

MINUTES OF REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE VILLAGE OF BRONXVILLE
HELD ON JULY 10, 2006 AT THE BRONXVILLE LIBRARY, 201 PONDFIELD ROAD, BRONXVILLE, N.Y.

PRESENT:	Mary C. Marvin	Mayor
	Glenn D. Bellitto	
	Robert S. Underhill	
	William H. Barton, Jr.	Trustees
ABSENT:	Anne W. Poorman	Trustee
ALSO PRESENT:	James F. Hayden	Deputy Village Counsel
	Harold Porr III	Village Administrator
	Rocco Circosta	Superintendent of Public Works
	Brian M. Downey	Chief of Police
	Vincent Pici, P.E.	Superintendent of Buildings
	Robert J. Fels	Village Treasurer
	William J. Murphy	Parking Commissioner
	Gerry Iagallo	Village Assessor

WORK SESSION

(In attendance were Mayor Marvin, Trustees Bellitto, Underhill and Barton, Administrator H. Porr III, and Deputy Counsel Hayden.) Meeting opened at 7:06 p.m. on motion of Trustee Underhill, second by Trustee Barton.

EXECUTIVE SESSION

At 7:34 p.m., on motion of Trustee Underhill, second by Trustee Barton, approved by all present, the Board went into executive session as the Village of Bronxville Board of Police Commissioners to discuss a personnel issue.

After discussion, by motion of Trustee Bellitto and second by Trustee Underhill, the Board of Police Commissioners approved the following resolution:

(Resolution w/findings is attached to and made part of these minutes.) The foregoing constitutes the Decision and imposition of Penalty with respect to the February 24, 2006 disciplinary charges preferred against Police Officer Luigi Cianciulli by the Village Board of the Village of Bronxville sitting as the Village Board of Police Commissioners.

By motion of Trustee Underhill and second by Trustee Barton, approved unanimously, the Board moved out of Executive Session at 8:10 p.m.

Mayor Marvin re-opened the meeting at 8:14 p.m. with the Pledge of Allegiance.

PRESENTATION OF AUDIT REPORT

Treasurer Fels noted that copies of the audit report for the fiscal year ending May 31, 2005 had been distributed to the Board of Trustees.

Nick DeSantis, partner, and Alan Kassay, manager, of Bennett Kielson Storch DeSantis Division of O'Connor Davies Munns & Dobbins, LLP presented an overview of the audit report. Mr. DeSantis said that the Village's financial condition is very good. He added that the Village Treasurer did a very good job in implementing GASB34, which is a new accounting procedure that the Village and all municipalities have to comply with.

Treasurer Fels said the Finance Committee will be meeting with the auditors next week to go over the audit report and management letter in greater detail.

The regular meeting was recessed to go to a public hearing, and reopened at 9:00 p.m.

MAYOR'S REPORT

Mayor Marvin said she is still looking for volunteers to join our Citizens' Advisory Committee, the purpose of which is to increase communication with our residents and address concerns in an expeditious manner. It is by self nomination; two citizens per election district, and members would serve as our eyes and ears in their neighborhood.

Mayor Marvin stated that we have asked the Bronxville Beautification Committee to review tree ordinances in communities similar to ours and offer recommendations on how to best preserve the historic trees that have been an important characteristic of the Village and are sadly coming down in numbers greater than she can ever remember. We expect to have a resolution to vote on in the fall. The Mayor thanked George McKinnis, President of the BBC, and Vicki Ford, subcommittee chairwoman, who is spearheading this effort.

Mayor Marvin reported that we continue our work on our reassessment, and she was very pleased to announce that we have put together a wonderful revaluation/assessment team with the offering of a position later in tonight's business as a full time consultant to Gerry Iagallo both on the revaluation project and the assessing function in general. She said we consider ourselves so fortunate to find someone with his 30 years of experience who is willing to tackle our very groundbreaking but difficult program. With Gerry as a consultant, we will then hire a part-time assessor to perform the additional assessing duties mandated by the state and coordinate the work of Mr. Iagallo. She said the Village had placed ads in the Journal News and with two professional organizations: the New York State Assessors Association and the New York State City and County Managers' Association.

Mayor Marvin said we are fortunate among our applicants to have Anthony DeBellis apply who currently serves at the Commissioner of Assessment in the City of Mt. Vernon. Prior to that he was an assessor in the Towns of Bedford and Pelham, and the City of New York. Like Mr. Iagallo, he has 30 years of experience in the field of assessing and is a state certified advanced professional assessor and a member and instructor for the International Association of Assessing Officers. She said we believe the combination of talent we are assembling will not only provide us with the most skilled team to get our revaluation project completed on time, but is also fiscally prudent and leaves us the flexibility to decide our assessing needs post revaluation. Village officials have spoken at length to our advisors at the Michaelian Institute of Law who endorse this concept for our particular situation.

On the same subject of assessment, Mayor Marvin informed residents that we understand their concern about unpermitted work that may be discovered in the course of the revaluation inspections. She said the Board is in the process of working with the Superintendent of Buildings and studying what other communities have done in this regard, and she reassured residents that our guiding principle is to not be punitive in nature because the goal of the revaluation process is to determine the most accurate values possible, done best by interior inspections, so that equity is achieved and we all pay our fair share.

Mayor Marvin reported that the Village Hall renovation is moving along on time and on schedule, and we are monitoring change orders very carefully.

Mayor Marvin reported on events since the June Board Meeting:

The Mayor and Mr. Porr attended the Eastchester Firefighters Annual Inspection. This year's event honored our volunteer firemen, who are an integral part of the success of our fire department, and she publicly thanked them.

The Village held a meeting exploring the Homestead Provision. Though we cannot make a decision one way or another on this option until late fall when we have concrete valuation data,

Mayor Marvin said it was good to get the information out. John Wolham, an expert on this topic, gave a wonderful explanation of a very nuanced subject and it is being telecast on Channel 74.

The Mayor and Chief Downey met with Supervisor Colavita, Mayor Martino, members of EVAC and the Fire Department to discuss protocol as to responding to emergency situations.

Update meetings were held with CLT to check on the progress on our revaluation.

The Village newsletter went out on schedule with tremendous help from Joan Chase and the Mayor thanked her.

Mayor Marvin spoke at the dedication of the Alice Stone Ilchman Science Center at Sarah Lawrence College.

The Mayor and Trustee Poorman attended the joint Eastchester Tuckahoe Bronxville Chamber of Commerce /Rotary/Lions Club dinner where D.A. Janet di Fiore was guest speaker.

Today the Mayor and Mr. Porr attended a three hour parking workshop sponsored by the County.

The Mayor was involved in the final interviews of police candidates.

Mayor Marvin thanked our DPW staff who did a tremendous job cleaning up Metro North's property near our train station, and said it looks so much better.

Mayor Marvin said she received a few calls from residents on Kensington Road concerned that we will line the street with cars during the Kensington Road project's duration. She said we had to give names of specific streets as part of the parking bill requirement, but any parking placement will be done with a parking and safety consultant as well as in cooperation with residents of Sagamore, Valley and Kensington Roads so we minimize inconvenience to them. She said will not make arbitrary decisions without their input.

Mayor Marvin said she was happy to report that Sheryl Donner continues as our Chamber Director. She has done a great deal in the short time she has been there, and she is currently spearheading our latest and largest undertaking – the Buy Bronxville Credit Card.

Mayor Marvin said she received two letters expressing concern in particular about the closing of the Village Pastry Shop. Sadly, she said, there is not much the Board can do if it is caused by a landlord's rent hike and/or in some cases just a desire to retire or relocate. She does call landlords, urging them to keep our special businesses here and the need for diversification of stores, but for good or for ill, free enterprise is at work, so short of zoning restrictions, we only have the power of persuasion with landlords and owners.

The Mayor noted there was a question raised during the public comments last month about editing minutes, something we never do and that some of the public comments had been abbreviated or not included. She did some research and actually, according to the Open Meetings Law, Article 7 of the Public Officers Law, minutes must only contain a record or summary of all motions, proposals, resolutions and any other matters voted upon and the actual votes. So contrary to being edited, our minutes actually contain a great deal more information than is required.

TRUSTEE REPORTS

Deputy Mayor and Trustee Bellitto reported that three additional parking places were striped on Park Place last week by the Department of Public Works. Also, in response to residents' needs, the Village has added a handicapped parking space on Studio Arcade near the Metro North railroad station to facilitate access for the disabled. He said we will continue to search for parking solutions small and large.

Trustee Bellitto reported that the Village-wide revaluation was progressing nicely. From the number of residents who have opened their homes for inspection, he said it is very clear that

we are all pulling together as a community to make this a fair and thorough process. He related a personal anecdote relating to reassessment, in which he received a 67% increase in the assessment of another home he owns but his taxes ended up being 12¢ less than he paid the previous year. The point he was making was that we have to keep things in perspective when the new assessments are announced.

Trustee Bellitto said that in his police report this evening Chief Downey will share some good news about adding two new police officers in his department. Concerning the police contract, Trustee Bellitto said the Village made a proposal that we felt was better than the previous one but the police did not accept it. He said that following an informal meeting with the police, Village officials decided we should schedule arbitration meetings in the fall. He said the Mayor and Trustees want the negotiation process to work well.

Trustee Bellitto said, as he has mentioned before, we all owe the police a great deal of appreciation and respect for all they do. However, he related an incident where he was less than satisfied with the manner in which a call to the police desk was handled. Trustee Bellitto added that it was just a matter of courtesy, and he has never had anything but positive experiences with patrolmen.

Trustee Barton reported on Public Works issues in the Village. He complimented Rocco Circosta and the staff of the Public Works Department on their accomplishments. He said when we were discussing the capital budget and decided to defer voting on it until tonight, one of the issues was how much money we wanted to spend on public works and street repair and the Board opted to increase the budget for street repair. He said we felt strongly about that, and cut spending in other areas. The budget went up 60% for streets. It was his idea that we grade the streets on an A, B, C grading system, with B middle of the road and C for roads that need immediate attention. The Board asked the Public Works department to do a fair and objective grading of our streets. He said that was a good move and fair to all residents. Trustee Barton said he looks forward to working with the Public Works Department in implementing this system.

Trustee Underhill said basically everything he had to report on the Kensington Road project was discussed tonight during the public hearing for the zoning change, and Vincent Pici will be speaking on the paddle tennis courts in his report.

APPROVAL OF MINUTES

On motion of Trustee Bellitto, seconded by Trustee Barton, the Board approved the minutes of the Special Meeting of June 9, 2006 and the Regular Meeting of June 12, 2006, as drafted.

DEPARTMENT REPORTS

Department reports were presented by Chief of Police Downey, Superintendent of Buildings Pici, Superintendent of Public Works Circosta, Village Treasurer Fels, Parking Commissioner Murphy, Village Assessor Gerry Iagallo, and Village Administrator Porr.

POLICE OFFICER APPOINTMENTS

Chief Downey stated that after having canvassed the current civil service list for eligible candidates for the position of Police Officer, and having conducted interviews and background investigations, he was respectfully requesting that Richard E. Anderson and Louis Addimando be appointed to the Bronxville Police Department as second year Police Officers at the second year Police Officer's salary of \$44,569.00, contingent upon their passing the required medical. He said both gentlemen are currently New York City police officers and both have a strong background in community police work. He noted that these are budgeted positions and will raise the number of Police Officers in the Department to 21, leaving two budgeted positions to be filled.

On motion of Trustee Bellitto, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees of the Village of Bronxville appoints Richard E. Anderson to the position of Police Officer effective at the earliest date following successful completion of all medical requirements.

On motion of Trustee Barton, seconded by Trustee Bellitto, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees of the Village of Bronxville appoint Louis Addimando to the position of Police Officer effective at the earliest date following successful completion of all medical requirements.

RESOLUTION – Retainer Agreement with L. Robert Kimball & Associates

On motion of Trustee Bellitto, seconded by Trustee Barton, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees authorizes the Mayor to sign a retainer agreement with the Architectural Engineering firm of L. Robert Kimball & Associates for telecommunications and technology professional consulting and design services in conjunction with the Village Hall renovation project at an hourly rate per the attached schedule, not to exceed \$35,000, as per the attached agreement. The contract encompasses the remainder of the cable plant project, bids and specs and the oversight process.

RESOLUTION – Agreement with Zerizon to Relocate Telephone Cables and Terminals

On motion of Trustee Bellitto, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees authorizes the Mayor to sign a contract with Verizon to relocate telephone cables and terminals from old telephone room to new telephone room in the Village Hall renovation project at a cost of \$18,000.

RESOLUTION – Authorization for Permit to Install Back Flow Prevention Device

On motion of Trustee Barton, seconded by Trustee Bellitto, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees authorizes the Village Engineer to execute and deliver a signed application to the Westchester County Health Department and United Water of New Rochelle to allow the installation of a back flow prevention device in connection with the Village Hall renovation project.

RESOLUTION – New York State Snow & Ice Agreement Amendment – 2005/2006 Snow Season

On motion of Trustee Bellitto, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

WHEREAS, the Village of Bronxville has entered into Agreement # D010765 with the New York State Department of Transportation entitled "Indexed Lump Sum Snow and Ice Agreement" dated August 15, 1997; and

WHEREAS, the original agreement allowed for increased funding due to the severity of the winter and fuel costs; and

WHEREAS, the present agreement provides funding in the amount of \$2,885.50;

NOW, THEREFORE BE IT RESOLVED, that the Village of Bronxville Board of Trustees authorizes the Mayor to sign the 2005/2006 NYSDOT Snow & Ice Agreement Amendment that allows for the additional funding of \$1,145.54 over the original funding of \$2,885.50. This increased funding was due to the higher fuel costs during that period.

RESOLUTION – Restoration and Installation of Curbing

On motion of Trustee Barton, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

WHEREAS, bid specifications for Contract No. 0601 were prepared by the Department of Public Works in accordance with local and State requirements; and

WHEREAS, two bids were received and public opened on June 27, 2006; and

WHEREAS, Acocella Contracting Inc. of 68 Gaylor Road, Scarsdale, N.Y. 10583 submitted the following unit price bids for the work specified:

Item 1 – Restoration of Ex. Granite Curbing (Labor)	\$ 13.00/ l.f.
Item 2 – Installation of new Granite Curbing (Labor)	\$ 16.00/ l.f.
Item 3 – Georgia Granite, 4" (Material)	\$ 10.00/ l.f.
Item 4 – Split Face, Sawn Top Granite (Material)	\$ 18.00/ l.f.
Item 5 – Restoration of Ex. Concrete Curbing	\$ 24.00/ l.f.
Item 6 – Installation of New Concrete Curbing	\$ 24.00/ l.f.

WHEREAS, the Superintendent of Public Works has reviewed all the submitted documentation and finds that Acocella Contracting Inc. meets all bid requirements and is the lowest responsible bidder.

NOW THEREFORE, BE IT RESOLVED:

That the Board of Trustees of the Village of Bronxville hereby awards Contract No. 0601 to Acocella Contracting Inc. of 68 Gaylor Road, Scarsdale, N.Y. 10583 at the unit bid prices specified and authorizes the Mayor to enter into such contract on behalf of the Village of Bronxville.

RESOLUTION – Inter-Municipal Street Resurfacing Agreement

On motion of Trustee Bellitto, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

WHEREAS, the Village of Bronxville, Village of Tuckahoe and the Town of Eastchester have jointly released bids for Street Resurfacing, and

WHEREAS, the Town of Eastchester has publicly advertised and received bids for said Contract, and

WHEREAS, Canal Asphalt Inc. of Mount Vernon, N.Y. was the low bidder for this Contract at the unit prices described below:

Item # 1 – Asphalt Concrete Top	\$ 62.24 per ton
Item # 2 – Key Cut Castings	\$ 49.00 ea.
Item # 3 – Adjust Manholes	\$ 330.00 ea.
Item # 4 – Roto Milling	\$ 2.70 per s.y.
Item # 5 – Line Striping	\$.50 per l.f.

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees hereby authorizes the Mayor to execute an Inter-Municipal Agreement with the Town of Eastchester and the Village of Tuckahoe for resurfacing and repairing of various streets located within the Town and Villages in accordance with the attached document.

RESOLUTION – Appointing Bond Counsel for the Village

Village Treasurer Fels stated that the Village had been notified by our bond counsel that they would no longer continue working on municipal bonds. Subsequently, the Village sent requests for proposals to four bond counsel firms and received responses from all four of those firms. Mayor Marvin and the Village Administrator reviewed the proposals, conducted interviews, and it was deemed that the Village would best benefit from the services of Squire, Sanders & Dempsey LLP.

On motion of Trustee Barton, seconded by Trustee Bellitto, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED that the Board of Trustees authorizes the Mayor to sign a three year agreement with Squire, Sanders & Dempsey LLP of New York, N.Y., to serve as Bond Counsel to provide the Treasurer's office with legal assistance regarding the issuance of bonds and notes required to be issued from time to time to finance various Village projects, at rates disclosed in their attached proposal.

RESOLUTION – Library Fund Budget Amendment

Village Treasurer Fels reported that in conjunction with the close-out of the Village's fiscal year ended May 31, 2006, his office has processed the final batch of Library Fund invoices pertaining to 2005/2006. As a result, the Library Fund budget status as of May 31, 2006 is as follows:

<u>Reference</u>	<u>Budget (as amended)</u>	<u>Actual</u>	<u>Variance</u>
Revenues	\$ 1,123,525.00	\$ 1,134,486.89	\$ 10,961.89
Expenditures	<u>1,123,525.00</u>	<u>1,134,486.89</u>	<u>(10,961.89)</u>
Balance - Year End	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>

On motion of Trustee Barton, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED that the Board of Trustees authorizes the Village Treasurer to amend the Library Budget for the 2005/2006 fiscal year as follows:

Estimated Revenues

Increase L.2705000	Gifts & Donations	\$ 8,700
Increase L.2082000	Library Fines	<u>3,000</u>
Total Increase in Estimated Revenues		\$12,000

Appropriations

Increase L.7410200	Equipment	\$ 3,400
Increase L.7410440	Books	3,500
Increase L.7410448	Audio/Video	400
Increase L.7410470	Equipment Maintenance	<u>4,700</u>
Total Increase in Appropriations		\$12,000

RESOLUTION – 2006/2007 CAPITAL IMPROVEMENT PLAN

Village Treasurer Fels gave some background on the Capital Improvement Plan. He noted that back in May a public hearing was held on the Capital Improvement Plan totaling \$1,153,606.00 for the various departments. Throughout the course of the last several weeks several amendments were made, deferring some expenses to a later date and increasing the street

paving/curbing budget. All of these changes bring the revised Capital Improvement Plan to a total of \$1,122,000.00 for fiscal year 2006/2007.

On motion of Trustee Barton, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees approves the 2006-2007 capital improvement plan as drafted.

RESOLUTION – Authorizing Tax Certiorari Settlement

On motion of Trustee Bellitto, seconded by Trustee Barton, and unanimously carried, the following resolution was adopted:

WHEREAS, petitions having been filed by the property owner below, challenging real property tax assessments on the Village's Final Assessment Roll with respect to the following parcels:

<u>Property Owner</u>	<u>Address Description</u>	<u>Year(s)</u>
Gramatan Office Bldg. Condominium	Section 4, Block 1, Lots 1-5.AB etc. (69-77 Pondfield Road)	2001- 2006

WHEREAS, petitioner's court challenges are now pending in the Supreme Court, Westchester County; and

WHEREAS, the Village and the property owner have reached a mutually agreeable resolution;

NOW THEREFORE BE IT RESOLVED, that the Village Board hereby authorizes the Village assessor to execute the following settlement on behalf of the Village and School, reducing the assessments to no less than the following amounts:

Year	Assessment	Revised Assessment	Reduction
2001	297,498	255,850	41,648
2002	297,498	243,950	53,548
2003	297,498	243,950	53,548
2004	297,498	220,150	77,348
2005	297,498	214,200	83,298
2006	297,498	214,200	83,298

RESOLUTION – 2006 Small Claims Settlements

On motion of Trustee Bellitto, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees of the Village of Bronxville authorizes the Assessor to settle various Small Claim Assessment Review proceedings as outlined in the attached schedule.

RESOLUTION – Assessor Appointment

On motion of Trustee Underhill, seconded by Trustee Bellitto, and unanimously carried, the following resolution was adopted:

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BE IT RESOLVED the Board of Trustees appoints Anthony DeBellis as Assessor for the Village of Bronxville serving at the pleasure of the Board of Trustees in a part-time capacity at an annual salary of \$7,000.

RESOLUTION – Contract with Gerry Iagallo

On motion of Trustee Barton, seconded by Trustee Underhill, and unanimously carried, the following resolution was adopted:

BE IT RESOLVED the Board of Trustees of the Village of Bronxville authorizes the Mayor to sign an agreement with Gerry Iagallo for various consulting services as outlined in the attached contract for a period which begins immediately at a rate of \$85 per hour.

PUBLIC COMMENTS

Betsy Harding, 39 Homesdale Road, said she was surprised with Trustee Bellitto's comments that he had a negative experience with the police department. She said she has had a very positive experience any time she has called the police.

Ms. Harding asked Mr. Iagallo about his employment with the Town of Greenburgh and if he was going to move into the office at 85 Pondfield Road. She also asked if the person who was hired as a part-time assessor is still retaining his full time job as assessor in Mount Vernon. Ms. Harding asked if CLT is gathering additional information than what's on the property cards.

Mr. Iagallo said he was retiring from his position with the Town of Greenburgh. He said that if Ms. Harding wants to go into the details on revaluation he would sit down with her and discuss them.

Dorothy Brennan, 59 Kensington Road, referring to comments made earlier, said she has never had a problem with the police department.

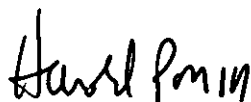
Mrs. Brennan made some comments about Mr. Pici and getting repairs done at the cabin. She said she was surprised to hear that we are getting new windows for the cabin as she was still running around looking for people to do the windows.

Mayor Marvin said she would call Mrs. Brennan to talk about the cabin.

Thomas Wolff, Pondfield Road, asked what the total amount of the five small claims settlements was.

On motion of Trustee Bellitto, seconded by Trustee Underhill, the meeting was adjourned at 11:00 p.m.

* * * * *



Harold Porr III, Village Clerk

VILLAGE OF BRONXVILLE
BOARD OF POLICE COMMISSIONERS

-----X
In the Matter of Disciplinary Charges Dated :
February 24, 2006 :

- preferred against - :

Police Officer Luigi Cianciulli :
-----X

The following is the decision by the Village of Bronxville Board of Trustees sitting as the Village Board of Police Commissioners (hereafter "the Board") pursuant to NY Unconsolidated Laws § 5711-q with respect to disciplinary charges preferred against Village Police Officer Luigi Cianciulli (hereafter "Officer Cianciulli") dated February 24, 2006. The disciplinary charges were preferred against Officer Cianciulli by Village Police Chief Brian M. Downey and issued to Officer Cianciulli by memorandum dated February 24, 2006 (Police Department Exhibit 1).¹

The Board conducted hearings on the disciplinary charges on May 9, 2006, May 19, 2006 and May 22, 2006. The disciplinary charges were prosecuted on behalf of the Police Department by Attorneys Terry O'Neil, Christopher Kurtz and Craig Olivo of the law firm Bond, Schoeneck & King, PLLC. Attorney Andrew Quinn of the law firm Quinn, Ferrante & Mellea, L.L.P. represented Officer Cianciulli in this matter. The Board was assisted in the conduct of the disciplinary proceeding by Attorney John F. O'Reilly. Each and all members of the Board were present throughout the course of the disciplinary hearings.

Each party was provided the opportunity and did present witnesses and evidence in support of its position with respect to the disciplinary charges. The witnesses and evidence were subject to examination and cross examination by counsel for the parties, and members of the Board questioned witnesses and the evidence throughout the course of the hearings.

¹ Documents introduced in the record of this disciplinary proceeding on behalf of the Police Department will be referenced herein as "DE" followed by the appropriate exhibit number. Documents introduced in the record of this disciplinary proceeding on behalf of Officer Cianciulli are identified as Respondent's Exhibit and are referenced herein as "RE" followed by the appropriate exhibit number.

The record of the testimony presented at the hearings was duly transcribed by a certified court reporter, and the transcript was reviewed by the Board in the course of its deliberations on the disciplinary charges.² In addition, the parties presented documents that were admitted as exhibits throughout the course of the hearings and reviewed by the Board in the course of its deliberations on the disciplinary charges.

The Board makes its determination of the disciplinary charges as set forth herein based on the testimony and documentary evidence admitted in the record of this proceeding. This determination is also based on personal observations of the witnesses in the course of their testimony before the Board and evaluation of the credibility of the witnesses. The Board also carefully considered the arguments made by the respective counsel as opening statements and closing statements, which are set forth in the hearing transcript. The Board decided the charges recognizing that the Police Department has both the burden of producing evidence in support of each charge and specification and that the Police Department also has the burden of persuading the Board that Officer Cianciulli is guilty of the charge and specification presented.

DECISION

For the reasons set forth below, the Board finds that the Officer Cianciulli is guilty of the following Charges and Specifications stated in the February 24, 2006 disciplinary charges.

CHARGE I Acts of delinquency seriously affecting [Officer Cianciulli's] general character or fitness for office and/or misconduct.

Specification 1 On November 29, 2005, Officer Cianciulli worked a 4:00 p.m. – 12 a.m. tour of duty.

Specification 2 On November 30, 2005, Officer Joseph Panzarino was scheduled to work a 12:00 a.m. – 8:00 a.m. tour of duty.

Specification 3 On November 29, 2005 at approximately 11:50 p.m. Officer Cianciulli was in uniform and was at the Police Department's Headquarters.

² Reference to testimony of a witness in the transcript of the hearings is indicated in this decision by "R." followed by the appropriate page number(s). Unless otherwise expressly stated, reference to testimony on identified pages of the transcript is made for purposes of example of the witness' testimony on a particular subject and not intended to represent the cited page as the only testimony provided by a witness on the subject.

- Specification 4 On November 29, 2005 at approximately 11:50 p.m. Officer Panzarino was in uniform inside Police Headquarters preparing to begin his scheduled 12:00 a.m. – 8:00 a.m. tour of duty on November 30, 2005.
- Specification 5 On November 29, 2005 at approximately 11:50 p.m. Officer Cianciulli and Officer Panzarino engaged in a heated conversation with raised voices at or near the front desk area inside Police Headquarters.
- Specification 6 The heated conversation between Officer Cianciulli and Officer Panzarino ended when both officers left the front desk area. Officer Cianciulli went to the locker room. Officer Panzarino went to the booking room.
- Specification 7 A few minutes later, after having completed his shift and while off-duty, Officer Cianciulli returned from the locker room not in uniform and went to the booking room.
- Specification 8 Upon entering the booking room, Officer Cianciulli said to Officer Panzarino "Are you fucking calmed down now?", or words to that effect.
- Specification 9 Officer Cianciulli and Officer Panzarino thereafter engaged in another heated conversation with raised voices in the booking room.
- Specification 10 Officer Cianciulli's statement upon entering the booking room and participation in the heated conversations with Officer Panzarino constitute Acts of Delinquency Serious Affecting His General Character or Fitness for Office and/or Misconduct.

CHARGE II Acts of delinquency seriously affecting [Officer Cianciulli's] general character or fitness for office and/or misconduct.

- Specification 1 (Reiteration of the matters asserted in Specifications 1 - 9 of Charge I above).
- Specification 2 During the heated conversation in the booking room Officer Panzarino said "Get your fucking finger out of my face!", or words to that effect.
- Specification 3 Officer Cianciulli and Officer Panzarino became involved in a physical altercation in the booking room.
- Specification 4 During the physical altercation between Officer Cianciulli and Officer Panzarino in the booking room Officer Cianciulli struck Officer Panzarino one time in the face in the area of the nose.
- Specification 5 During the physical altercation between Officer Cianciulli and Officer Panzarino in the booking room Officer Cianciulli was yelling and attempted to kick Officer Panzarino while Officer Panzarino was on the ground.

- Specification 6 Upon hearing the heated conversation in the booking room between Officer Cianciulli and Officer Panzarino and then sounds consistent with a physical altercation between Officer Cianciulli and Officer Panzarino, Sergeant Anthony Deleo and Officer Brenton Dorre left the front desk area and entered the booking room.
- Specification 7 At the time Sergeant Deleo and Officer Dorre entered the booking room, Officer Panzarino was on the floor with blood coming from his nose.
- Specification 8 At the time Sergeant Deleo and Officer Dorre entered the booking room, Officer Cianciulli was attempting to kick Officer Panzarino.
- Specification 9 After entering the booking room, Sergeant Deleo and Officer Dorre intervened by physically restraining Officer Cianciulli and Officer Panzarino and/or separating them into different areas to prevent them from continuing their physical altercation.
- Specification 10 As a result of the physical altercation between Officer Cianciulli and Officer Panzarino, Officer Panzarino's nose was injured from being struck in the face by Officer Cianciulli causing Officer Panzarino to be unable to return work until on or about January 3, 2006.
- Specification 12 Officer Cianciulli's participation in the physical altercation with Officer Panzarino constitutes an Act of Delinquency Seriously Affecting His General Character or Fitness for Office and/or Misconduct.

CHARGE III Violation of the Police Department's Rules and Regulations, Duties, Rules of Conduct.³

- Specification 1 (Reiteration of the matters asserted in Specifications 1 - 9 of Charge I above and Specifications 1 - 11 of Charge II above).
- Specification 2 Officer Cianciulli's conduct described above constitutes conduct which brings discredit upon the Department and, thus, is a violation of Article X, 10.1 and 10.1.1 of the Police Department's Rules and Regulations, Duties, Rule of Conduct.

CHARGE V Violation of the Police Department's Rules and Regulations, Duties, Rules of Conduct.

- Specification 1 (Reiteration of the matters asserted in Specifications 1 - 9 of Charge I above and Specifications 1 - 11 of Charge II above).

³ The Police Department Rules and Regulations, Duties, Rules of Conduct are in evidence as DE 6 and sections cited in the disciplinary charges are incorporated by reference in this decision.

Specification 2 Officer Cianciulli's conduct described above constitutes conduct which brings discredit upon the Department and, thus, is a violation of Article X, 10.1 and 10.1.15 of the Police Department's Rules and Regulations, Duties, Rule of Conduct.

CHARGE VI Violation of the Police Department's Rules and Regulations, Duties, Rules of Conduct.

Specification 1 (Reiteration of the matters asserted in Specifications 1 - 9 of Charge I above and Specifications 1 - 11 of Charge II above).

Specification 2 Officer Cianciulli's conduct described above constitutes conduct which brings discredit upon the Department and, thus, is a violation of Article XI, 11.8 of the Police Department's Rules and Regulations, Duties, Rule of Conduct.

For the reasons set forth below, the Board finds that the evidence presented does not support a finding of guilty with respect to the following charges and specifications.

CHARGE II (quoted above).

Specification 1 As a result of breaking up the physical altercation between Officer Cianciulli and Officer Panzarino, Sergeant Deleo aggravated a pre-existing back injury while restraining Officer Panzarino and missed 35 days of work.

CHARGE IV Violation of the Police Department's Rules and Regulations, Duties, Rules of Conduct.

Specification 1 (Reiteration of the matters asserted in Specifications 1 - 9 of Charge I above and Specifications 1 - 11 of Charge II above).

Specification 2 Officer Cianciulli's conduct described above constitutes a violation of duly constituted law (Penal Law § 120.00(1)) and, thus, is a violation of Article X, 10.1 and 10.1.14 of the Police Department's Rules and Regulations, Duties, Rule of Conduct.

OPINION

The disciplinary charges and the evidence before the Board concern events that took place between Officer Cianciulli and Officer Joseph Panzarino (hereafter "Officer Panzarino") on the night of November 29, 2005 during the approximate period 11:50 PM to shortly before midnight (hereafter "relevant period"). The record shows that the matters stated in Charge I, Specifications 1 and 2 with respect to Officer Cianciulli's duty schedule on November 29, 2005 and Officer Panzarino's scheduled tour of duty on November 30, 2005 are not disputed and are supported by the testimony of both officers

and the other members of the Police Department (Sergeant Anthony Deleo and Police Officer Brenton Dorre) who were present during the relevant period. In addition, there is no dispute in the record that Officers Cianciulli and Panzarino were present in uniform in Police Department headquarters at approximately 11:50 PM on November 29, 2005 in connection with their respective tours of duty. The record shows that at this time and while in the area of the front desk, Officer Panzarino initiated a conversation with Officer Cianciulli about the cleanliness of the police vehicle used by Officer Cianciulli during his preceding tour of duty on November 28, 2005, that Officer Cianciulli responded to Officer Panzarino, and that the conversation escalated to a heated discussion between the officers, each using raised voices (Officer Panzarino R. 59-64; 110-111; Officer Cianciulli R. 489-490; Sgt. Deleo R. 234-235, Officer Dorre R. 352-353). Officer Cianciulli in his testimony indicated that he responded to Officer Panzarino's remarks by a statement to the effect "prove it" (R. 491).

The record shows that the heated conversation at the front desk area ended when Officer Cianciulli went to the locker room to change from his uniform to personal clothing (Officer Cianciulli R. 494-495) and Officer Panzarino went to the booking room to use a computer in preparation for his tour of duty (Officer Panzarino R. 65; 139). The testimony shows that the conversation in the front desk area ended simultaneously, with each officer going their separate ways (Sgt. Deleo R. 236; Officer Dorre R. 331; 375; 381). After approximately four to five minutes, Officer Cianciulli, dressed in personal clothing, emerged from the locker room and went to the booking room looking for Officer Panzarino, rather than leaving Department headquarters (Officer Cianciulli R. 495-496; Sgt. Deleo R. 236; Officer Dorre R. 333).

Officer Panzarino and Officer Cianciulli in their testimony provided different reasons and motivations for the "heated conversation" in the front desk area. Officer Panzarino indicated in his testimony (R. 59-60) that his intent was to bring to Officer Cianciulli's attention that the patrol car was not clean and not gassed up when left for Officer Panzarino's use the night before. Officer Cianciulli connected the heated conversation to purported prior suggestions by Officer Panzarino that Officer Cianciulli should write fewer tickets in connection with a strategy involving ongoing labor negotiations between the Village and the Village PBA (R. 479-484). Officer Cianciulli

also believed that Officer Panzarino was angry because he had been reassigned to work as the "late man" from the "early man" on the shift schedule. Officer Cianciulli stated that Officer Panzarino's comments about ticket activity started in December 2004 (R. 479), but that prior to the events of November 29, 2005 Officer Cianciulli did not feel tension over the issue (R. 484), that he "shrugged it off" as an expression of opinion, and that he did not feel the need to make a complaint about Officer Panzarino's comments (R. 482).

While recognizing the significance of the matters raised by Officer Cianciulli, the Board is not convinced by the testimony or the evidence that his dealings with Officer Panzarino regarding ticket activity is the direct cause of the events, and in particular the physical altercation, that took place between the officers on November 29, 2005. The testimony given by Sgt. Deleo and Officer Dorre (R. 236-238; 255-256; 313-314; 332-334; 354; 382-386), who were present during the relevant period, supported by their reports (DE 8, pages 4 and 5) and notes of interviews conducted by Police Lieutenant Christopher Satriale shortly after the events of November 29th (DE 7), convinces the Board that the disagreement would have concluded when the two officers parted ways at the front desk area, with Officer Panzarino proceeding to the booking room to work on the computer and Officer Cianciulli going to the locker room to change. Upon leaving the locker room area, Officer Cianciulli made a conscious decision (R. 495) to resume with Officer Panzarino the discussion, which everyone present characterized as heated. Based on our observations of the witnesses, their testimony and the contemporaneous reports, we conclude that Officer Cianciulli was angered by the discussion at the front desk area, that this anger caused him to seek out Officer Panzarino four to five minutes after the conversation had ended, and that the anger is the primary reason for Officer Cianciulli starting a second, escalated conversation with Officer Panzarino in the booking room, which concluded with Officer Cianciulli striking Officer Panzarino in the face, thereby breaking the nose.

In this connection, we note that Officer Cianciulli admitted that upon entering the booking room, he "may have" addressed Officer Panzarino with a profanity as asserted in Charge I, Specification 8 (R. 497-498; 535) and overheard by Sgt. Deleo (R. 239, 256-257; 300). Sgt. Deleo and Officer Dorre, sitting by the desk area away from the booking

room, both overheard an increasingly heated conversation between Officer Cianciulli and Officer Panzarino. As related by Officer Cianciulli, after entering the booking room, he proceeded to the desk where Officer Panzarino was seated at the computer and he was yelling at Officer Panzarino (R. 498-500). It was not Officer Panzarino who approached Officer Cianciulli in the booking room.

The next sequence of events and physical movements of each officer is disputed between the testimony of Officer Panzarino and Officer Cianciulli. However, Officer Cianciulli relates that he gestured with two fingers at Officer Panzarino (R. 501). Officer Dorre testified that after Officer Cianciulli entered the booking room, he heard Officer Cianciulli use a profanity in addressing Officer Panzarino and then heard Officer Panzarino twice yell words to the effect of "Louie, get your finger out of my face" (R. 333-334).

The testimony on the next series of hand movements varies widely between Officer Panzarino and Officer Cianciulli, but the record shows that Officer Cianciulli with his hand admittedly hit Officer Panzarino in the face with "a good amount of force" (R. 504-505) on his nose and that as a consequence Officer Panzarino incurred a broken nose (DE 3, DE 5 and 8). Officer Cianciulli in the course of his testimony and in the questioning of witnesses, claimed that the strike to the nose occurred in reaction to his belief that Officer Panzarino was about to strike him. Officer Cianciulli at the hearing testified that he observed Officer Panzarino with "his fist up, cocking his fist" (R. 504) which caused Officer Cianciulli to hit Officer Panzarino in the face. However, as pointed out in the cross examination of Officer Cianciulli (R. 544-550), this testimony at the hearing appears to be at variance with the sequence of events related by Officer Cianciulli in a prior legal document which he had signed (DE 9). We note further that the report by Lt. Satriale of his interview with Officer Cianciulli on January 6, 2006 (DE 8) and Lt. Satriale's handwritten notes of the interview ((DE 7) make no reference that Officer Cianciulli claimed that Officer Panzarino used his fist toward Officer Cianciulli on November 29, 2005. During his testimony in the hearings, Lt. Satriale was questioned at length regarding the January 6th interview with Officer Cianciulli and Lt. Satriale related that Officer Cianciulli did not claim that Officer Panzarino raised a fist to Officer Cianciulli in the booking room (R. 613-620). Thus, we find that we cannot credit Officer

Cianciulli's claim that he struck Officer Panzarino in the face in reaction to a concern that Officer Panzarino was about to strike Officer Cianciulli with his fist.

We note that Officer Cianciulli has also pointed out a statement in the Emergency Physician Record (included in DE 5) to the effect that Officer Panzarino incurred the injury as a result of punch by an "assailant he was arresting". Officer Panzarino does not recall giving this information to the doctors at the hospital (R. 393-394). Lt. Satriale, who accompanied Officer Panzarino to the hospital, was not present at all times Officer Panzarino was with the physician and Lt. Satriale does not know the source of this information (R. 453-456). Lt. Satriale had been made aware of the altercation in the booking room prior to the time he drove Officer Panzarino to the hospital (R. 403-404). The record before the Board does not allow us to decide the source of the statement in the emergency room record or to afford it significance in our decision in this matter.

The record shows that as a result of the interaction between Officer Cianciulli and Officer Panzarino, Officer Panzarino fell to the floor. Officer Cianciulli stated Officer Panzarino twice fell to the floor, once as result of the blow to the face and the second time as the result of a push (R. 505-508). Sgt. Deleo and Officer Dorre upon entering the booking room saw Officer Panzarino on the floor and apparently in the process of getting himself off the floor. Sgt. Deleo was in front of Officer Dorre as they entered the booking room. Sgt. Deleo was clear in his testimony that Officer Cianciulli was standing over Officer Panzarino, that Officer Cianciulli had his foot raised and moved it in a motion to attempt to strike Officer Panzarino in the vicinity of his face or upper body (R. 242; 270-283; 302; 320). Officer Dorre in his testimony related that upon entering the booking room, Officer Panzarino was on the floor and Officer Dorre saw Officer Cianciulli with his foot raised; apparently having kicked or about to kick Officer Panzarino (R. 336). Officer Dorre also indicated that Officer Cianciulli raised foot appeared to be moving in a backward motion away from Officer Panzarino's body, as Officer Panzarino was getting up off the floor (R. 376-377). Officer Cianciulli testified that his foot was raised in the air as Officer Panzarino was getting up (R. 597-598), and indicated that this was a defensive reaction in anticipation of Officer Panzarino's movement toward him. Our observations of Sgt. Deleo and Officer Dorre in their testimony, their demonstrations of the events they observed as they entered the booking