



President's Report – Oct. 27, 2016

Five newly-elected Trustees began their service on October 1, 2016 under less than ideal circumstances. Due to a number of actions and inactions by the prior Board, and the Interim Director, the operations of the Library are in dire straits, and, for the reasons I will explain in a few minutes, it will take considerable effort on our part just to keep the Library functioning. At the conclusion of the meeting, I will provide a copy of this Report to the Secretary so that it can be attached to the minutes and posted on the Library's website. Copies of this Report will also be sent to the newspapers.

Before I get into the details, I want to put on the record what I believe to be the role of the trustees of our Library. Our obligation is to be prudent stewards of the Library as an institution, and of the funds entrusted to us by the taxpayers and donors. As fiduciaries, it is our obligation to make decisions on the basis of thoughtful and deliberate consideration of all the facts and circumstances, to implement and follow sound recordkeeping and decision-making procedures, to observe all relevant legal requirements and restrictions, and to seek professional advice when prudence dictates, with an eye single to the best interests of the Library. As President, I will endeavor to assure the Board adheres to these guiding principles, and we will soon adopt a written Ethics Policy to this effect.

I intend to report regularly to the public on the significant issues that come before the Board. I expect the members of this Board to treat each other, and the public, with civility and respect, regardless of any disagreements we may have. In the first twenty-seven days of my tenure as President, our message of civility and transparency has been tested to the core. Yet, I intend that this Board continue to act with genuine regard for all opinions, despite sometimes harsh internal and external criticism and the obstacles placed before us.

With that introduction, let me turn to the four major issues that we have confronted in the last twenty-seven days. These are: (1) issues relating to the termination of Marilyn Tinter; (2) Library staffing; (3) fiscal accountability; and (4) appointment of new Trustees.

Marilyn Tinter.

As you know, the prior Board voted on September 26th to terminate Ms. Tinter's employment, following the report and recommendation submitted by Mr. Kasarda, the hearing officer appointed by the prior Board to hear the charges filed against her. The Board's decision was made within hours of the Hearing Officer's recommendations and on the eve of the election for new Trustees.

On September 29, 2016, Mr. Tersigni, wrote to the Trustees-elect requesting negotiations to prevent further litigation, and rescission of the prior Board's decision to terminate Ms. Tinter, at least for the duration of any negotiations. In the absence of such interim relief, Mr. Tersigni advised the Board that he intended to proceed with an appeal. I responded to Mr. Tersigni requesting that he direct his request to the full Board of Trustees (which he did on October 6th) and advised him that the Board would consider his request within its capacity as Library fiduciaries, not as supporters or opponents of Marilyn Tinter.

In order to prepare for possible negotiation talks with Mr. Tersigni, both I and Pat Dauer, the Board's Secretary, reached out to the Westchester County Department of Human Resources (WCDHR), which administers the county's civil service law, to ascertain exactly what our options are regarding Ms. Tinter's employment status. Pat Dauer and I have had several lengthy conversations with the Assistant Commissioner of Human Resources, who informed us that the this Board cannot legally reinstate Ms. Tinter without the consent of WCDHR. According to the Assistant Commissioner, an application for reinstatement would have to be made to the Commissioner that would be reviewed by WCDHR, taking into account the record, findings and recommendations established during both phases of the formal hearing. Consequently, regardless of how any of us may feel about the prior Board's decision to file and pursue charges against Ms. Tinter, and ultimately terminate her employment, the current Board cannot simply undo the prior Board's actions without the approval of the Commissioner of WCDHR.

By the same token, regardless of the very vocal sentiments of those opposed to Ms. Tinter's reinstatement, this Board must, as fiduciaries, address the demands made by Mr. Tersigni. Accordingly, this Board will review all the facts and circumstances associated with the decision by the prior Board to terminate Ms. Tinter. This Board will, among other things,

consider the astronomical, unchecked costs to the taxpayer of that litigation (with the immediate effect of diverting funds from staffing, programs, etc.), the continuing reputational damage to the Library and Marilyn Tinter, as well as the effect of further litigation on the Library's ability to focus exclusively on its core mission and goals. Moreover, in weighing the likelihood of successfully defending an appeal, this Board must consider the proportionality of the penalty to the charges brought against Ms. Tinter, and the haste with which the prior Board meted out its decision to terminate her employment. With all this in mind, Carl Weinberg, Vice-President of the current Board, was charged by the Board to contact Mr. Tersigni to discuss his demands.

For reasons that appear to be related to Mr. Tersigni's concern for statutory filing requirements, on October 11, 2016, Mr. Tersigni served Notice of Claim on the Library and each of the Trustees. A Notice of Claim is a legal step required before one can file certain kinds of legal claims against a governmental entity, and permits the parties to consider settlement options during a defined period of time.

The filing of the Notice of Claim by Mr. Tersigni compelled the Board to notify the Library's insurance carrier of threatened litigation. Following its review of the Notice of Claim and related documents, the insurance company informed us that the claims asserted by Mr. Tersigni are covered by the Library's employment practices liability insurance policy. Except for a small deductible of \$5000, the Library's insurance will cover the cost of defending the claims asserted by Mr. Tersigni, as well as the cost of any resulting liability. It is anticipated that the cost of any settlement in lieu of litigation may also be covered under the insurance policy. However, the Library is required to comply with the insurer's litigation defense procedures in order to get the benefits of insurance coverage.

The insurance carrier has appointed the firm of Gordon & Rees, LLP, to defend the Library and advise it regarding potential settlement of the matter. I have attached to this Report the biographies of the lead Partner and Special Counsel handling the matter. Just today, I had a lengthy discussion with the attorneys and they will be meeting with the full Board very soon.

It is important to make clear to all that as a result of Mr. Tersigni's filing of a Notice of Claim, the Board's options in dealing with Mr. Tersigni directly, and with WCDHR, have been sharply curtailed. Any settlement we may wish to reach with Ms. Tinter is now subject to the

review and approval of the insurer, and our failure to follow the insurer's advice could result in our forfeiture of insurance coverage. At this point, we are awaiting our counsel's assessment of Ms. Tinter's claims and possible settlement of the matter.

In order to enable the counsel appointed by the insurance company to advise us in this matter, I have asked the law firm of Lamb & Barnosky that represented the Library in the proceedings against Ms. Tinter, and specifically Mr. Richard Zuckerman, to turn over to us the entire original file in the matter. They have agreed to do so if we agree to pay certain costs, including payment for their time in responding to our request. Their response will be reviewed by the Board at its next meeting.

On a related note, we found out shortly after taking office that Mr. Zuckerman (or his firm) submitted a bill to the prior Board for approximately \$28,000 on either September 27<sup>th</sup> or 28<sup>th</sup> for services provided through the day of election, and the bill appears to have been immediately approved for payment. If there was any backup documentation indicating what work had been performed to justify that expense, it could not be located in the Library's files. Mr. Zuckerman was asked to provide that documentation, which we recently received. The backup documentation indicated that, in addition to time billed in connection with the Tinter litigation, the law firm had provided advice to the Board regarding election issues. This will require further inquiry.

With respect to legal fees incurred by the prior Board, it is important that the public be made aware that for the nine-month period between January 1, 2016 and September 30, 2016, the prior Board spent more than \$223,000 in legal expenses. We are still in the process of ascertaining the nature of those legal services.

It appears that during the same nine-month period, the prior Board spent approximately \$175,000 for salaries, pension and benefits (excluding amounts paid to Marilyn Tinter) for a skeletal staff of mostly part-time workers, and certain exempt-employees were asked to work six days a week in order to maintain services at pre-litigation levels. And as I will report shortly, the number of Library employees is quickly shrinking because of challenges from WCDHR to the Library's hiring practices during this nine-month period.

Two final points regarding Ms. Tinter: As was widely reported in the press, Police Chief Ryan is investigating possible misuse of the Library's credit card during the period between January 1, 2013 and December 31, 2015. We now know that approximately 17 current and former employees and trustees of the Library are expected to be interviewed by Chief Ryan in connection with this investigation. Based on Chief Ryan's statements to the current Board, it is expected that the investigation will be completed shortly and the Board will receive a report of his findings. Accordingly, neither the insurance company nor WCDHR is expected to be able to make any decision regarding Ms. Tinter's demand for reinstatement or settlement, nor can this Board even submit any application to the WCDHR, until we receive Chief Ryan's report and it is fully reviewed by all the relevant parties.

Finally, over the course of the last two weeks, the Board has received from one individual three different Freedom of Information Law (FOIL) requests (attached to this Report) requesting information regarding the Board's actions relative to Ms. Tinter. These requests will be addressed in accordance with the requirements of FOIL.

I. Library Staffing.

The second major issue that we confronted upon taking office was the discovery that certain employees hired in the last nine months have been working without required WCDHR authorization.

On the date of the election, the Library staff consisted of an Interim Director, one full-time Librarian, a part-time Librarian, a part-time Library Assistant student trainee, a part-time Library Staff Assistant, and a full-time Clerk. Except for the full-time Librarian, the employees were hired by the Interim Director. These are all civil service positions, and there are detailed rules governing how these positions can be filled. As it turns out, the Library did not comply with these rules with respect to certain hires, and neither the Interim Director nor the prior Board shared information with the current Board as to the impending consequences of their hiring decisions.

One day prior to our taking office, the Interim Director resigned without notice. He did not even personally turn in his keys, credit card, and other Library equipment that he kept at his

home. Instead, he asked the senior Librarian to meet him on the following Saturday in a parking lot outside of town to turn over the Library's property. He did not leave any instructions to guide the Board, or the staff, nor information regarding the location of files or critical documents. As discussed at its first Board meeting, the new Trustees were confronted with locked file cabinets, and unsecured cabinets containing staff personnel files. This required the immediate allocation of \$1,000 for new locks and keys to assure authorized access to Library documents and their ongoing security, which has now been accomplished.

Most important is that the employees hired outside of civil service rules did not know that their continued employment with the Library was in imminent peril.

On October 13, 2016, I received a letter from the Deputy Commissioner of WCDHR notifying the present Board that the continued employment of the person in the Clerk position would constitute a violation of civil service law and would subject the Library, and each of the Trustees, to penalties. The letter further advised that it is a "misdemeanor for any officer to 'willfully pay or authorize the payment of salary or compensation to any person in the classified service with the knowledge that the ... appropriate civil service commission has refused to certify ...' that person on the payroll." A copy of the letter is attached to this Report.

As will be apparent upon reading the letter, the prior Board President, the Interim Director and the paid-Consultant hired by the prior Board, were each apprised by WCDHR that the Library had engaged in hiring practices that violated civil service rules regarding certification and staffing. The letter describes the chronology of events and a face-to-face meeting of the parties on August 4, 2016, and delineates the actions the prior Board was required to take in order to avoid the situation this Board now faces. The letter states that because the prior Board had not taken any actions specified during the August 4th meeting, the employee in question must be terminated by November 7, 2016. This employee is chiefly responsible for the financial recordkeeping of the Library. There is no other employee now working for the Library who can currently assume the responsibilities of this position. Pat Dauer and I have been communicating with WCDHR nearly on a daily basis to avoid what may be the inevitable termination of this employee on November 7, 2016. Pat Dauer will report more fully on this situation later in this Special Meeting.

The Library Assistant student trainee's position is also in jeopardy. She will be subject to termination shortly after the end of 2016 unless her position is properly certified, and she completes the eligibility requirements to be "listed" under civil service rules. This employee is the Library's Webmaster and she is solely responsible for publication and management of the website's content. No other current employee can assume her responsibilities. Here too, Pat and I are working hand-in-hand with WCDHR to assure that this employee can continue to work beyond 2016 in a properly certified position.

In a somewhat similar situation, the Library last week was forced to accept the resignation of our part-time Librarian responsible for Adult Programs. She accepted a Library II position elsewhere because she was not hired by our Library into a position commensurate with her training and credentials. This individual had scored 100% in her qualifying exam, and the prior Board could have appointed her to a full-time Library I position, pending certification and "listing" for a Library II position. But, no action was taken. We thank her for her terrific service, but her departure has created a significant hole in our Adult Programs.

This staffing crisis could have been averted by careful adherence to civil service rules and good planning. Today we are barely managing to keep afloat by stretching our remaining staff to take on additional responsibilities and tasks, but it has put a substantial and indefensible strain on these employees, not the least of which is the uncertainty of not knowing whether they will be asked to leave (or whether they should seek other employment as the part-time Librarian did) because of flaws in the hiring process.

In sum, the actions and inactions of the prior Board and the prior Interim Director may shortly result in the Library being reduced to a staff of two (one Librarian and one Clerk), down from the already meager staff of six (mostly part-timers) that was employed on the day of the election. We are working frantically to deal with this crisis so that we can keep our doors open and maintain our programs. This is our top priority. Pat Dauer will report tonight on our efforts to "canvass" for various positions, including discussions with WCDHR about the open Director position.

## II. Financial Controls.

The third major issue we have confronted in our first month in office is the Library's seemingly loose system of financial controls. We have not been able to identify as of this date (1) the existence of documented policies and procedures that comply with the General Municipal Law; (2) procedures for Board approval of expenditures before they are paid; (2) who all the authorized persons are who can make purchases on behalf of the Library, and by what means; and (3) the reasons for the imposition of tax(es) on Library purchases even though the Library is a tax-exempt entity. We have asked Mr. Steven Brussels of the Katonah Management Group, who was retained by the prior Board to handle the Library's financial function, to describe to us this evening the financial, accounting and budget systems currently in place. Michele Gage, our co-Treasurer, has begun to develop the necessary policies and procedures to assure that we have the legally-required financial policies and procedures in place, and the proper controls and accountability going forward. She will provide a preliminary report on her findings later in this special meeting.

### Appointment of New Trustees.

The final issue in my report is the need to appoint three new Trustees. Between September 27<sup>th</sup> (Election Day) and October 1<sup>st</sup> (the day the new Board took office), three trustees from the prior Board abruptly resigned. Under the Library's by-laws, these vacancies can be filled by appointment by this Board, and we have begun the process of identifying suitable candidates. We would particularly like to bring onto the Board someone with school-age children, so that we can make sure we hear from and consider this important constituency and stakeholder. I have made clear to everyone I have spoken to about these positions that we will not ask them whom they voted for in the election. That is inconsequential. We are looking for individuals who have a strong interest in the Library as an institution, and who have valuable skills and experience to bring to the Board. We are looking for "fresh faces" as we believe that it is important to the vibrancy and growth of the Library to avoid insular thinking. We hope to have the Board up to full strength by the end of this year.

I thank you for your attention, and now turn to the next item on the Agenda.

Miriam Schindel