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Conflict of interest involving Village's law firm ends...

Rye Brook's mayor reveals Keane & Beane drops client's fight to kill water filtration plant

By Dick Hubert

Wednesday, December 21, 2022 10:36 PM

Rye Brook Mayor Jason Klein confirmed to the Westmore News last Friday, Dec. 16 that the Village's law firm Keane & Beane is no longer representing Sylvan Development and its owner Michael Tokarz in their efforts to kill construction of the court-mandated Westchester Joint Water Works (WJWW) filtration plant which, when built, would supply clean filtered drinking water to his constituents.

Tokarz, who is the lead Board member of the [Purchase Environmental Protective Association \(PEPA\)](#) and a prominent owner of land on Purchase Street in Harrison, had managed to frustrate the plant's construction for well over a decade through his political and financial influence with Harrison Town leadership and the Harrison Planning Board.

Current state of the filtration plant

Westchester Joint Water Works Manager Paul Kutzy gave the following update on the current state of the water filtration plant on Friday, Dec. 16:

"Westchester Joint Water Works (WJWW), as lead agency, adopted a State Environmental Quality Review Act (SEQRA) Statement of Findings on 10/12/22, which was the final step in the lead agency's SEQRA review for the Rye Lake Filtration Plant project.

In addition to completing the required SEQRA process, routine approvals must be secured from involved agencies having jurisdiction such the New York State Department of Health (NYSDOH), Westchester County Department of Health (WCDOH), New York City Department of Environmental Protection (NYCDEP), New York State Department of Environmental Conservation (NYSEDEC), and the Town of Harrison.

An application to the NYSEDEC for a State Pollutant Discharge Elimination System (SPDES) permit was submitted in August 2022. Following comments from the NYSEDEC in a letter dated 10/14/22, a revised SPDES application along with a NYSEDEC Freshwater Wetlands permit application was submitted in November 2022.

An application to the NYCDEP for approval of a Stormwater Pollution Prevention Plan (SWPPP) was submitted in July 2022. Hazen and Sawyer, our project engineer, has been working collaboratively with the NYCDEP since July 2021 to understand and comply with their needs relative to siting the filtration plant on the NYCDEP watershed. In responding to comments in the NYSEDEC letter dated 10/14/22 relative to the SPDES permit application, Hazen and Sawyer had to make revisions to the SWPPP application which will be submitted to the NYCDEP in January 2023."

Rye Brook's Dottie Roer has more to say

Rye Brook resident Dottie Roer first contacted the Westmore News in early 2021 about the lack of filtered water in the village which prompted the first story on this issue in our May 13, 2021 edition. We contacted her again this past week to ask for comment on the latest developments.

"It has been pathetic to watch, for over two decades, elected and appointed "officials" play Dodgeball in an effort to deter their having to make a decision concerning the health of their constituents," she wrote. "It is nothing short of a dereliction of duty."

After a lengthy telephone interview during which Klein at first blamed WJWW for the plant's delay and then reluctantly admitted that he had not carefully read the Westmore News coverage of PEPA and Tokarz's efforts to kill the plant with the legal help of Keane & Beane partner Eric Gordon, said "it is our understanding that while still representing Sylvan Development in other issues, Keane & Beane is no longer representing them in relation to the proposed WJWW filtration project."

FOIled letter from Keane & Beane

This newspaper, long aware of Gordon's involvement with Tokarz, his role as a partner in Keane & Beane, and his membership in the firm's environmental group which includes fellow attorneys sitting on the rostrum with Rye Brook's Board of Trustees during its meetings, had continually raised conflict of interest questions with both Gordon (who refused to comment) and with Village Administrator Chris Bradbury, who insisted Keane & Beane had no role in Village water issues which he claimed were handled exclusively by attorney Joel Dichter of Dichter Law LLC.

However, a Freedom of Information Law request fulfilled early last week by the New York State Department of Environmental Conservation uncovered a provocative Jan. 7, 2021, four-page letter Gordon sent, on Keane & Beane letterhead, to Basil Seggos, the Department's Commissioner.

In it, Gordon argued that WJWW should not be allowed to be the lead agency to conduct an environmental quality review (SEQRA) and that the responsibility to do that should be returned to

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No paper on Dec. 30

Due to the weather, we will not have a paper on Wednesday, Dec. 30, 2022. We will resume publication on Thursday, Jan. 5, 2023.

the Town of Harrison Planning Board. That's the Board where Tokarz had the ongoing political clout to squelch the plant's construction.

The letter, which copied Harrison officials and an attorney for WJWW, conspicuously left out all elected officials representing constituents on the receiving end of the long-awaited filtered water.

The Westmore News shared that letter with Rye Brook Village Administrator Chris Bradbury upon receiving it. The Klein report on Keane & Beane ending its involvement with Tokarz on the filtration plant issue came shortly afterward.

Responding to the optics of the situation, Bradbury mid-morning on Wednesday, Dec. 21, emailed the following statement to this newspaper:

"Rye Brook has maintained special counsel, other than Keane & Beane, for water-related matters for many years. Because of this separate representation, it was determined that Keane & Beane had no conflict on this matter with any actions taken to date. However, after discussions with the Village, Keane & Beane voluntarily determined on its own to forego representation of Michael Tokarz and Sylvan Development on any further issues involving the WJWW Filtration Plant."

Mayor Klein and WJWW fail to communicate

Klein could offer no reason why he had not been in communication about the plant with his colleague, Village of Mamaroneck Mayor Tom Murphy, who is also chairman of the WJWW and, in that capacity, oversees the Rye Neck portion of the Town of Rye. Both the Villages of Rye Brook and Port Chester are in the Town of Rye.

This newspaper then supplied Klein with Murphy's e-mail and mobile phone number and informed Paul Kutzy, WJWW manager, of the lack of communication between the two. Kutzy promised to share when the two talk to each other.

Klein also admitted he had not been in touch with either County Executive George Latimer or County Legislator Nancy Barr on the issue. Latimer and the County Legislature must agree to a land swap for the proposed filtration plant to be built.

Klein was asked if he would lobby both Latimer and Barr on behalf of his constituents on the issue. He said he would speak to Barr. Klein's day job is as Director of Conservation for Westchester County, a position where he ultimately reports to Latimer.

Status of the plant's future

In a detailed communication last Friday, Dec. 16, WJWW's Kutzy insisted the information needed by both the New York State Department of Environmental Conservation and New York City Department of Environmental Protection (New York City oversees Rye Lake, from which the filtration plant must draw its water) was in the process of being reviewed (see box).

Critical to the filtration plant's proposed existence is a land swap (which Sylvan fought bitterly) of a parcel WJWW has owned next to Sylvan's land on County Airport property and another parcel of land of equal size also on County Airport property.

Sylvan and Tokarz reversed positions to try to kill the plant by opposing the new location and urging it be built at the original location—which they opposed as well. As WJWW's Chairman Murphy told the Westmore News: "My mother taught me when I was young: 'Fool me once, shame on you. Fool me twice, shame on me...My constituents can't afford a mistake that would cost them dearly.'"

The Latimer Administration and the County Legislature can approve the land swap without waiting for approval from either the New York City or New York State environmental agency. However, it is likely they will wait for a New York City Department of Environmental Protection signoff first.

There is still no definitive date as to when the plant's construction might start.

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