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Legal case is costing town, but how much?

MARK ROSMAN In the News

The meter is running and what's being pumped into it is not quarters - it's dollars and lots of them. Briefly, the Manalapan Township Committee is suing attorney Stuart Moskowitz, who was Manalapan's municipal attorney in 2005.



The committee alleges that in 2005 Moskowitz improperly prepared a contract of sale for a pair of properties the township was buying on Route 522. The lawsuit alleges that Moskowitz's actions left Manalapan on the hook for the cost of a soil cleanup when contamination was discovered on the site. The committee is seeking damages from Moskowitz, who is representing himself in court.

Residents may not realize four attorneys are working for Manalapan to prosecute this case.

They are Caroline Casagrande, who is the current township attorney and whose bills show that she has conferred with the special counsels who are handling the matter; Robert Renaud, an attorney who was brought into the case initially to file an affidavit which states that he believed there was a case against Moskowitz; and special counsels Daniel J. McCarthy and David Weeks.

I have seen two bills Renaud has submitted for payment. They total more than \$6,400 at \$350 per hour.

Casagrande is billing Manalapan \$135 per hour for her services.

McCarthy is billing Manalapan at a rate of \$130 per hour for his services.

Weeks is working on a contingency basis and will recover a fee if Manalapan wins the case against Moskowitz.

At two early stages in this case, Moskowitz has been rebuffed by two judges in his attempt to have the lawsuit against him dismissed. I guess you could say those are victories for the township, but the victories come with a price of keeping Casagrande, Renaud, McCarthy and Weeks working and the meter still running.

Moskowitz said he has yet to file an answer to the township's complaint against him and said that when he does, the costs of the attorneys representing the township will keep adding up. He also said he will file a motion for summary judgment. If that motion is denied the case will proceed to trial and expert witnesses, depositions and other legal actions will have to be paid for.

Moskowitz said he will not settle the case or allow an insurance company to settle the case for him.

He said, "at the end of the day, the township is ahead of the game by not condemning the land, since Green Acres already told the township in 2004 that they wouldn't contribute the \$250,000 they were giving to purchase the property if there was a condemnation started after 2004 on this property.

"If I included the language (the township claims should have been in the contract), the township would have been forced to condemn the land because of the court order and would have been in the hole \$250,000," Moskowitz said.

"Therefore there is no damage. The township can't win a lawsuit if the act complained of put them ahead of the game. I won't settle the case because lawsuits that are not justified should not be brought.

"Settling an unjust lawsuit would simply encourage more unjust lawsuits to be brought. The township should never have settled the police suit making them appear guilty. That was a disgrace. I will not make the same mistake by settling this lawsuit," Moskowitz said.

I spoke with Weeks on Sept. 21 and asked him about the possible outcomes of the case. Weeks said the best case scenario for Manalapan would be to win the case and recover the cost of the remediation project from Moskowitz.

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He said the worst case scenario for Manalapan would be to lose the case, recover nothing from Moskovitz and have to pay the cost of the remediation project.

I asked him if Manalapan can recover all of its legal costs from Moskovitz if it wins the case. Weeks said, "I don't know, that has not been discussed."

I also asked him if the legal fees of any of the attorneys who are working on the case have been capped. Weeks said, "I have no idea what anyone else's arrangement is. I am on contingency. I suggest that you ask Mr. McCarthy."

McCarthy did not return a telephone message left at his office.

Here's the problem as I see it.

Manalapan has a contaminated piece of property that has to be cleaned up. Township engineer Greg Valesi told me on Sept. 20 his best estimate for that work is now between \$80,000 and \$115,000, including the remediation work and engineering fees. He said, "I am trying to minimize costs for everyone involved."

Valesi said he has not done any work related to the Manalapan vs. Moskovitz case and will not do so if asked by the Township Committee.

It was only a few months ago that a figure of \$18,000 was being floated around in conjunction with the remediation project, and only a few weeks ago that a figure of \$50,000 was cited by a municipal official. Now the amount for the cleanup work is tens of thousands of dollars higher.

To be fair to the people who cited those different costs, those three amounts may not have been referring to the same scope of a remediation project, or included all of the same costs. But that is the problem with this entire situation - nobody seems to have any hard and fast answers about what all of this may end up costing taxpayers.

I do not know who is right or wrong in the case of Manalapan vs. Moskovitz. Obviously, each side believes its position is the correct one. A judge or a jury will decide this case eventually.

It appears to me that taxpayers are the forgotten side here. A "victory" for the Township Committee, under some circumstances, could still be a loss for the people who are footing the bill for this case. It is up to those taxpayers to ask their elected officials if this is the most prudent course of action that can be taken.

Mark Rosman is the managing editor of the News Transcript.