

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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In the Matter of the Application of, :

VILLAGE OF BRIARCLIFF MANOR, : Docket No. 2014-4282

Petitioner, :

- against - :

TOWN OF OSSINING, :

Respondent. :
-----X

**AFFIDAVIT OF
TOWN OF OSSINING
SUPERVISOR
SUSANNE DONNELLY**

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

SUSANNE DONNELLY, being duly sworn, hereby deposes and, under penalties of perjury, states as follows:

1. I am the Supervisor of the Respondent Town of Ossining (the "Town"), in the above-captioned matter. I am presently serving my second term as the elected Supervisor of the Town, and my eighth year of elected office in our community. I am fully familiar with the facts and circumstances set forth herein.

2. I submit this Affidavit in opposition to the Verified Petition, dated April 23, 2014 (the "Petition"), filed by Petitioner Village of Briarcliff Manor ("Briarcliff"), which improperly seeks a determination that Briarcliff's attempted annexation of Town Election Districts 17 and 20 ("EDs 17/20") is in the public interest. As I will explain, and as the Town will demonstrate at trial before the Referees designated by this Court, annexation is clearly not in the overall public interest.

3. I also submit this Affidavit in response to the Affidavit of Briarcliff's appointed Village Manager Philip E. Zegarelli, sworn to April 23, 2014 (the "Zegarelli Aff."), in order to clarify and correct the numerous misstatements, exaggerations, and misinformation set forth therein.

4. For the reasons set forth below, as further expounded upon in the Town's Annexation Findings, Objections and Determination, adopted by Town Board Resolution on March 11, 2014 (the "Town Findings," copy, including exhibits, annexed hereto), Briarcliff's annexation of EDs 17/20 would not be in the overall public interest, and, therefore, Briarcliff's Petition should be denied in its entirety.

5. I am advised by counsel that Briarcliff's Petition for annexation is highly unusual, in that Briarcliff does not even claim that EDs 17/20 are deficient -- let alone completely lacking -- in any municipal services, or that Briarcliff would significantly improve the services that the Town is already providing to this area.

6. I understand that the burden of establishing that an annexation is in the over-all public interest is on the municipality seeking the annexation, and that the dispositive issues are customarily defined in terms of municipal services, such as police and fire protection, highway maintenance, emergency services, sewer and water, and public utilities.

7. The Town already provides police, fire, emergency ambulance services, sewer, water, highways, sanitation, recreation, street lights, and other essential services to EDs 17/20, and does so in an efficient and cost-effective manner. In fact, the Town regularly receives compliments from the residents of EDs 17/20 about the high quality of these services.

8. Briarcliff simply does not, and cannot, show how it will improve the provision of any of these services to EDs 17/20. Instead, Briarcliff's contention is largely a

philosophical or political one, based on its mistaken claim that it can provide these same services more effectively.

9. While the Town respectfully submits that Briarcliff's contention misses the whole point of the annexation process -- since it make no serious claim that it would improve services to EDs 17/20 -- in any event, the Town will establish at trial that it is providing these services in a cost-effective manner.

10. Moreover, the Town's means and methods for providing services to EDs 17/20 is consistent with statutory authority and the prevailing principles of municipal government in this State, namely, those which favor the consolidation of municipal services and recognize the benefits of the cooperation among municipalities in the provision of services.

11. While my Town Board and I believe it is quite apparent that Briarcliff's argument is misdirected in these annexation proceedings, the Town is nevertheless prepared to carefully and thoroughly prove at trial why the requested annexation is poor, if not naïve, public policy.

12. Accordingly, the Town respectfully requests that the Court designate Referees to adjudicate this matter, that these Referees hold a pre-trial conference to direct disclosure, and that, following trial before the Referees, the Court dismiss the Petition, uphold the Town Findings, dismiss the Findings, Resolutions and Order of the Village of Briarcliff Manor Pursuant To Article 17 of the New York State Municipal Law, dated March 11, 2014 (the "Briarcliff Findings"), and otherwise determine that Briarcliff's proposed annexation is not in the overall best interests of the public.

Background

13. I have been the Town Supervisor for approximately two-and-a-half (2½) years, and I am serving my second term. Prior to being elected as Town Supervisor, I served as a Trustee for the Village of Ossining for approximately five-and-a-half (5½) years.

14. By way of background, I received a B.A. in Business Management from Iona College in 1975.

15. My experience and expertise for close to forty (40) years has been in staff supervision and management, implementation of cash controls, formulating and implementing strict budgetary measures, and serving as a consultant for retail supermarkets focused on point of sale hardware and software, both in terms of sales and providing support.

16. In 2006, I was appointed to the Village of Ossining Board, replacing a Trustee who had moved into the Mayor slot after the Mayor has stepped down. I ran for election of the unexpired term that fall and proceeded to be elected for two (2) additional two (2) year terms, serving for a total of approximately 5½ years in that capacity.

17. During my time as Ossining Village Trustee, I worked closely with the Village Management and Finance Department to evaluate and restructure the budget of the Village, assuring that departments had responsibility for the expenses appropriate to their functions, as well as ensuring that each department was credited with the correct revenue.

18. After 5½ years, during which the Village of Ossining maintained its credit and without having to deplete its fund balances during the biggest recession since the Great Depression, I ran for and was elected Supervisor for the Town of Ossining, based on my track record of developing and monitoring strictly crafted budgets and holding employees accountable for their responsibilities.

19. For the past 2 ½ years, I have managed the Town as if it were a business. As a result, every year the Town has become more and more solvent.

The Town Provides All Necessary Services To EDs 17/20

20. As our Town Attorney and Special Counsel to the Town have explained, annexation of part of one municipality by another municipality is only legally appropriate when it is in the overall best interest of the community, including the community proposing the annexation, the territory proposed to be annexed, and to the rest of the municipality from which the annexed territory would be taken.

21. I understand that the primary consideration for determining whether annexation would be in the overall best interests of the community is how annexation would affect the provision of services, such as police, fire, ambulance, highway department services, recreation, sewer and water, sanitation and administrative services.

22. In other words, in determining whether annexation would be in the overall best interest of the community, both the Town and Briarcliff were required to analyze whether, as a result of annexation, the residents of Briarcliff, EDs 17/20, and the balance of the Town of Ossining, would benefit from improved services or receive services that are not otherwise being provided.

23. As set forth in the Town Findings, annexation would *not* result in an improvement to services, or a provision of significant additional services to anyone.

24. The Town currently provides an excellent level of service to the residents of EDs 17/20 and the entire unincorporated Town. Annexation would in no way improve these services, and, to the contrary, services would be provided in a less efficient, less cost-effective, and much more opaque manner.

A. Police

25. Police services are presently provided to EDs 17/20 by the Town through a contract with the Westchester County (the "County") Police Department ("County Police").

26. The Town had previously determined that it was unnecessary and cost prohibitive to employ police officers directly for a variety of reasons, including because of benefits ordinarily required.

27. The County provides supervised police coverage to the Town twenty-four (24) hours a day, seven (7) days a week. There are two (2) County police officers in the Town during the day and evening shifts, and one (1) during the overnight shift.

28. Because these police officers are already on patrol in the Town, their response times are excellent.

29. These police officers also benefit from direct supervision at all times.

30. The County also provides the Town with a dedicated liaison, who regularly gives his phone number to Town residents.

31. In preparing the Town Findings, the Town considered such factors as response times and other service components, and determined that there is no deficiency in police service.

32. In fact, the Town has consistently benefited from the extraordinarily high level of professional services provided by the County Police, including the depth and knowledge of its personnel.

33. Since the Town contracted with the County Police, performance, which is measured in terms of response times, mutual aid statistics and public input, has been exemplary.

34. The County Police does not suffer from staffing concerns due to illness, vacations, military service, or other factors that tend to limit availability in smaller police departments, such as village police departments. Due to its size, the County Police are always able to provide patrols and backup when needed.

35. The County Police also provide full investigative support, internal affairs, forensics, traffic control, full insurance and indemnification and communications.

36. The County Police are consistently responsive to any concerns, and the Town officials are always provided access to the highest level of management.

37. By utilizing a regional police force, the Town is able to provide this service at a significantly lower per capita rate.

38. For that reason, the contract with the County Police has served as a model of efficiency, one that other communities in Westchester County are seeking to duplicate.

39. In fact, I also understand that in other Counties, such as Nassau County, the County is now the primary provider of police services – as the Towns and Villages have migrated away from smaller, less efficient departments.

40. Now that the contract is nearing the end of its term, the Town is obligated to request proposals from other interested municipal entities. These proposals will be reviewed by the Town to ensure the same high level of service being provided presently by the County Police.

41. Briarcliff simply cannot provide this same level of service to EDs 17/20 through its small village police department. It certainly cannot provide *better* police services than already provided by the Town.

42. Indeed, I understand that, if it annexed EDs 17/20, Briarcliff would need to hire five (5) additional police officers.

43. In sum, annexation will not result in an improvement of the police services that are already being provided to EDs 17/20, and certainly will not provide a service that is not provided today.

B. Fire Services

44. The Town provides fire protection to EDs 17/20 through Special Districts that contract with the Village of Ossining and Briarcliff.¹

45. Annexation would not change the provision of fire protection services to EDs 17/20 in any way, except to potentially make them more expensive.

46. As such, there would be no change or improvement to fire services as a result of Briarcliff's annexation of EDs 17/20.

C. Ambulance Services

47. Presently, the Town, including EDs 17/20, receives extraordinary advanced life support and ambulance service through the Mid-Hudson Ambulance District ("MHAD"), which has evolved over the past five (5) years into a regional service.

48. MHAD contracts with the Ossining Volunteer Ambulance Corp. ("OVAC") for the provision of critical ambulance services to the Town.

49. This provides the Town, including EDs 17/20, with 24/7 ambulance coverage.

¹ As discussed in greater detail below, Special Districts are a statutorily authorized mechanism by which towns in New York State can deliver services to meet the specific needs of property owners.

50. Because OVAC dispatches from their proximate facility on Clinton Avenue, its response times in the Town are good: I understand that approximately ninety-six percent (96%) of calls are responded to within nine (9) minutes.

51. Annexation would not alter the Mid-Hudson Ambulance District, and, therefore, would not result in Briarcliff being able to provide better services than already being provided by the Town.

52. Briarcliff cannot provide these critical services.

53. Indeed, I understand that Briarcliff's first line of paramedics are from OVAC. OVAC has a dedicated "fly-car" for Briarcliff, which provides paramedic service whenever it is needed.

54. The Town does not dispute that it is entirely appropriate for Briarcliff to rely on OVAC to provide services to Briarcliff residents in a cost-effective manner.

55. In any event, the critical point here is that annexation will not result in an improvement of the critical ambulance services that are already provided to EDs 17/20, and certainly will not provide a service that is not already provided today.

D. Highway Department Services

56. The Town has consistently received high praise for the work performed by the Town's Highway Department. In fact, when the Town recently conducted a referendum to switch from an elected to an appointed Highway Superintendent, the Town resoundingly voted in favor of retaining the present method of providing services. That vote was uniformly interpreted as an endorsement that the Town's Highway Department is doing an excellent job of road maintenance, plowing, sanding, salting, and street sweeping.

57. As has become increasingly more important, Town has an excellent response time in responding to snow events and clearing the Town streets of debris.

58. Of special relevance here, I would note that the Town's Highway Department is in closer proximity to EDs 17/20 than Briarcliff's Department of Public Works.

59. The Town Highway Department also benefits from the excellent engineering services and support provided through an inter-municipal agreement ("IMA") with the Village of Ossining.

60. By entering into this IMA with the Village of Ossining, the Town has saved taxpayers hundreds of thousands of dollars.

61. This arrangement has also aided the Town in planning and executing several vital infrastructure projects at the lowest possible cost to the taxpayers.

62. Highway services are, therefore, being provided to EDs 17/20 in an exemplary manner.

63. As such, annexation would not result in an improvement to these services, nor would it provide a service currently lacking in the Town and/or the area sought to be annexed.

E. Sanitation

64. The Town has created a Special District to provide for the collection of refuse and recycling in the Town.

65. The Special District contracts with an outside vendor, Suburban Carting, to provide these services to the entire Town. Suburban Carting collects solid waste twice a week, and recycling once per week, which is an adequate level of collection for the Town.

66. Notably, Suburban Carting is headquartered on North State Road directly within EDs 17/20.

67. Suburban Carting has been very responsive to Town residents' needs, and, in fact, provides a dedicated liaison to ensure the quality of its services.

68. The Town receives excellent service at a fair and competitive rate.

69. Like the police service agreement with the County Police discussed above, the Town bears no responsibility for pension, worker's compensation, and other benefit payments that emerge from providing this service.

70. As such, the taxpayers have realized significant cost savings through the competitive bidding process.

71. The favorable rate in the current contract, which includes two (2) day per week pickups, is based on the "economies of scale" associated with providing service to the entire Special District. Refuse and recycling pickup is provided to unincorporated Town residents, as a result, at a significantly lower per capita rate than in Briarcliff.

72. Importantly, since sanitation is provided through a Special District, annexation will not change the Town's provision of this service through the aforementioned contracts.

73. Once again, annexation will not result in an improvement of services already being provided to EDs 17/20, nor would it provide a service that is not already provided today.

F. Sewer And Water

74. Sewer and water are both provided through a Town-wide Special District.

75. The Town Highway Department maintains the sewer lines and lift stations.

76. The Village of Ossining disposes of sewage originating in the Town.

77. The Village of Ossining also supplies water to the Town.

78. Consumers in the Ossining Town-wide District pay for the water at an agreed upon rate.

79. Importantly, Briarcliff has conceded that the manner in which sewer and water services are provided to EDs 17/20 will not change as a result of annexation.

80. Once again, annexation will not result in an improvement of services already being provided to EDs 17/20, nor would it provide a service that is not already provided today.

G. Administrative Services And Facilities

81. As a result of the longstanding IMA with the Village of Ossining and the County of Westchester, the Town has been spared most of the costs of owning and maintaining certain buildings and facilities, such as a Court and Town Hall.

82. Briarcliff, on the other hand, has well-documented long-term significant capital needs, including the need for a new police and court facility, improvements to its Village Hall, a new Recreation Center, and its library.

83. In addition, as an unincorporated area of the Town, governed solely by the Town-wide government, the unincorporated area (including EDs 17/20) realizes extraordinary

and undeniable benefits of sharing administrative costs between the Town-Wide and unincorporated functions of the government.

84. Lastly, under State law, every Town must maintain a Town Court. Villages have no such requirement, since the Town Court would have jurisdiction over any matters that could be brought before a Village Court within a Town.

85. Village Courts, and the expenses associated with them, are thus optional.

86. With the active encouragement and assistance of the Ninth Judicial District and the Office of Court Administration, the Village of Ossining did dissolve its local court and merged its functions into the Ossining Town Court in 2012.

87. Briarcliff Manor was actively encouraged to do the same, with the Court Administrative authorities finding no actual impediment to doing so. Instead, it contends that since it is located within two different towns, it cannot do the same.

88. Residents in the unincorporated area (including EDs 17/20) currently do not need to pay for their own dedicated court.

89. If annexed, EDs 17/20 would have to pay not only their share of the cost of the Briarcliff Court, but also their share of the cost of the Town Court, without any actual additional benefit since the Town Court performs the exact same functions.

90. It is obvious that annexation of EDs 17/20 would not result in a better provision of these services.

H. Recreation

91. In reaching the conclusions in the Town Findings, the Town considered the level and broad array of recreation services available to Town residents, including access to a state-of-the-art indoor pool facility.

92. In reviewing and comparing the recreational services available to Town residents and Briarcliff residents, the Town determined that, at the very least, the services are comparable, particularly since the Town facilities are available to all Briarcliff residents located within the borders of the Town.²

93. Briarcliff can only offer the use of an outdoor pool, open only four (4) months per year. That certainly does not equate to an improvement of services, when the Town has an indoor pool that is open year-round.

94. In any event, I would submit that Briarcliff's provision of an outdoor pool for four (4) months a year, which appears to be the only service that Briarcliff could actually provide to EDs 17/20 residents that they do not already have, does not, standing alone, justify annexation.

95. Accordingly, recreational services provided to EDs 17/20 will not be significantly improved, and certainly not to such a great extent as to justify annexation.

I. Train Station Parking

96. Briarcliff asserts that a potential benefit inuring to EDs 17/20 residents through annexation is the ability to park in the Scarborough train station parking lot.

97. While Briarcliff touts its available "valet parking," what it fails to state is that the valet parking is necessary due to the significant overcrowding at the Scarborough train station.

98. Parking is currently available at the Ossining train station parking lot.

99. More importantly, commuters often find the Ossining station more convenient for any number of reasons, including the closer proximity to EDs 17/20

² A portion of Briarcliff is located in the Town of Mount Pleasant. EDs 17/20 are entirely located in the Town.

geographically, as well as the fact that the Ossining station is an express stop, whereas Scarborough is a local stop.

100. There would be no improvement to train station parking in the event of annexation of EDs 17/20.

Not Only Would Briarcliff Not Provide Additional Services To EDs 17/20, But, Moreover, It Would Not Provide These Same Services As Effectively As The Town Does Now

101. The fact that Briarcliff will not provide any real improvement to the services that are already being provided to EDs 17/20 should end the annexation inquiry.

102. Briarcliff's claim that it can provide these issues more efficiently seems to me to be really a policy difference.

103. Nevertheless, I would like to briefly explain why Briarcliff's claim that it could provide these same services more efficiently is in error.

104. Contrary to what Briarcliff would have this Court believe, the Town's provision of services through IMA's and Special Districts is actually a model of how services should be offered by a municipality.

105. Special Districts are a statutorily authorized mechanism by which towns in New York State can deliver services to meet the specific needs of property owners with established districts using charges and/or user fees from taxpayers in the District to finance these particularized services. See, e.g., N.Y. Town Law, art. 12.

106. Utilizing Special Districts to provide services creates a greater transparency by allowing the taxpayers to review the specific costs and expenditures for specific services, instead of lumping them together in a unified or aggregated master budget, the way that Briarcliff does.

107. Curiously, Briarcliff appears to disparage the Town's consolidation of services with the Village of Ossining, the County, and MHAD. In fact, through consolidation, the Town is able to provide much more efficient, cost-effective services to our constituents, which are, frankly, beyond reproach.

108. Moreover, as discussed in the Town Findings, New York Law establishes that 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." See N.Y. Gen. Mun. Law § 716.

109. That means that if Briarcliff were to annex and provide services to EDs 17/20, it would add another layer of government, essentially superimposing costs on top of the services already provided by the Town; annexation of EDs 17/20 would not be the equivalent of eliminating the Town as EDs 17/20 would still be within the Town of Ossining.

110. Importantly, Briarcliff recognizes that the Town is supplying services, and the only response it has is to opine that the Town should renegotiate contracts in good faith so that the Town would no longer be providing services to EDs 17/20.

111. That is not what I understand to be the standard for annexation. The issue is not whether the Town can *stop* providing services; the issue is whether the Town is *presently* providing services, and whether Briarcliff can do so administratively and actually in a manner that is better than the Town, and therefore in the overall best interests of public.

112. Again, the Town already provides exemplary services in a streamlined and cost-effective fashion through consolidation of services with the Village of Ossining and IMAs, as well as through Special Districts. Even if Briarcliff can take those services over, it cannot do so in a manner superior to what is already provided.

**The Zegarelli Affidavit Does Not Claim That
EDs 17/20 Are Lacking In Any Essential Services**

113. Perhaps what is most notable about the Zegarelli Affidavit is what it does *not* say: it does not, because Briarcliff cannot, claim that annexation would improve services to EDs 17/20, much less provide residents of this area with any services that they are lacking.

114. The Zegarelli Affidavit is primarily concerned with critiquing various documents that were annexed to the Town Findings.

115. These documents were intended to be illustrative and informative, and to address certain concerns raised specifically by members of the public.

116. As will be borne out through the anticipated discovery process, the Town Findings are based upon indisputable empirical data.

117. Hence, the Town is ready to demonstrate to the Court that it based the Town Findings on empirical data, which unquestionably supports the conclusion that annexation of EDs 17/20 would not be in the overall best interests of the community.

118. Again, given that the proposed annexation would not result in the improvement of any municipal services -- much less, the provision of municipal services that are not already being provided -- the Town Findings are consistent with the law.

CONCLUSION

119. Ultimately, as will be established before the Referees designated by the Court during these proceedings, it is clear that Briarcliff cannot provide services in a manner that is better, more cost-effective, or efficient than those provided by the Town.

120. As will also be established through these proceedings, it is clear that Briarcliff's ulterior political motives clouded the proceedings. A desire to embark upon a "land grab" of a substantial portion of the revenue-generating properties in the Town to fuel

121. This is why, in my opinion, the vast majority of residents in ED 17/20 (a number approaching 80%) did not, and do not, endorse this annexation and refused to sign the Petition despite roughly 2 1/2 years of an intense lobbying effort supported by Petitioner Briarcliff.

122. As will also be established through these proceedings, it is clear that Briarcliff's ulterior political motives clouded the proceedings. A desire to embark upon a "land grab" of a substantial portion of the revenue-generating properties in the Town to fuel Briarcliff's ultimate goal of creating a co-terminus Town/Village is hardly sufficient to overcome the requisite showing that annexation is in the overall interest of the public.

123. For the foregoing reasons, and based upon the facts that will be adduced during the Court's proceedings, the Town respectfully requests that the Court issue an Order: (i) dismissing Briarcliff's Annexation Order; (ii) upholding the Town's Annexation Order; (iii) holding that the proposed annexation of EDs 17/20 is not in the overall public interest; and (iv) granting such other and further relief as this Court deems just and proper.



SUSANNE DONNELLY

Sworn to by me this
28th day of May, 2014



Notary Public

ANN MARIE ROCCO
Notary Public, State of New York
No. 01RO6241602
Qualified in Westchester County
Commission Expires May 23, 2015