

## Town Of Ossining Annexation Statement

I have been asked by the Town Supervisor and Town Board to make a statement concerning the legal foundations underlying the annexation process. You may (or may not) find my comments helpful in framing your comments to the Boards, either tonight or in writing submitted after tonight. I apologize, in advance, if I repeat anything that's already been said.

Annexation is a matter controlled by statute and state constitutional provisions. The New York State Constitution states:

“No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by a majority vote on a referendum **and** until the governing board of each government of the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the overall public interest.”

General Municipal Law section 705 also requires that, at the hearing, “the boards shall hear any testimony and receive evidence and information which may be presented concerning the petition and the question of whether the annexation is in the overall public interest, including but not limited to testimony, evidence and information including the following:”

(e) “That the proposed annexation is or is not in the overall public interest (1) of the territory proposed to be annexed, or (2) of the local government or governments to which the territory is proposed to be annexed, or (3) of the remaining area of the local government or governments in which such territory is situated, or (4) of any school district, fire district or other district Corporation, public benefit corporation, fire protection District, fire along district or town or county improvement district, situated wholly or partly in the territory proposed to be annexed.”

Both the New York State Constitution and State Law make it clear that determinations by both Boards that annexation would be in the best interest of the entire overall community is required, and in fact, mandated prior to a referendum. The state law also establishes a process, through the courts, in the event the Boards disagree on whether annexation would be the best interest of the communities, by which the court would make that determination. In any event, prior to any vote by the people, it must be established that annexation would be in the best interest of all parties. The referendum is the last step in the process. There is no presumption in favor of a voter determination of annexation.

It is clear that the state understood that establishing and changing municipal boundaries causes significant impacts to multiple segments of the overall community. In the case of annexation, those impacts will be felt not just by the individuals living in the area being annexed, but in areas of the overall community that would never get a chance to vote if the matter goes to a referendum. The duly elected Boards are therefore charged with performing a high degree of due diligence in determining the effects on all impacted parties.

I have been asked to review the available authorities on the annexation process. This is a limited review of those authorities and the interpretations stated are my own. Although annexation appears to be somewhat rare, guidance does exist, through court decisions, as to the criteria for determining whether annexation is in the best interest of the overall community. Benefit and detriment to a community in annexation cases is customarily defined in terms of municipal services such as police and fire protection, health regulations, sewer and water services, public utilities and public education. Another consideration is whether the annexing local government and the territory to be annexed have the requisite unity of purpose and facilities to constitute a community.

I have found no authority that an individual property owner's rate of taxation in an annexed area or perceived increases in real estate values are major factors in determining whether annexation would be in the overall public interest. The authorities instead point to a fairly uniform array of criteria. In order to justify annexation, it must be shown that the residents in the area to be annexed will

benefit from improved services or receive services that otherwise aren't being provided, as a result of annexation. Status quo is not sufficient, improvements, without detriments to other parties is what is required. In conducting this review it is acknowledged that the special districts that exist will not be impacted by annexation. Therefore, water, sewer, fire, ambulance, solid waste and lighting will not be changed and the same services that are provided now will continue to be provided even if annexation does occur, even if that would result in double payment for those services in addition to for the libraries. Services that can be reviewed will include Highway, police and recreation. Again the question will not be whether the services can be provided by Briarcliff Manor more affordably, but whether the services can be or are being provided by the Town and whether annexation will improve them. The Town, in its analysis, will therefore mainly consider the quality of the services provided to the unincorporated area of the town. As examples, regarding police services, the Town will consider the service provided by the Westchester County Police Department including response times and other service issues in determining whether there is a deficiency in police service provided to the town. Similar consideration will be given to the Highway Department. In that instance, the Town may consider the recent referendum seeking to switch from an elected to appointed highway superintendent and the resounding vote in favor of retaining an elected highway superintendent which may be viewed as indicative of community support for the town method of providing highway services. Regarding recreation services the Town will consider the level of and broad array of recreation services available the town residents, including access to the indoor pool facility. Consideration will be given to the recreational opportunities and whether there is a deficiency in available recreation services in the Town.

The Town must also consider possible detriments to areas of the town not included in the annexation effort. The Town will consider verifiable estimates regarding the tax implications to the areas not being annexed, and, if possible, to the balance of Briarcliff Manor. There must be clear, verifiable, not just perceived benefits to all affected parties to provide a basis to approve annexation. As an example, there is case law indicating that an increase in overall tax revenue could

be a factor justifying annexation. However, simply shifting tax revenue from one municipality to another is not considered an increase in overall tax revenue. If annexation facilitates the provision of services to an area which would allow greater development thereby increasing overall tax revenues that factor might favor annexation. That is not the situation existing herein. Annexation has also found to not be in the overall public interest where one municipality loses tax revenue without any corresponding benefit. The fact that districts 17 and 20 have only 25% of the total unincorporated population but a higher % of the unincorporated assessed value may be a factor considered in determining whether the remaining area of the unincorporated town will not be harmed, let alone benefited, by annexation.

It may also be significant that districts 17 and 20 are already fully developed, nearly to capacity. Many of the annexation cases involve undeveloped areas that can be integrated into neighboring municipalities to facilitate planned developments within those municipalities. Other cases involve areas necessary to the annexing municipality for purposes such as water treatment plants, sewer facilities and, in at least one case, the ability to develop affordable housing. None of the circumstances exist here. Proposed use of the annexed land has been identified as an important factor in many annexation cases. In this case there are no proposed new uses for districts 17 and 20 which would either benefit those districts or the balance of Briarcliff Manor.

The impact to the village of Ossining will also be considered by the Town as a factor in determining whether annexation is in the overall public interest since the remaining governmental unit could also be said to include the village, as part of the town. This analysis will focus on the cooperative existing relationship between the town and Village of Ossining through a myriad of intermunicipal agreements. Those agreements, such as finance, clerk, rent facilities, amongst many others may indicate that carefully calibrated budgets of both municipal entities and staffing levels in various departments might be impacted.

The other factor to be considered is whether the annexing local government and the territory to be annexed have the requisite unity of purpose and facilities to

constitute a community. One of the questions is whether the residents feel more a part of the Ossining or Briarcliff communities. There is some indication, from case law, that the level of community support, in the form of signatures on the petition could be considered a factor. If well over half of a community signs a petition that could certainly be indicative of where the community leans. Here, where after two years of extensive lobbying by the pro-annexation group, the number of signatures is still well below half the eligible voters in the districts, may be of relevance. On this issue it also needs to be reemphasized that the school district boundaries won't change as the areas will remain in the Ossining school district. They also will continue to get their water and sewer services as well as solid waste and street lighting through the existing special districts. Parts will also continue to be served by the Ossining ambulance district and Ossining fire district. These are just a few of the circumstances that need to be considered in determining whether a unity of purpose and facilities exist in such a way that districts 17 and 20 are more part of the Briarcliff than Ossining communities.