

**MARK SCHERZER and PETER DAVIES**

Germantown, NY 12526

April 16, 2008

Hon. Roy Brown and Members of the Town Council  
Town of Germantown  
50 Palatine Park Road  
Germantown, NY 12526

Re: **Police Policy Manual discussion at Town Council Meeting April 21, 2008**

Dear Supervisor Brown and Town Council Members:

The draft of a new police policy manual was originally undertaken in response to two incidents of police misconduct reported in 2006. Then it seems to have languished until the third and highly publicized incident, the unacceptable efforts of department members to intimidate a citizen from exercising his constitutional rights to petition government and speak at the March, 2007, Town Meeting. Over a year later the draft has finally appeared.

This has been a slow and very secretive process. We welcome that the draft has finally been made available, and find it highly appropriate that the residents of Germantown have been given the opportunity to carefully consider the document and submit their responses. We suggest that the next stage should be a formal public hearing on the policy manual.

Without knowing the details of the 2006 misconduct complaints, it is impossible to say whether the new draft manual addresses all existing known instances of police misconduct. As part of the discussion of the document at the next town meeting we believe it would be useful to have these incidents described. The manual does contain several useful new rules and standards, prohibiting police department members from wearing their uniforms when not on duty and from attending Town meetings without a specific request from the Town Supervisor or meeting Chair. These rules would have prevented the particular incidents of March, 2007.

However, we believe the Town has missed several important opportunities in the draft manual to establish more general principles that would better protect Town residents and visitors from police excesses, while still maintaining public order. The current draft needs change in several respects.

■ First, the manual needs a general rule that officers may not use their uniforms or authority for any purposes other than enforcing the law, and in particular not for personal gain or to accomplish other goals, whether personal or political. There appears to be a

rule to that effect regarding use of vehicles. It needs to be a more general rule of conduct as well.

■ Second, the manual should affirmatively state that police department members must protect citizens' constitutional rights, and respect the exercise of their constitutional privileges, including speech, association, public assembly, and petitioning the government. The manual currently frames the department's duties to the public more in terms of "tact" and "public relations", without emphasizing the rights enjoyed by citizens which must be respected by the police. In this regard, we strongly recommend that the department arrange and require training for department members in civil liberties, just as it would, under the terms of this manual, require training regarding the use of firearms and justification in the use of force.

■ The manual also needs amplification in areas less directly related to the misconduct of 2007. Most critically, it needs more explicit and restrictive rules on the use of force. While this draft requires that officers complete arms training and a course on the use of force, there ought to be more explicit rules restricting the use of force to the minimum needed to accomplish valid law enforcement goals. The rules should better restrict the time and manner of use of such devices as batons (including restrictions on use affecting "non-target" areas), and weapons such as pepper spray and tasers. The manual mentions these latter devices as "non-lethal" and available for use when deadly force is not called for, seeming to ignore the lethal effects of taser use reported in many communities. As to use of force in general, we would recommend examination and adoption of the considerably more detailed and restrictive rules that have been adopted in some larger communities. The Houston Police Department Deadly Force Policy, as published in the New York Civil Liberties Union manual "Fighting Police Abuse: A Community Action Manual" (December, 1997, available on the American Civil Liberties Union website) appears to be a very good model.

Aside from these broad areas of concern, there are some details in the manual which we believe would benefit from reconsideration:

■ Under what circumstances and with what justification would the department permit police department members to carry personal "back-up weapons"?

■ In the case of serious crime, is it really the intention that the officer notify all the police commissioners, now that there are three people jointly appointed as police commissioners?

■ With respect to animal control and destruction, should not farm livestock be explicitly included together with domestic animals as among those for whom an officer ought to make efforts to contact the owner should it not be clear that the owner should be contacted before their destruction unless dire circumstances dictate otherwise?

■ With respect to domestic violence, is the list of "family" members truly comprehensive? It is not clear that it would even include adopted children, to say nothing

of the many unmarried domestic partnerships inhabiting the Town., since it seems to require relationship by "blood or marriage",.

■ Should not the encouragement to obtain suspects' oral admissions in the context of domestic violence disputes be tempered with a reminder of the need to advise suspects of their Miranda rights?

■ Finally, there is the expression that a picture is worth a thousand words. The image of an empty patrol car on the front of the proposed document does project an image. What are the associations a patrol car brings up to most people? These are not a positive thousand words. Why not put a human face on the police department with an image of officers serving the public by, for instance, helping children at a school event or some other form of community service.

In closing we note that various provisions in the manual suffer from a lack of grammatical clarity. We urge, in addition to the above changes, a thorough editorial review before adoption of as well.

Very truly yours,

Mark Scherzer and Peter Davies

MS:

**BY FAX: 518.537.6001 AND REGULAR MAIL**