

CHEVY CHASE VILLAGE
SUMMARY OF REPORT OF THE
LEGAL SERVICES REVIEW COMMITTEE

(Presented to the Board of Managers on December 12, 2011)

Background

The Legal Services Review Committee was formed in the spring of 2011 for the purpose of reviewing the legal costs incurred by Chevy Chase Village and to explore potential alternatives the Board might wish to consider to reduce such costs. This summarizes its Report.

Observations and Findings

1. The Committee reviewed the legal invoices submitted by Village counsel for the period since January 1, 2009, and interviewed Village staff (Shana Davis Cook, Michael Younes, Ellen Sands, and Dimitri Protos) and outside counsel for the Village (David Podolsky). Staff generally gave outside counsel high marks.
2. The Committee conducted interviews with either elected officials or senior staff members of the City of College Park, North Chevy Chase, the Town of Chevy Chase, the Town of Edmonston, the Town of Kensington, the Town of University Park, the Town of Washington Grove, and the Village of Friendship Heights.
3. The invoices from Village counsel reflected charges for legal services to the Village of approximately \$507,000 for calendar year 2009, and \$422,000 for calendar year 2010 exclusive of the legal costs associated with the Euwer litigation. In the first nine months of 2011, the legal expenses invoiced to the Village were approximately \$150,500. The Village's budget for legal services in FY2012 is \$255,000, but the current rate of expenditures indicates there should be savings of about 20%. In the other jurisdictions interviewed, budgets for legal services in the current fiscal year range from \$5,000 to \$180,000. Like the Village, all of the jurisdictions interviewed are billed for legal services on an hourly basis; none has a retainer arrangement. The hourly rates paid by these jurisdictions range from \$175 - \$475 per hour for their principal counsel. Mr. Podolsky's hourly rate for the Village is \$390.
4. There has been a marked drop in legal expenses in 2011. In the Committee's view, a number of developments have contributed (and are likely to contribute further) to the reduction in legal expenses. They are set forth below:
 - A. Two major legal matters with substantial expenses incurred in 2009-10 have concluded (Euwer litigation; Brookeville Road sidewalk project).

- B. The new Village Manager appointed two years ago relied more heavily on outside counsel initially than she does today. This was in part because outside counsel (who has over 30 years of continuous service as Village counsel) had been utilized by prior Village Managers (as well as some prior Board Chairs) in various situations to provide quasi-legal policy advice, as a source of historical records (which the Village staff relied on outside counsel to maintain), and for institutional memory (given the turnover of Village staff). The Village Manager has gradually shifted to relying more heavily on other resources (e.g., colleagues in other towns and municipalities, the Maryland Municipal League, and the local government insurance trust in which the Village participates) and to using Village outside counsel to provide reactive comments.
- C. "Gatekeeper" controls have also been placed by the Village Manager and the Board Chair on contacts by Village staff and Board members with outside counsel.
- D. Village contracts and franchise agreements with outside vendors have become more standardized using Village-developed templates, thus limiting the scope of legal review required.
- E. In March 2011, the Village required outside counsel to restructure his bills to be more definitive and accountable for discrete matters.
- F. Beginning in early 2011, the Board Chair restructured Board meeting agendas to group matters requiring the presence of counsel together early in the meeting, so counsel could be excused when those matters were completed.
- G. The Village Board has also recognized that prior procedures for granting variances and special permits in certain situations could be handled through an administrative variance procedure by the Village Manager and the newly-authorized Building Officer rather than require a full hearing before the Board.
- H. The current Village Board Chair has been proactive in managing the Village's use of outside counsel and in instilling an awareness of the need to reduce legal costs.

Recommendations

1. The Board Chair and staff are to be commended for instituting the measures summarized in #4, which have had the immediate effect of reducing the Village's legal expenses. These procedures should be maintained.

2. The above-mentioned trend of the current Village Manager to rely on outside sources other than counsel for practical advice and legal assistance should be encouraged and continued.
3. Many Village Managers and Board members have relied on outside counsel to maintain Village records. We should go forward expeditiously with our digital indexing project for these files and enhance the quality of Village created files.
4. Chevy Chase Village is the only town or municipality of which he was aware that incorporates covenants into the Village Code. We believe that the Village should determine what purpose(s) are served by allowing the Village to enforce "the requirements of all deeds or covenants of properties situated within the Village" (since no similar entity does so) and consider whether any purposes served could just as easily be accomplished by modifying the Village Code.
5. Counsel's billing categories should be further examined and revised to allow those who review bills to better understand where costs are incurred and their reasonableness; a spreadsheet tracking device also should be used.
6. In addition to the Village Manager and Finance Officer, the Board Chair and Board Treasurer also review outside counsel invoices. When the Board Chair is not an attorney, a Board member or other Village resident who is a lawyer with experience reviewing bills should be asked to do so on a volunteer basis.
7. The Village has a number of lawyer-residents (and others) willing to assert or threaten to assert their legal rights. The Village needs to have a standby legal committee of seasoned, pragmatic litigation attorneys who can provide advice and counsel to minimize the risks and costs to the Village.
9. Outside counsel's hourly rate structure should be subject to periodic review and, if necessary, negotiation. The Village also should not permit counsel to adjust rates automatically without advance notice to the Village and the Village's prior consent.
10. The Committee considered the potential for reducing the Village's legal expenses by either replacing current counsel with new outside counsel or employing a part time, in-house attorney. The Committee found no reason to explore changing outside counsel at this time. While hiring in-house counsel might be worth pursuing at some point, it would be prudent to wait at least a year before deciding whether to explore a part time counsel alternative further.

Respectfully submitted,

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