of contexts that such rules must be reasonable. For example, although a board of education may "adopt by laws and rules for its government and operations", in a case in which a board's rule prohibited the use of tape recorders at its meetings, the Appellate Division found that the rule was unreasonable, stating that the authority to adopt rules "is not unbridled" and that "unreasonable rules will not be sanctioned" [see *Mitchell v. Garden City Union Free School District*, 113 AD 2d 924, 925 (1985)]. Similarly, if by rule, a public body chose to permit certain citizens to address it for ten minutes while permitting others to address it for three, or not at all, such a rule, in my view, would be unreasonable.

I note that there are federal court decisions indicating that if commentary is permitted within a certain subject area, negative commentary in the same area cannot be prohibited. It has been held by the United States Supreme Court that a school board meeting in which the public may speak is a "limited" public forum, and that limited public fora involve "public property which the State has opened for use by the public as a place for expressive activity" [*Perry Education Association v. Perry Local Educators' Association*, 460 US 37, 103. S.Ct. 954 (1993)]; also see *Baca v. Moreno*

Valley Unified School District, 936 F. Supp. 719 (1996)]. In *Baca*, a federal court invalidated a bylaw that "allows expression of two points of view (laudatory and neutral) while prohibiting a different point of view (negatively critical) on a particular subject matter (District employees' conduct or performance)" (*id.*, 730). That prohibition "engenders discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue and ultimately, dynamic political change" [*Leventhal v. Vista Unified School District*, 973 F.Supp. 951, 960 (1997)]. In a decision rendered by the United States District Court, Eastern District of New York (1997 WL588876 E.D.N.Y.), *Schuloff, v. Murphy*, it was stated that:

"In a traditional public forum, like a street or park, the government may enforce a content-based exclusion only if it is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Perry Educ. Ass'n.*, 460 U.S. at 45. A designated or 'limited' public forum is public property 'that the state has opened for use by the public as a place for expressive activity.' *Id.* So long as the government retains the facility open for speech, it is bound by the same standards that apply to a traditional public forum. Thus, any content-based prohibition must be narrowly drawn to effectuate a compelling state interest. *Id.* at 46."

In the context of the specific issues that you raised, I believe that a court would determine that a public body may limit the amount of time allotted to person who wishes to speak at a meeting, so long as the limitation is reasonable. Similarly, it is my view that the City Council may limit comments to matters involving City business or the operation of City government and require a brief written summary of the subject intended to be discussed by a person wishing to address the Council.

From my perspective, the President of the Council presides over Council meetings. It is questionable, however, whether he may validly determine unilaterally whether the subject matter of comment proposed by a person desiring to speak involves City Council business. He is but one member of the Council, and I believe that the Council, if necessary, should determine by means of a majority vote of its total membership (see General Construction Law, §41) if there is a question or disagreement regarding whether a subject relates to City Council business. I believe that the Council in that circumstance should determine whether the subject may be raised, rather than the President of the Council reaching a determination alone.

While individuals may have a constitutional right to express themselves and to speak, I do not believe that they necessarily have the right to do so at meetings of public bodies. It is noted that there is no constitutional right to attend meetings of public bodies. Those rights are conferred by statute, i.e., by legislative action, in laws enacted in each of the fifty states. In the absence of a statutory grant of authority to attend such meetings, I do not believe that the public would have the right to attend.

In the case of the New York Open Meetings Law, in a statement of general principle and intent, that statute confers upon the public the right to attend meetings of public bodies, to listen to their deliberations and observe the performance of public officials. Nevertheless, as you are aware, that right is limited, for public bodies in appropriate circumstances may enter into closed or executive sessions. As such, it is reiterated that, in my opinion, there is no constitutional right to attend meetings or to speak at those meetings.

Lastly, with respect to the ability to tape record or video record open meetings, there is nothing in the Open Meetings Law that addresses the issue. However, there is a series of decisions pertaining to the use of recording equipment at meetings and in my opinion, they consistently apply certain principles. One is that a public body, such as the City Council, has the ability to adopt reasonable rules concerning its proceedings. The other involves whether the use of the equipment would be disruptive.

By way of background, until 1978, there had been but one judicial determination regarding the use of the recording devices at meetings of public bodies. The only case on the subject was *Davidson v. Common Council of the City of White Plains*, 244 NYS 2d 385, which was decided in 1963. In short, the court in *Davidson* found that the presence of a tape recorder, which at that time was a large, conspicuous machine, might detract from the deliberative process. Therefore, it was held that a public body could adopt rules generally prohibiting the use of tape recorders at open meetings.

Notwithstanding *Davidson*, however, the Committee advised that the use of tape recorders should not be prohibited in situations in which the devices are unobtrusive, for the presence of such devices would not detract from the deliberative process. In the Committee's view, a rule prohibiting the use of unobtrusive tape recording devices would not be reasonable if the presence of such devices would not detract from the deliberative process.

This contention was initially confirmed in a decision rendered in 1979. That case arose when two individuals sought to bring their tape recorders at a meeting of a school board in Suffolk County. The school board refused permission and in fact complained to local law enforcement authorities who arrested the two individuals. In determining the issues, the court in *People v. Ystuetza*, 418 NYS 2d 508, cited the *Davidson* decision, but found that the *Davidson* case:

"was decided in 1963, some fifteen (15) years before the legislative passage of the 'Open Meetings Law', and before the widespread use of hand held cassette recorders which can be operated by individuals without interference with public proceedings or the legislative process. While this court has had the advantage of hindsight, it would have required great foresight on the part of the court in *Davidson* to foresee the opening of many legislative halls and courtrooms to television cameras and the news media, in general. Much has happened over the past two decades to alter the manner in which governments and their agencies conduct their public business. The need today appears to be

truth in government and the restoration of public confidence and not 'to prevent star chamber proceedings'...In the wake of Watergate and its aftermath, the prevention of star chamber proceedings does not appear to be lofty enough an ideal for a legislative body; and the legislature seems to have recognized as much when it passed the Open Meetings Law, embodying principles which in 1963 was the dream of a few, and unthinkable by the majority"(id., 509-510; emphasis mine).

Several years later, the Appellate Division unanimously affirmed a decision which annulled a resolution adopted by a board of education prohibiting the use of tape recorders at its meetings and directed the board to permit the public to tape record public meetings of the board [Mitchell v. Board of Education of Garden City School District, supra]. In so holding, the Court stated that:

"While Education Law sec. 1709(1) authorizes a board of education to adopt by-laws and rules for its government and operations, this authority is not unbridled. Irrational and unreasonable rules will not be sanctioned. Moreover, Public Officers Law sec. 107(1) specifically provides that 'the court shall have the power, in its discretion, upon good cause shown, to declare any action *** taken in violation of [the Open Meetings Law], void in whole or in part.' Because we find that a prohibition against the use of unobtrusive recording of a fully informed citizenry, we accordingly affirm the judgement annulling the resolution of the respondent board of education" (id. at 925).

In consideration of the "obtrusiveness" or distraction caused by the presence of a tape recorder, it was determined by the Court that " the unsupervised recording of public comment by portable, hand-held tape recorders is not obtrusive, and will not distract from the true deliberative process" (id., 925). Further, the Court found that the comments of members of the public, as well as public officials, may be recorded. As stated in Mitchell:

"[t]hose who attend such meetings, who decide to freely speak out and voice their opinions, fully realize that their comments and remarks are being made in a public forum. The argument that members of the public should be protected from the use of their words, and that they have some sort of privacy interest in their own comments, is therefore wholly specious" (id.).

In short, the nature and use of the equipment were the factors considered by the Court in determining whether its presence affected the deliberative process, not the privacy or sensibilities of those who chose to speak.

In view of the judicial determination rendered by the Appellate Division, a member of the public may tape record open meetings of public bodies, so long as tape recording is carried out unobtrusively and in a manner that does not detract from the deliberative process. While Mitchell pertained to the use of audio tape recorders, I believe that the same points as those offered by the Court would be applicable in the context of the use of video recorders. Just as the words of members of the public can be heard at open meetings, those persons can also be seen by anyone who attends.

In *Peloquin v. Arsenault* [616 NYS 2d 716 (1994)], the court focused primarily on the manner in which camera equipment is physically used and found that the unobtrusive use of cameras at open meetings could not be prohibited by means of a "blanket ban." The Court expansively discussed the notion of what may be "obtrusive" and referred to the Mitchell holding and quoted from an opinion rendered by this office as follows:

"On August 26, 1986 the Executive Director of the Committee on Open Government opined (OML-AO-1317, p.3) with respect to video recording as follows:

'If the equipment is large, if special lighting is needed, and if it is obtrusive and distracting, I believe that a rule prohibiting its use under those circumstances would be reasonable. However, if advances in technology permit video equipment to be used without special lighting, in a stationary location and in an unobtrusive manner, it is questionable in my view whether a prohibition under those circumstances would be reasonable.'

On April 1, 1994, Mr. Freeman further opined (OML-AO-2324) that a county legislature's resolution limiting hand held camcorders to the spectator area in the rear of the legislative chamber was not per se unreasonable but rather, as challenged, it depended for its legitimacy on whether or not the camcorders could actually record the proceedings from that location.

Blanket prohibition of audio recording is not permissible, and it is likely that the appellate courts would find that also to be the case with blanket prohibitions of video recording. However, what might be reasonable in one physical setting - a village board restricting camcording to the rear area of its meeting room - might not be in another - the larger chambers of a county legislature (OML-AO-1317, supra). It might well be reasonable in a village or other space-restricted setting to restrict the number of camcorders to one, as the court system may with its pooling requirement for video coverage of trials (22 NYCRR Parts 22 and 131). Such a requirement might be viewed as unreasonable in a large county legislative chamber or where a local board of education is conducting a meeting in a school auditorium.

As Mr. Freeman observed with respect to video recording (OML-AO-1317, supra), if it is 'obtrusive and distracting', a ban on it is not unreasonable. It is here claimed to be distracting. Tupper Lake Village Board members and some segment of the public aver that they are distracted from the business at hand because they do not wish to appear on television - the sole justification offered in defense of the policy.

Mitchell, supra, held that fear of public airing of one's comments at a public meeting is insufficient to sustain a ban on audio recording.

Is Mr. Peloquin's (or anyone's else's) video recording of a village board proceedings obtrusive?...

"...Hand held audio recorders are unobtrusive (Mitchell, supra); camcorders may or may not be depending, as we have seen, on the circumstances. Suffice it to say, however, in the face of Mitchell, the Committee on Open Government's (Robert Freeman's) well-reasoned opinions supra and the court system's pooled video coverage rules/options, a blanket ban on all cameras and camcorders when the sole justification is a distaste for appearing on public access cable television is unreasonable. While "distraction" and "unobtrusive" are subjective terms, in the face of the virtual presumption of openness contained in Article 7 of the Public Officers law and the insufficient justification offered by the Village, the 'Recording Policy' in issue here must fall" (id., 717, 718; emphasis added by the court).

From my perspective, since the basis for the denial of the use of video recording devices in Peloquin, "distaste for appearing on public access television", is analogous to the basis of the proposed policy, that policy would, if adopted, be found by a court to be equally unreasonable and void. The same conclusion was reached more recently in *Csorny v. Shoreham-Wading River Central School District* [759 NYS 2d 513, 305 AD2d 83 (2003)].

I hope that I have been of assistance.

RJF:tt

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Board Meeting Code of Conduct

The Board of Trustees recognizes the value of public comment on issues coming before the Board as agenda items for action and the importance of allowing citizens to express themselves on school matters of community interest. In order to permit the fair and orderly expression of such comment, the Board provides a period for public participation at every regular business meeting or special meeting of the Board. Citizens' questions or comments on formal Agenda items shall be permitted before the Board takes official action on agenda items, as follows:

- Those who wish to make a comment or ask a question are requested to come forward and use the podium so everyone present can hear the comment or question. Comments should be directed to the Board of Trustees.
- Commentators are requested to state their name and address when they approach the podium.
- Comments are limited to 4 minutes per person. There is no sharing of time. If you have 2 minutes of time you are not allowed to give someone else those unused 2 minutes.
- Board members may choose to respond to a question, but those situations will be rare. Generally, we receive commentary and do not engage in back and forth conversation.
- We may ask the commentators a question - the goal of any such question is to understand the comments being made. It may be necessary for members of the Board to ask a question in order to fully understand the comments being made. We may interject to correct a statement presented as fact when it is not. We do so not to embarrass anyone.
- Discussion on any matter shall be made in a civil manner. Insults towards anyone will not be tolerated. Inappropriate and disrespectful comments aimed at others will not be tolerated. Speaking over others will not be tolerated.
- Let everyone who wishes to speak have their say in a polite and respectful manner and allow those present to hear other commentators. We reserve the right to remove disrespectful or rude persons.
- After agenda items are completed, residents are encouraged to participate in the open comment portion of the meetings during which time the Board will entertain comments of any general Village matters not previously presented on the agenda for action by the Board.