

VILLAGE OF BRIARCLIFF MANOR
BOARD OF TRUSTEES AGENDA
MAY 6, 2015

5. ANNEXATION APPEAL – AUTHORIZE DISCONTINUATION OF ACTION

WHEREAS, by Petition filed with the Village on October 16, 2013, the residents of Election Districts 17 and 20 in the Town of Ossining, petitioned the Village to take action to annex the 17/20 Area as defined therein, into the Village in accordance with General Municipal Law Article 17 (GML17); and

WHEREAS, after following all requisites imposed by GML17, the Village Board on March 11, 2014, adopted Findings, Resolutions and Order determining that “it is in the over-all public interest to approve” the proposed annexation; and

WHEREAS, on March 11, 2014, the Ossining Town Board adopted Findings, Objections and Determination which concluded that the proposed annexation “will not be in the best interests of the Town of Ossining”; and

WHEREAS, pursuant to GML17, had both the Village and Town approved the proposed annexation, the matter would have been put to a vote of the 17/20 Area residents to ultimately determine for themselves whether to approve the proposed annexation; and

WHEREAS, given the contrary findings of the Village and Town, it was incumbent upon the Village under GML17 to seek judicial intervention in order to secure the right of the 17/20 Area residents to vote on the proposed annexation; and

WHEREAS, by resolution adopted April 10, 2014, the Board of Trustees directed Village Counsel to commence and maintain proceedings, in accordance with GML17, to seek adjudication and determination from the Appellate Division of the Supreme Court of the State of New York, on the law and facts, that the proposed annexation is in the over-all public interest, so that upon such determination, the matter of annexation may be submitted to a vote of the 17/20 Area residents; and

WHEREAS, Village Counsel commenced such proceedings by filing a Verified Petition with the Village Manager’s supporting affidavit; the Town’s attorneys filed a Verified Answer with Supervisor’s Affidavit in opposition thereto; and the Village filed a Verified Reply in response to the Town’s Verified Answer; and

WHEREAS, by Order dated June 19, 2014, the Appellate Division appointed the GML17 statutory panel of three referees (AD Referees) to hear the matter; and

WHEREAS, on November 5, 2014, Village Counsel and the Town's attorneys met with the AD Referees at which time, among other things, the AD Referees determined to conduct a *de novo* review of the proposed annexation requiring the introduction of all new analyses and computations in support of the proposed annexation, despite the Village's position that the record on the Village's Findings, Resolutions and Order and the Town's Findings, Objections and Determination provided a sufficient basis for the AD Referees to hear and report to the Appellate Division on whether the annexation would be "in the over-all public interest" in accordance with GML17; and

WHEREAS, based on a trial discovery schedule established by the AD Referees, on or about December 8, 2014, the Town served Respondent's First Notice of Discovery and Inspection upon the Village, which included thirty three discreet demands to produce documentation covering the ten year period from 2004, despite the several hundred pages of analyses and documents which comprised the Village's Order to begin with; and

WHEREAS, the Village served its own demands for Discovery and Inspection upon the Town; and

WHEREAS, the Town and Village each prepared and delivered to the other documents in response to their respective demands; and

WHEREAS, on April 1, 2015, Village Counsel and the Town's attorneys met again with the AD Referees at which time, among other things, the AD Referees set a trial date of June 17, 2015, and instructed the parties to proceed expeditiously with the balance of discovery; and

WHEREAS, the Town's attorneys confirmed their intent to depose each and every Village department head and official having specific knowledge of the provision of Village services at Examinations Before Trial (EBTs) in furtherance of the Town's opposition to annexation, including but not limited to the Village Manager, the Village Treasurer, the Village Clerk, and the heads of the Village's Fire Department, Police Department, Sanitation Department, and Highway Department; and

WHEREAS, the preparation of said parties for EBTs, attendance by Village Counsel at said EBTs, the associated lost services of Village employees, and the conduct of EBTs of Town personnel sought by the Village itself, among other things, would be a drain on Village resources and a significant expense to the Village and its taxpayers; and

WHEREAS, the Village has already necessarily allocated resources to determine that annexation would be in the overall public interest; and

WHEREAS, given the Referees' disposition to effectively hold a full trial on the basic issues of annexation complete with full discovery including the introduction of all new analyses and computations, the Village Board by Resolution adopted on January 7, 2015, authorized and directed Village Counsel to take any steps appropriate to limit and regulate the Town's discovery to prevent unreasonable annoyance, expense, and abuse; and

WHEREAS, efforts by Village Counsel to so stipulate with the Town's attorneys to a reasonable scope of discovery proved unsuccessful, and it remains the intent of the Town's attorneys to proceed with the EBTs among other things; and

WHEREAS, the Village has not received any tangible support in resources from the 17/20 Area Residents and, rather has received a letter dated May 4, 2015, from the 17/20 Area residents' Steering Committee indicating a waning in the 17/20 Area residents' interest in annexation since their submission of their Petition.

NOW THEREFORE, BE IT RESOLVED that in light of all of the above, the Village Board hereby determines that while annexation of the 17/20 Area may remain in the overall public interest, the Town's further discovery demands, together with the conduct of a full *de novo* trial on the issues pertaining to annexation, and thereafter a full submission and argument before the Appellate Division on the AD Referees determination, will result in the expenditure of an inordinate amount of time, effort and funds which will not be in the best interests of the Village's taxpayers,; and

BE IT FURTHER RESOLVED, that in light of the above, Village Counsel is hereby directed to take all steps to discontinue the pending court action pertaining to the subject annexation.