

Philip E. Zegarelli
Village Manager

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January 14, 2014

Hon. Sue Donnelly, Supervisor
Members of the Town Council
Town of Ossining
16 Croton Avenue
Ossining, NY 10562

RE: Briarcliff Manor Submission:
Joint Public Hearing Record

Dear Sue and Members of the Town Council:

Attached please find copy of a letter submitted to me by Daniel Pozin, Esq. of the Village of Briarcliff Manor's (VBM's) counsel, Wormser, Kiely, Galef & Jacobs, LLP. This letter is in response and answer to various statements that were made at the Joint Public Hearing of December 12, 2013 by Town of Ossining Counsel, Wayne Spector, Esq.

It is hereby requested that this letter be made a part of the record emanating from the public hearing and be made available to the public. The VBM will be posting this letter on its own website and making it available as it sees necessary to the public in different forums.

I draw your attention to Mr. Pozin's letter and, in particular, the penultimate paragraph highlighting the inference made by Mr. Spector as to the veracity of the petition's submission as it pertains to the number of signatures and the duration to secure same. The Mayor and Board of Trustees wish to reiterate that it was submitted to the Westchester County Board of Elections and found to be valid as to timing, boundary definition, and requisite number of *bona fide* signatures to be deemed a valid annexation petition. If there was a dispute or desire on any party including, but not limited to, officials of the Town of Ossining, a challenge to the Westchester County Board of Elections certification could have or should have been done in a timely fashion. This was not done.

Lastly, the VBM will continue to solicit information and make available its position, opinion or otherwise, analysis to the public. We will endeavor to provide you with copies as this

occurs. For the record, the VBM has not established a meeting date to take up the matter of the annexation itself.

Thank you for your time and consideration in this matter. We request your acknowledgment of the receipt of this letter and its attachment.

If there are any questions or need for additional information, please contact me accordingly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Phil Zegarelli". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Philip E. Zegarelli
Village Manager

Attachment

Cc: Mayor and Board of Trustees, Village of Briarcliff Manor
Robin Rizzo, Village Treasurer
Daniel Pozin, Esq.
Clinton Smith, Esq.

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Via Email and Regular Mail

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Philip E. Zegarelli, Village Manager
Village of Briarcliff Manor
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Briarcliff Manor, New York 10510



Re: Election District 17 and 20 Annexation

Dear Phil:

As you know, the Ossining Town Attorney made a presentation on various aspects of the annexation process at the Joint Public Hearing on December 12, 2013. On certain points, the Town Attorney said he was engaging in a "literal" reading of applicable law, while on others he was expressly stating his "opinion." We are concerned that erroneous inferences can be drawn from 2 specific issues he discussed, and this letter is intended to respond to each. If this is consistent with your views on the subject matter and that of the Board of Trustees, we suggest that you forward a copy of this letter to the Ossining Town Board and Town Clerk for inclusion in the Joint Public Hearing record.

Town Districts.

The Town Attorney's remarks included the following:

"[S]pecial districts by law, as they exist will not be impacted by annexation. I take this by a literal reading of the statute which is Section 716 of the General Municipal Law that specifically states that." Joint Public Hearing Transcript, Page 48.

Although this statement was made with the qualification that there may be some disagreement on this point, it is clear from the applicable statutes that the issue is anything but absolute.

Indeed, the Municipal Annexation Law (General Municipal Law Article 17) provides the following:

“If a Village annexes territory of the town in which it is situated . . . any such annexation shall not affect the boundaries of any town special or improvement district in such town or the boundaries of any fire district, fire protection district, or fire alarm district.” GML §716(12).

However, other sections of the GML which address the results of annexation, provide the involved municipalities with broad discretion to enter into agreements that would otherwise control various matters, including the disposition between them of real and personal property (GML §707), and the assumption of district debt as between them (GML §708).

Accordingly, while it is true that the Annexation process itself does not result in alterations of existing town district boundaries, this statement might create the wrong impression without reference to other applicable statutory provisions. Certainly, the Town Attorney’s comments could create the inference that residents of 17/20 may become subject to certain inequities in the manner in which they are taxed, and the phrase “double taxation” was bandied about some during the Hearing.

The Municipal Annexation Law contains several provisions to avoid double taxation. As noted above, the statute permits the subject municipalities to agree on apportionment for the payment of town district indebtedness and liability. Also, the Municipal Annexation Law expressly contemplates the shifting of town district debt in the event a village annexes property from a town within which that village is located. General Municipal Law §708 provides the following:

“Except as may be provided in an agreement among any of the affected local governments . . . concerning the apportionment of any indebtedness in any contract or other liabilities, and interest thereon, any such indebtedness or liabilities, or interest, in the event of such annexation, shall be a charge upon and shall be paid by a local government to which the territory is annexed, as the same shall become due and payable, to the other affected local government in the same proportion to the whole of any such indebtedness or any such liability as the full evaluation of the taxable real property of the territory to be annexed bears to the full valuation of the taxable real property of the local government in which the territory was situated prior to the annexation.”

However, with respect to certain districts this section further provides the following:

“In the case of an annexation of territory of a town by a village located in the same town, any such apportionment of town indebtedness and contract or other liabilities shall not include any indebtedness or contract or other liabilities of the town in relation to which the debt service or payments thereon would, in the first instance, be required to be raised in some manner other than by taxes, special ad valorem levies, or assessments, on real property located in whole or in part inside such territory to be annexed.”

Further impacting town districts is the applicability of Town Law §202-c entitled, “Dissolution and diminishing area of certain districts.” Though this law is not related to annexation, and neither impacts nor is

impacted by annexation, it does provide a remedy for the 17/20 residents. This law provides that upon a petition, the town board of any town may

“dissolve and discontinue any lighting, snow removal, water supply, or refuse and garbage district, or a sewer district in which no sewer system has been constructed, provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district.” Town Law §202-c(1-a).

This Section also contemplates diminution in the area of such districts. Accordingly, the residents of the 17/20 area may petition the Town for their removal from any of the existing enumerated districts, in favor of like services to be provided by the Village. As with annexation, the Town Board’s consideration for such a petition would be the public interest.

Annexation Petition.

The Municipal Annexation Law requires as a predicate for action by the Town and Village, a petition seeking annexation signed by at least 20% of the qualified voters residing in the proposed territory seeking annexation. See, General Municipal Law §703(1). In the present case, such a petition was submitted as certified by the Westchester County Board of Elections. In his presentation at the Joint Public Hearing, the Town Attorney made the following statement:

“There is some indication, from some case law, that the level of community support, in the form of signatures on the petition, the number of percent could be considered a factor . . . certainly, if well over half of the community signs a petition that can be indicative of where the community leans . . . here after two years of somewhat extensive lobbying by the pro-annexation group[,] [t]he number of signatures is still well below half of the eligible voters in the districts That may be of relevance by the [Town] board, if they so chose to consider it.”

This statement by the Town Attorney implies that the statutorily required 20% of signatures is somehow legally deficient, or indicative of a lack of community support. The fact remains that the Westchester County Board of Elections reviewed the signatures and certified that the petition conforms to the requirements of the law for purposes of annexation. It is irrelevant how long it took to obtain the signatures, and as long as the required 20% was obtained, it is irrelevant that more signatures were not obtained.

If you have any questions please do not hesitate to contact me.

Very truly yours,

WORMSER, KIELY, GALEF & JACOBS LLP


Daniel Pozin