



TOWN OF EAST HAMPTON

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March 5, 2021

Supervisor's Determination on Petition to Incorporate Wainscott as a Village

On December 30, 2020 a petition to incorporate a proposed territory within the Town of East Hampton as the village of Wainscott was delivered to the town office located at 159 Pantigo Road, East Hampton, NY 11937. A required deposit was also delivered to the town office. The petition was submitted on behalf of and signed by Gouri Orekondy Edlich, Jonathan Stern and Pamela Mahoney.

This petition was circulated pursuant to the New York State Village Law §§2-200 *et seq.*, which specifies a procedure by which regular inhabitants of a identified territory can petition a town to hold a referendum for the establishment of a village. The Town Supervisor, after a public hearing, has the authority and obligation to determine whether the petition is legally sufficient. Village Law § 2-208.

Pursuant to § 2-204, notices were published and posted as to a public hearing to be held "to consider the legal sufficiency of the petition." The first hearing was held on February 5th, and after approximately one hour and forty minutes, adjourned to February 25, 2021. The second hearing was held and concluded on said date. Village Law § 2-206(4).

Various objections were submitted in writing and presented orally during the hearings. There was one written submission by attorneys representing one of the petitioners, Gouri Edlich, addressing various objections to the legal sufficiency of the petition; Ms. Edlich also signed this submission. Neither one of the other designated petitioners, Jonathan Stern and Pamela Mahoney, submitted any written comment or offered any oral presentation relating to the legal sufficiency of the petition. On the two hearing dates, approximately four dozen persons presented their views.

All written submissions are being filed, along with the original of the within decision, pursuant to Village Law § 2-208, as are minutes of the oral presentations.

Said objections are required to be made available to the public within fifteen days of the close of the hearing. Village Law § 2-208(2). However, in order for the hearing and objection

process to be as transparent and fair as possible, said objections were published on the Town of East Hampton's website on an ongoing basis, allowing those who wished to respond to or address the objections to have the opportunity to do so. As already stated, petitioner Edlich's attorney had the opportunity to and did address the written objections that had been received.

Pursuant to the law, and in accordance with my obligation to render a decision based upon the law and the facts, I have reviewed the objections to the legal sufficiency of the petition as well as the written and verbal comments in response to the objections, and various registration and voting records pertaining thereto. Additionally, I reviewed the petition itself, and consulted with counsel as to the relevant law pertaining to such petitions.

The only issue before me is whether the petition is legally sufficient. Village Law § 2-208. If it is determined that the petition is legally sufficient, a referendum shall be held by qualified voters in the territory of the proposed village of Wainscott to determine whether a village shall be created. Village Law § 2-208 *et seq.* If it is determined that the petition is not legally sufficient under the law, then no such referendum shall be held. *Id.*

Several persons at the hearing stated the view that "democracy requires" and the "constitution requires" that a referendum be held irrespective of whether the petition is legally sufficient so that regular inhabitants of the territory in the proposed village of Wainscott may decide whether to establish a village. This is not the law. The Village Law requires that a petition to conduct a referendum whether to establish a village must be legally sufficient. This legal predicate cannot be ignored or obviated.

In fact, the law provides that petitioners must "strict[ly] compl[y]" with the procedures articulated by the Village Law for the petition to be legally sufficient. *See, e.g., Berkowitz v. St. Lawrence*, 21 A.D.3d 413 (2d Dep't. 2005) ("strict compliance with the statutory provisions is required [citations omitted]"). Moreover, in addition to the specifics of Village Law §§ 2-206 (1)(a-f) enumerating various procedures that must be followed, Village Law § 2-206 (1)(g) further requires that a petition be deemed legally insufficient if "the petition in any other specified respect does not conform to the requirements of this article." Consistent with this provision, the law requires that "the Supervisor must consider [any deficiency] by virtue of his obligation to 'determine whether the proposition, consent and papers filed therewith comply with [the Village Law],....'" *Plummer v. Dominy*, 18 A.D.2d 190 (2d Dep't. 1963).

Thus, in short, a petition must be rigorously evaluated according to the requirements of the law.

After a thorough consideration of the petition itself, the objections and comments addressing the objections, oral presentations, public records, and the relevant law, I am constrained to find that the petition is legally insufficient. I do so for the following reasons.

Finding 1. Village Law § 2-202(1)(f)(1) provides that the "original petition shall be filed with a Supervisor of the town in which all or the greatest part of such territory is located." I am said Supervisor. However, the petition was not filed with me. Instead, it was filed with the Town Clerk of the Town of East Hampton, a separately and independently elected public official.

Prior to the submission of the petition, neither the petitioners, their attorneys nor anyone acting on their behalf contacted me or my office to alert me that a petition would be filed or to inquire as to any of the procedures that must be followed. Instead, according to an Affidavit by Alexander Edlich, sworn to February 25, 2021, annexed to Ms. Edlich's attorney's submission as Exhibit B, both Mr. Edlich and, his wife, petitioner Gouri Edlich, submitted the petition to the Town Clerk. Mr. Edlich indicates in his Affidavit that he was fully aware that the petition was to be filed with the Town Supervisor, not the Town Clerk, and read the pertinent provision of the Village Law, § 2-202(1)(f), to the Town Clerk. He further states that he then indicated to the Town Clerk that they wanted to file the petition with the Supervisor as required by the law. Mr. Edlich states that the Town Clerk told him that she would take the petition.

Thus, despite Mr. Edlich and petitioner Ms. Edlich's full knowledge that the law required the petition to be filed with the Supervisor, they nevertheless failed to do so. Their apparent reliance upon the Town Clerk's misunderstanding that she could accept this petition does not obviate the legal requirement that it must be filed with the Supervisor. In doing so, the Edlichs knew at the time that they were not following the required procedure as explicitly provided by the law.

Indeed, in that the petition was not due on the date they arrived at Town Hall, December 30, 2020, they could have easily followed the law as specified by filing it with me, either on that day, or at another time.

Ms. Edlich and her attorneys' attempt to justify their violation of the Village Law by stating in their written comments that the Town Clerk is "custodian" of all of the town's "records, books and papers." A custodian of papers is not the same as a recipient of a filing, and their view in this regard improperly conflates the two. The Town Clerk may be the custodian of records, but the New York State legislature clearly required the petition to be filed with the Supervisor.

The law in this respect is akin to circumstances in which an otherwise proper lawsuit is dismissed because it was not served upon the parties in the manner required by the court. *See, e.g., Fonvil v. Audain*, 131 A.D.3d 630 (2d Dep't. 2015)(service must be effected pursuant to the requirements of the Order to Show Cause); *Haggerty v. Queens County Republican Committee*, 92 A.D.3d 681 (2d Dep't. 2012)(failure to adhere to service provisions in the Order to Show Cause requires dismissal of petition); *Del Villar v. Vekiarelis* 59 A.D.3d 642 (2d Dep't. 2009)("method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complies with [citations omitted]").

As such, in violation of Village Law § 2-202(1)(f)(1), petitioners failed to comply with the statutory filing requirement, rendering the petition legally insufficient.

Finding 2. Village Law § 2-202(1)(f)(2) provides that the sum of six thousand dollars be "deposited with [the] supervisor." As with the petition, such sum was not deposited with me.

Instead, it was deposited with the Town Clerk of the Town of East Hampton, a separately and independently elected public official.

For the same reasons as indicated in Finding 1, the deposit was not properly filed as required by Village Law § 2-202(1)(f)(2), rendering the petition legally insufficient.

Finding 3. Village Law § 2-202 specifies the content and format of the petition to be submitted in support of a proposed incorporation of a village. Petitioners here submitted two pages at the beginning of the petition which alleges the ways in which the petition supposedly complies with the law. In the stated allegations, signed by the three designated petitioners, there is a material false statement. Specifically, they represent, purportedly in compliance with Village Law § 2-202(1)(a)(1), that

“1. This petition *is signed* by at least twenty percent (20%) of the residents in the territory herein proposed...[emphasis supplied].”

This averment is dated November 20, 2020. On November 20, 2020, only fifteen persons had signed the petition – not 20% of the proposed village’s inhabitants as is required. As such, the petition contained a materially false representation.

In response to this objection, Ms. Edlich’s attorneys stated that the objection “mischaracterize[s]” the statement on Page 1 of the petition, and “does not aver that, as of the moment of signing, the petition is signed by twenty percent of the residents in the territory.” However, that is actually what the plain language of the signed statement says. On November 20, 2020, the petitioners stated that the petition “is signed” by at least twenty percent of the residents. On that date, the petitioners obviously could not have known and did not know how many persons would subsequently sign the petition. In short, in that only fifteen persons had signed when they made that representation, it is a false statement that cannot be explained away. In fact, petitioners attorneys did not even attempt to explain it away.

As such, in violation of Village Law § 2-202(1)(a)(1), this false averment renders the petition legally insufficient. *Berkowitz v. St. Lawrence*, 21 A.D.3d 413 (2d Dep’t. 2005)(even the improper placement of the required authentication renders the petition invalid); *Plummer v. Dominy*, 18 A.D.2d 190 (2d Dep’t. 1963)(Supervisor has general authority to render a decision on a petition’s legal insufficiency); Village Law § 2-206(1)(g).

Finding 4. Village Law § 2-202(1)(c) requires that the petition “shall have attached thereto prior to the signature pages... (2) [a] list of the names and address[es] of the regular inhabitants of [the proposed] territory.” Regular inhabitants are those who reside in the proposed territory and are registered to vote therein. *See, e.g. Bernstein v. Feiner*, 58 Misc.3d 1221(A)(Sup. Ct. Westchester Co.), *rev’d on other grounds* 165 A.D.3d 924 (2018)(“insofar as the term regular inhabitants is defined under Village Law § 2–200(1), it shall include all persons residing in the territory of the proposed village who are 18 years-of-age or older, and who maintain a residence therein which is used for voting purposes (*see* Village Law § 2–200[2]).”).

Indeed, the courts have consistently opined that the list of inhabitants be “an accurate list of the regular inhabitants of the proposed village, as is required by Village Law § 2-202(1)(c)(2).” *Bernstein v. Feiner*, 165 A.D.3d 924 (2018).

Objections were presented as to the accuracy and completeness of this list. Specifically, objectors alleged that there were 78 inhabitants who are registered voters in the proposed district who were erroneously omitted from the list; there were 10 persons on the submitted list who were no longer inhabitants in that their homes were sold before the petition process was commenced; and there were 193 persons erroneously included on the list who are not registered voters in the Town of East Hampton, and, therefore, not regular inhabitants as defined by law. (The specific names of such persons were included in the objections collectively submitted by Doreen Niggles, Amy Turner and Jonathan Wainwright, dated February 21, 2021, and part of this record.)

Neither the petitioners here nor their attorneys or the persons named on said lists submitted by the objectors appeared at the within hearing or submitted affidavits to address the objectors’ allegations regarding whether their names were erroneously included in or excluded from petitioners’ list. Although the attorneys correctly note that objectors have the burden to demonstrate the insufficiencies of a petition, the burden shifts once an objection is lodged, especially when the other party is in possession of the evidence or has control of potential witnesses. *See, e.g., Matter of Newcomb v. Middle County Central School District*, 28 N.Y.3d 455 (2016). Moreover, if an allegation is met with silence, an adverse inference may be drawn. *Adams v. Klapper*, 182 Misc.2d 51 (Sup.Ct. Kings Co.), *aff’d*, 264 A.D.2d 696 (2d Dep’t. 1999).

The attorneys did respond with their own chart that specified that many of the 78 persons who the objectors alleged were erroneously omitted had moved (39), were deceased (2), lived in homes not within the proposed village boundaries (26), or whose names were not in the Board of Elections records which petitioners obtained through a FOIL request in December (5). Although this “evidence” was not presented by the persons named in the objectors’ lists, I accept it for the purpose of my determination.

Evidence was submitted for only 3 of the 39 persons who had allegedly moved, and 2 of the deceased. No testimonial or documentary evidence regarding the other 73 names were submitted. As such, I could have simply drawn an adverse inference. Instead, consistent with my authority and obligation to render a fair, objective and fact-based decision, I determined that it was warranted and appropriate to review certain public information relating to voting records. My assessment follows:

Regarding the three persons who had moved, the 4 new owners identified by the attorneys in their own chart were not listed by petitioner in the list of inhabitants.

Regarding the other 36 persons who allegedly moved, they were all still registered to vote at their homes in Wainscott, which ordinarily creates the presumption that they are still residents. However, I took the additional step to review voting records, and ascertained that 23 of these persons had actually voted either in person or absentee in the November 2020 general election. By these acts, these 23 voters have demonstrated their lawful

residence in Wainscott. I should add that public records show that none of their homes were sold. A list of these 23 persons is annexed hereto as Exhibit A.

Regarding the 26 persons who allegedly are not within the proposed village boundaries, 5 are actually within the boundaries. A list of these persons is annexed hereto as Exhibit B.

Regarding the 5 names petitioners could not find in the Board of Elections records, they are in fact registered (one in 1964, one in 1992, one in 2005, one in 2006 and one in August of 2020). A list of these 5 persons is annexed hereto as Exhibit C.

In all, the attorneys' submission addressing the objection that 78 names on the Board of Election voting rolls were erroneously excluded from the list of inhabitants is itself without basis for at least 33 persons. I find that these 33 names were erroneously excluded from the list, and, therefore, the list of inhabitants is incomplete and inaccurate. (I do not reach a decision as to those persons who remain registered voters at homes in Wainscott who did not vote in 2020.)

With respect to the objectors' allegation that 193 persons were erroneously listed on their list of inhabitants because they are not registered to vote, the attorneys simply assert that being qualified to vote is not necessary when calculating the list of inhabitants in the proposed territory. The petitioners attorneys assert that as long as these persons are not registered elsewhere, their names could be included on the list of inhabitants. As stated above, that is not the law. *Bernstein v. Feiner*, 58 Misc.3d 1221(A)(Sup. Ct. Westchester Co.), *rev'd on other grounds* 165 A.D.3d 924 (2018) ("insofar as the term regular inhabitants is defined under Village Law § 2-200(1), it shall include all persons residing in the territory of the proposed village who are 18 years-of-age or older, and who maintain a residence therein which is used for voting purposes (*see* Village Law § 2-200[2]).").

Presumably relying upon their interpretation of the law, petitioners failed to produce any witness or affidavit by any of these 193 persons to state that they are in fact residents and are not registered to vote elsewhere. Indeed, the attorneys do not even themselves state this in their written submission. Here, too, I could simply have drawn an adverse inference from the lack of any documentary or testimonial evidence by any of these 193 persons, and determined that all names should have been excluded from the list of inhabitants. Instead, I again determined that it was warranted and appropriate to review public voting records to ascertain whether any of these persons are in fact registered to vote elsewhere. A review of registration data from counties around the state reveals many of these persons appear to be registered to vote elsewhere – and, therefore, even according to the attorneys' asserted definition of the law, should not have been included in petitioners' list of inhabitants. A list of this sample is annexed hereto as Exhibit D.

Moreover, 7 of these voters, obviously knowing that they were registered outside of Wainscott (having just voted in the November 2020 general election), nevertheless signed the within petition. (These 7 people, all of whom voted from addresses in New York county, are indicated as such on Exhibit D.) If they were asked by the witnesses if they were registered to vote in Wainscott before signing – a requirement under Village Law § 2-202(1)(a)(1) – either the witnesses misrepresented their status or the witnesses did not follow the law when obtaining their signatures; if the witnesses did not ask the signers or otherwise perform the required due

diligence to ascertain the status of the signers, then petitioners did not properly gather signatures. If the witnesses knew that these seven persons were registered to vote outside of Wainscott, their filing of the petition was a knowingly false filing.

In any event, whether petitioners included these signatures knowingly or not, I find that petitioners' inclusion of these 7 persons on the list of inhabitants was erroneous.

Finally, it was further alleged by the objectors that 10 persons were erroneously on the list of inhabitants because they had moved. Neither petitioners nor their attorneys produced any evidence regarding their rejection of this objection. Public records substantiate the objection.

Several years ago in Westchester County, in an effort to excuse inaccuracies of their list of inhabitants in support of a proposed village, petitioners there made fulsome presentations as to the process by which their list was generated. Ultimately, however, an appeals court found that even some modicum of due diligence did not obviate the requirement for a complete and accurate list, and the petition there was found legally insufficient. *Bernstein v. Feiner*, 58 Misc.3d 1221(A)(Sup. Ct. Westchester Co.), *rev'd* 165 A.D.3d 924 (2018). In any event, neither the petitioners here nor their attorneys provided any explanation as to how the instant list was prepared.

All told, then, there were significant discrepancies on the list of inhabitants in this petition, rendering it incomplete and inaccurate.

Accordingly, in violation of Village Law § 2-202(1)(c)(2), I find the petition is legally insufficient. Village Law § 2-200(2); *Bernstein v. Feiner*, 165 A.D.3d 924 (2d Dep't. 2018)(petition legally insufficient because it "did not include an accurate list of the regular inhabitants of the proposed village, as is required by Village Law [§2-202](1)(c)(2)"); *Barnard v. St. Lawrence*, 44 A.D.3d 1037 (2d Dep't. 2007)(petition legally insufficient in absence of "a complete and accurate list of the 'regular inhabitants' of the territory sought to be incorporated [citations omitted]"; *Baker v. Heaney*, 15 A.D.3d 577 (2d Dep't. 2005)("The petition for incorporation was legally insufficient in that it did not include an accurate list of the regular inhabitants of the territory sought to be incorporated (*see* Village Law § 2-202[1][c][2]).").

Finding 5. Village Law § 2-202 provides the specific requirements of a petition for a proposed incorporation of a village. This is similar to the New York State Election Law which provides specific requirements of designating and nominating petitions as well as various other filings relating to candidacies. *See, e.g.*, N.Y. Elec. Law §§ 6-132, 6-134, 6-138, 6-140. (Petitioners attorneys' written submission concedes that I may "use the Election Law as guidance," p. 7, fn. 1). In all such instances, including the procedures relating to a petition for a proposed incorporation of a village, there is an implicit requirement that petitioners, subscribing witnesses, authenticators and notaries are bound by ethical and legal conduct. Recently, the New York Court of Appeals invalidated a designating petition upon which certain dates were entered fraudulently despite the validity of the signatures themselves. *Ferreira v. Arroyo*, 35 N.Y.3d 127 (2020)("the designating petition is so "permeated" by fraud "as a whole as to call for its invalidation" [citations omitted]"). And there is a legion of cases where petitions were

invalidated based upon irregularities or fraud even when there were otherwise a sufficient number of valid signatures. *See, e.g., Lerner v. Power*, 22 N.Y.2d 767 (1968)(petition invalidated even though only 146 out of 1047 signatures [13.9%] were fraudulent); *Leonard v. Pradhan*, 286 A.D.2d 459 (2d Dep't. 2001)(petition invalidated when there is fraud even when there remain sufficient number of signatures that were obtained properly); *In re Denenberg*, 33 A.D.3d 198 (1st Dep't. 2006)(suspension from practice of law appropriate even when false authentication of signatures was inadvertent or careless). *See also Drace v. Sayegh*, 43 A.D.3d 481 (2d Dep't. 2007)(candidate's involvement with respect to only two improper signatures was sufficient to invalidate the entire petition).

In the instant petition, 14.2% of the 217 submitted signatures on 141 pages in the petition are not valid either because signers were not *bona fide* inhabitants of the territory of the proposed village, their signatures were duplicated by the same witness on or about the same dates, the dates on a sheet were out of order, or the signatures were authenticated improperly. Six persons acted as witnesses in the petition. One, Alexander Edlich, witnessed 77 of 141 pages consisting of 63.5% of all the signatures submitted. Of the 138 of the 217 signatures submitted by Mr. Edlich, 16, or 11.5%, were invalid.

Mr. Edlich's defective signatures were either by (1) ineligible signers or (2) duplicate signatures.

The first defect, relating to the ineligible signers, evidences that Mr. Edlich (as well as five other petition witnesses) either failed to use due diligence by not consulting the voting records of Suffolk County when obtaining signatures, or, after having reviewed the voting records, intentionally obtained invalid signatures or intentionally filed invalid signatures.

Mr. Edlich's ineligible signatures included 4 of the 7 signatures referenced in Finding 4 that were from persons who had voted in the November 2020 general election outside of Wainscott. Indeed, as indicated above, all seven had voted from their registered address in New York County. Mr. Edlich apparently failed to use any diligence in ascertaining the *bona fides* of these signers, or, perhaps, he knew they were registered elsewhere and obtained their signatures anyway.

The second defect, duplicate signatures, were all promulgated by Mr. Edlich. Specifically, he obtained the signature of Brooke Neidich on Nov. 22 (p. 100) and then again on Nov. 26 (p. 101); Peter Schwartz twice on Dec. 5 (pp. 59 and 60); and Lori Anne Czepiel, also twice on one day, Nov 22 (pp. 91 and 95). These duplications either on the same day or a few days later are facially improper, and also raise the concern as to whether Mr. Edlich was intentionally "padding" the petition, or whether he was actually the witness of these signatures.

Another witness, Michael P. Mahoney witnessed 44 pages containing 54 signatures, 9 of which were invalid. Three of these signatures were from persons who were registered to vote in New York county, and had voted in the 2020 general election. Additionally, on two of his sheets the signatures were not in chronological order. Specifically, on p. 6, there were two signatures, the first dated November 25, 2020, and the second one dated November 24, 2020; on p. 131, there were also two signatures, the first dated December 13, 2020, the second dated December

12, 2020. This calls into question whether these signatures were actually taken on the dates indicated and who inserted the dates.

A third witness, Rosemarie Arnold, witnessed four signatures on 4 pages, and had her authentication notarized by a New Jersey notary. The authentication states Mr. Arnold's signature was taken in Suffolk County. The notarization was improper. *See* N.Y. General Construction Law § 12; *Application of Sakaris*, 160 Misc.2d 657 (Civ. Ct. NYC Richmond Co. 1993).

Mr. Edlich submitted an Affidavit, sworn to February 25, 2021. He did not address the improper duplicate signatures or any of his petitioning practices that resulted in erroneously included signatures on his sheets as alleged by the objectors. Mr. Edlich also did not appear at the February 25th hearing.

Michael P. Mahoney did appear at the February 25th hearing, but also failed to address the objections relating to the signatures he obtained.

Although Mr. Mahoney himself failed to address his allegedly irregular signatures, petitioners attorneys' written submission did. They offer a different reading of the signatures than the objector did. It would have been preferable to hear from Mr. Mahoney on this point.

Petitioners attorneys did not address Mr. Edlich's duplicate or other erroneous signatures.

I make no finding regarding the signatures obtained by witness Rosemarie Arnold other than to deem all of her signatures invalid.

As a result of these facts, I am constrained to find that the Edlich duplicate and ineligible signatures were sufficiently irregular to warrant the invalidation of all of his otherwise valid 122 signatures, and the Mahoney signatures from New York county were also sufficiently irregular to warrant the invalidation of all of his otherwise 45 signatures. *Drace v. Sayegh*, 43 A.D.3d 481 (2d Dep't. 2007)(even two irregular or fraudulent signatures are sufficient to invalidate a petition). *See also Sgammato v. Perillo*, 131 A.D.3d 648 (2d Dep't. 2015) ("A candidate's designating petition will be invalidated...where the candidate has participated in, or is chargeable with, knowledge of the fraud [citations omitted]"); *Tapper v. Sampel*, 54 A.D.3d 435 (2d Dep't. 2008)(candidate knowingly submitted petition sheets that failed to comply with requirements is sufficient ground to invalidate a petition). *See also Toles v. Quintana*, 183 A.D.3d 1290 (4th Dep't. 2020)("Where a subscribing witness falsely swears to a designating petition sheet and does not testify at the hearing, the court may declare that all of the designating petition sheets subscribed by that witness are invalid [citations omitted]."); *Kogan v. D'Angelo*, 83 A.D.2d 892 (2d Dep't. 1981)(failure of witness to explain petitioning irregularities requires invalidation of all his signatures); *Sasson v. Board of Elections*, 24 Misc.3d 1245(A)(Sup. Ct. Queens Co. 2009)(signing of name twice constituting a fraud by the subscribing witness); *Haas v. Costigan*, 14 A.D.2d 809 (2d Dep't. 1961).

As such, the petition "does not conform to the requirements" of the law. Village Law § 2-206(1)(g). Accordingly, in violation of Village Law § 2-206(1)(g) and the common law that

requires petitions to be filed with a government agency in conformity with the ethics and laws relating to such procedures, I find the petition legally insufficient.

Finding 6. Village Law § 2-202(1)(a) requires that petitioners submit signatures of at least twenty percent of the regular inhabitants of the territory of the proposed village, or the names of more than fifty percent in assessed valuation of real property. Petitioners chose the first option. Village Law § 2-202(1)(a)(1). In that the list of inhabitants submitted is legally defective for multiple reasons as stated in Finding 4 herein, it is difficult to assess the actual number of regular inhabitants, and, therefore, the number of signers that constitutes twenty percent of such inhabitants is also impossible to ascertain. Furthermore, in that I find the Edlich and Mahoney signatures to be deemed stricken for the reasons stated in Finding 5, the number of valid signatures submitted by petitioners is only 19.

Nineteen does not constitute 20% of the residents of the territory of the proposed village. Indeed, in that the number of residents in a proposed village must be at least 500, any calculation based upon the factual findings I have made would render the petition legally insufficient. Village Law § 2-202(1)(b)(3).

Accordingly, in violation of Village Law § 2-202(1)(a)(1), I find that the petition is legally insufficient.

Finding 7. Village Law § 2-202(1)(c)(1) requires the petition to include

“a description of [the proposed village’s] territory sufficient to identify the location and extent of such territory with common certainty and which shall be in one of the following forms or a combination thereof: (a) a metes and bounds description; (b) a description made with reference to existing streets and navigable waters or a combination of same; or (c) a map showing existing streets and navigable waters or a combination of same forming boundaries or metes and bounds or the entire boundaries of one or more districts of an entire town.”

Petitioners included in their petition a “Legal Description” and an aerial view of said territory, presumably to satisfy Village Law § 2-202(1)(c)(1)(b) or (c).

The aerial view submitted, annexed to the petition as Exhibit A-1, does not satisfy Village Law § 2-202(1)(c)(1)(c) in that it is not a map that shows “existing streets and navigable waters or a combination of same forming boundaries or metes and bounds or the entire boundaries of one or more districts of an entire town.” Rather, it is a “Google Earth” photo with only some of the existing streets identified; and it fails to show the “entire boundaries.” As such, insofar as petitioners were attempting to comply with Village Law § 2-202(1)(c)(1)(c), this Google depiction does not show the entire territory sought to be incorporated.

Accordingly, in violation of Village Law § 2-202(1)(c)(1)(c), I find the petition is legally insufficient.

Petitioners, alternatively, also appear to have attempted to comply with Village Law § 2-202(1)(c)(1)(b) in submitting their “Legal Description,” annexed as Exhibit A of the petition. This so-called “Legal Description” does not comply with Village Law § 2-202(1)(c)(1)’s prescription that it is “a description of [the proposed village’s] territory sufficient to identify the location and extent of such territory with common certainty...” in the following respects.

The southern border of the proposed territory failed to correctly identify navigable waters in its description of the boundaries. Although the Village Law itself does not define “navigable waters,” I am authorized and obligated to render a judgment as to its meaning within the context of this requirement. Accordingly, I have reviewed various relevant statutes and publications, and have studied the submissions of the objectors’ and petitioners attorneys’ respective presentations of the issue.

In their description of the proposed boundaries, petitioners refer to navigable waters as “mean high water of the Atlantic Ocean.” In fact, the “mean high water” mark referenced by petitioners does not constitute “navigable waters.” The New York Court of Appeals held that a waterway is navigable if, at the least, “single logs or sticks of timber” could float on the area. *Morgan v. King*, 35 N.Y 454 (1866). No sticks or logs can float on the beach between mean high water and low water when the tide is out. See “Office of Coast Survey,” *National Oceanic and Atmospheric Administration, United States Department of Commerce*, <https://nauticalcharts.noaa.gov/data/us-maritime-limits-and-boundaries.html> (“Maritime limits and boundaries for the United States are measured from the official U.S. baseline, recognized as the *low-water line* along the coast as marked on the NOAA nautical charts in accordance with the articles of the Law of the Sea [emphasis supplied].”

Moreover, petitioners also refer to a proposed boundary as “running thence east along the southerly side of Montauk Highway until it intersects the westerly shore of the westerly fork of Talmadge Creek an arm of Georgica Pond.” New York Navigation Law § 2.4, which is relevant by reference, defines navigable waters as excluding “all tidewaters bordering on and lying *within the boundaries of Nassau and Suffolk counties*” and “all lakes, rivers, streams and waters within the boundaries of the state and not *privately owned* [emphasis supplied].” In that the description of the proposed boundaries refers to certain tidal wetlands (Georgica Pond, Talmadge Creek and Georgica Creek), such boundaries are not navigable waters and thus are not permissible boundaries under Village Law § 2-202(1)(c)(1).

Further, in that the Georgica Cut does not exist for six or so months of the year, it is not a lawful boundary. Once or twice a year an opening is cut in the berm between Georgica Pond and the Atlantic Ocean, and the waters meet; but after several weeks the separation between the two bodies of water is restored, eliminating the Gut. And when the Gut does exist, its location varies, thus rendering questionable any “common certainty” of the boundary.

Additionally, petitioners refer to Town Line Road as a street boundary. However, the law’s reference to “existing streets” does not include shifting, transitory or “projected” streets. Town Line Road ends at the commencement of the beach, and the centerline ends approximately twenty yards before the end of the asphalt. A “projected” centerline does not actually permanently exist, and is, therefore, not an “existing street.”

Moreover, the petitioners cannot use private property as a boundary line without taking into “account for or otherwise recogniz[ing] [the owner’s] exclusive rights to the [Georgica Association’s] exclusive rights to the Association Beach,” defined by the Association in its February 25, 2021 written submission at the hearing as “roughly 2.9 acres of oceanfront land to the west of Georgica Pond, including a section of the beach extending to the mean high water mark of the Atlantic Ocean.” Insofar as said lands constitute any part of the boundary of the proposed village, such boundary lines may be construed as an impermissible taking or may be subject to unilateral withdrawal from the village.

The Association claims that it

“holds a unique position in the Town with respect to its beach ownership...aris[ing] from a grant from the Freeholders of the Town of East Hampton to one Steven Hand in 1669. Its title was recognized as valid and absolute in a June 17, 1963 decision by New York State Supreme Court Justice F.J. Munder in the case of Georgica Association v. Trustees of the Freeholders and Commonality of the Town of East Hampton.”

Petitioners attorneys address this issue by referencing Village Law § 2-200, which provides that the territory of a proposed village may not “include a part of a city or village.” They further state that incorporation “has no impact on the Association’s property rights over Association Beach.”

The law may not explicitly address private land as it relates to a proposed boundary line, but it cannot be denied that this issue raises thorny questions as to whether the boundary can be disturbed by private interests. The law does say the boundaries must be “existing streets and navigable waters,” implying that such land or water must be publicly held. This, I find, is the proper interpretation of what is required under the law.

Accordingly, for each and all of these reasons, I find the description of the proposed territory is defective, in violation of Village Law § 2-202(1)(c)(1), rendering the petition legally insufficient.

Finding 8. Certain residents of the territory of the proposed village as well as others who live in areas not within the proposed territory submitted objections and made oral presentations to the effect that the incorporation of Wainscott would devalue their property, increase their taxes, deprive them of a vote on the incorporation if they lived outside the proposed boundaries, restrict access to beaches, or exacerbate social and economic inequalities. Although these objections were well-stated and reflect a sincere response to the proposed incorporation, I am constrained to find that these reasons do not impact the legal sufficiency of the petition itself. Therefore, I find that these comments are not part of my consideration as to whether the petition is legally sufficient.

THEREFORE, after due consideration of all the written and oral submissions, the law and the weight of all of the evidence, I find that the petition submitted on December 30, 2020 proposing the incorporation of the village of Wainscott is legally insufficient.

In light of my Findings, I know the petitioners will be disappointed. I know they worked hard on the petition. If they are inclined to pursue this further, perhaps this Decision will offer a roadmap as to how to proceed in the future so that any subsequent petition will be deemed legally sufficient.

I thank all the residents of the Town of Easthampton who have expressed their views, and trust that everyone will stay healthy.


PETER VAN SCOYOC 3/5/2021
Date

EXHIBIT A

Carol Abady
Henry Alegria
Ana Arietta
Angie Bollman
Elizabeth Cullum
Joseph Crosson
Valerie Crosson
Karol DeLaaisne
Harry Kamen
Steven Lapidus
Chimene MacNaughton
Craig MacNaughton
Judith McDowell
Michael McDowell
Carlos Mendoza
Michael Norbeck
Charles Persico
Jay Plumeri
Michael Silvestri
Priscilla Star
John Vetrano, Jr.
Barbara Wirth
Francis Wirth

EXHIBIT B

Debra Allen
Alex Braile
Elizabeth Cullum
Sonia Folkes
Jay Plumeri

EXHIBIT C

Phoebe Shellman
Brian Sugman
John Vetrano, Jr.
Nicole Wilson
William Wilson

EXHIBIT D

Sophia Barone	Monroe
Julia Bodner	New York*
Aleksei Brown	Kings
Luz Calle	Queens
Tania Calle	Queens
Matthew Casetellon	Queens
Trace Cohen	Nassau
Brannon Cook	New York
Elise Cook	Broome
Dylan Cornell	Allegany
Sasha Cutter-Nye	New York*
Franklin Davidson	Dutchess
Alex Gunmar-Rubin	Westchester
Emma Hand	Queens
Thomas Hexner	New York
Aaron Hsu	New York*
Zachary Kavovit	New York*
Daniel Lupercio	Queens
Jeffrey Mazur	New York*
Claire McGovern	Nassau
Matthew McGovern	Nassau
Luz Moroche	New York
Alex Moroche	Nassau
Charlotte Osborn	Nassau
Beatrice Perkins	Kings
Brenda Powers	New York*
David Rivlin	Kings
Elizabeth Sample	New York*
Tazia Smith	New York
Paul Sobel	New York
Dayana Tejedo	New York
Kathleen Valladares	Nassau
Samantha Valladares	Westchester
Ethan Wolin	New York

*Registered in New York but signed petition.