



2600 Innovation Square
100 South Clinton Avenue
Rochester, New York 14604
nyenvlaw.com

DWIGHT E. KANYUCK
ATTORNEY AT LAW

585.546.8430
dkanyuck@nyenvlaw.com

VIA ELECTRONIC MAIL

April 5, 2024

Dan Pangrazio
Town Supervisor
Town of Caledonia
3109 Main Street
Caledonia, New York 14423
supervisor@townofcaledonianyny.org

**RE: Proposed Water District No. 4
Assessment of Petition Responses**

Dear Supervisor Pangrazio:

You have requested my review and opinion of the sufficiency of the Petition (“Petition”) for the creation of Water District No. 4 (“Water District”) to move forward with the creation of the proposed Water District. As discussed below, in my opinion, the Petition lacks the support of a sufficient number of resident owners to establish the Water District.

Background

The Town Board directed the preparation of a Preliminary Engineering Report for the Water District and the Report, dated June 2023 (“Report”), was prepared by the Town’s Engineer, MRB Group and presented to the Board. Ministerial amendments to the Report were made in November 2023. The Report included, among other things, the parcel list for the proposed Water District (“Parcel List” attached as Exhibit A).¹

In October 2023, the Town Board arranged for the preparation of the Petition and for a facilitator to canvas the owners of the properties in the Parcel List to obtain signatures either for or against the Petition. Of note, there is no legal requirement for the Town to facilitate the circulation of the Petition for signature or to obtain the signatures of land owners affirmatively voting “against” the Petition.

¹ The “owner name” on the Parcel List is as reflected in the 2023 Final Assessment Roll. Two properties had new owners subsequent to the 2023 Final Assessment Roll: Parcels 7.1-1-2 and 7.-1-3.11 are now owned by Hillary McShea and Parcel 7.-1-3.12 is now owned by Samuel Sherwin.



The Petition was filed with the Town Clerk on or about January 29, 2024 as were the signature pages of those voting “against” the Petition.

Legal Requirements for a Petition to Form a Water District

The formation of a water district is governed by the requirements of Article 12 of the Town Law. The threshold requirement for the formation of a water district is a petition meeting the requirements of Town Law § 191, which requires, among other things, that the petition be signed by the following property owners:

1. the owners of taxable real property situate in the proposed district... owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of the proposed district ..., as shown upon the latest completed assessment-roll of said town; and
2. the resident owners owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the proposed district ... owned by resident owners, according to the latest completed assessment-roll.

For the purposes of the 2nd criteria, the State Comptroller interprets a “resident owner” as:

One who has established a residence within the district and who owns taxable real property therein....In addition, we have concluded that the term “resident owner” does not include corporations (see, e.g., ...*Wachtel v Diamond State Eng'g Corp.*; 215 AD 15, 213 NYS 77, supporting the premise that ordinarily, absent a statutory definition, the word "resident" means individual or citizen...).

See Office of the New York State Comptroller, Opinion 2001-15, attached as Exhibit B. The applicable assessment roll is the 2023 Final Assessment Roll for the Town of Caledonia.

Does the Petition have Sufficient Signatures to Form the Water District?

Eligible responses were received from the owners of 85 of the 94 parcels on the Parcel List. Of the eligible responses, owners of 40 of the parcels affirmatively voted “no” and owners of 45 of the parcels affirmatively voted “yes.” Of the non-responsive parcels, six had no response (including four resident owners) and three (including two resident owners) were not eligible signatories (i.e. they were not the listed owners of the parcels).



A. Criteria 1-All Owners in Proposed Water District

The assessed value of all of the properties on the Parcel List, based on the 2023 Final Assessment Roll, is \$22,437,000. The total assessed value of the properties on the Parcel List signed by an eligible property owner is \$11,370,500. This represents 50.6% of the assessed valuation of all the taxable real property of the proposed Water District, so the Petition meets the requirements of Criteria 1 above. *See Exhibit C* for a list of all of the Parcel List properties signed by an eligible property owner. *See Exhibit D* for a summary of the responses for Criteria 1-All Owners in the Proposed Water District.

B. Criteria 2-Resident Owners of Proposed Water District

The assessed value of all of the properties on the Parcel List owned by resident owners is \$18,870,000. The total assessed value of the properties on the Parcel List signed by an eligible property owner is \$8,478,900. This represents 44.9% of the assessed valuation of all the taxable real property of the proposed Water District. The Petition does not meet the requirements of Criteria 2 above, therefore, the Petition does not have sufficient support to form the proposed Water District. *See Exhibit E* for a list of all of the Parcel List properties signed by an eligible resident owner. *See Exhibit D* for a summary of the responses for Criteria 2-Resident Owners in the Proposed Water District. Of note, even if the Petition were signed by owners all of the parcels with “no response” and all of the parcels with an ineligible signer, the Petition would not be supported by a sufficient number of resident owners because 51.1% of the resident owners affirmatively indicated they were opposed to the Petition.

Conclusion

In my opinion, the Petition is not supported by more than 50% of the resident owners, therefore, the Petition is not sufficient to form the proposed Water District.

Sincerely,

KNAUF SHAW LLP

A handwritten signature in black ink, appearing to read 'Dwight E. Kanyuck', written in a cursive style.

DWIGHT E. KANYUCK

EXHIBIT A

EXHIBIT B



Office of the NEW YORK
STATE COMPTROLLER
NYS Comptroller Thomas P. DiNapoli



Opinion 2001-15

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

IMPROVEMENT DISTRICTS -- Dissolution (authority to dissolve a lighting district); (authority of corporation to sign petition to dissolve district); (authority to dissolve district when there are no "resident owners" within the district); (authority to dissolve district when assets are sold to town) -- Property (meaning of for purpose of Town Law §198[12])

PERSONAL PROPERTY -- Disposition of (a service contract of a lighting district)

WORDS AND PHRASES -- "Corporation" (meaning of for purpose of Town Law §198[12]) -- "Property" (meaning of for purpose of Town Law §§191, 202-c) -- "Resident Owner" (meaning of for purpose of Town Law §198[12])

TOWN LAW §191; TOWN LAW §202-c(1): A petition to dissolve a lighting district pursuant to Town Law §202-c(1) is proper only if signed by the appropriate number of "resident owners"; that is, individual owners of real property who have established a domicile within the district. Corporations are not considered to be "resident owners" for this purpose. Consequently, if there are no resident owners within a lighting district for which services

have been provided, the district may not be dissolved pursuant to section 202-c of the Town Law.

TOWN LAW §198(12): A town board on behalf of a lighting district whose sole asset is a service contract may, subject to mandatory referendum, sell the service contract to the town in which the district is located, and thereafter dissolve the lighting district, in order for the town to include the area encompassing the district as part of its general town lighting function,

You ask whether a lighting district, comprised wholly of corporate and nonresident-owned property, and for which services have been provided, may be dissolved. You indicate that the district does not own any tangible property or facilities, and that the sole asset of the district is a service contract with the provider of lighting to the district. In addition, you state that the town board believes that it would be in the public interest to spread the expense of lighting the area covered by this district as a general town charge, in order to treat this area in the same fashion as other main thoroughfares in the town currently are treated.

Section 202-c of the Town Law relates to the dissolution and diminution of certain districts, including lighting districts. Section 202-c(2) states that a town board may dissolve a lighting district on its own motion and in accordance with the requirements set forth therein, "provided that the period of three years shall have elapsed since the date of establishment of such district and that no improvement has been constructed or service provided for such district at any time since the establishment thereof and further provided that there be no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such district." When, as in the instant case, services have been provided or improvements have been constructed for a lighting district, subdivision 1 of section 202-c authorizes the dissolution of such a district only upon a petition which "shall be signed by resident owners of taxable real property aggregating at least one-half of all taxable real property of the district owned by resident owners ..." and only if there is no indebtedness outstanding for any

purposes of the district (emphasis added).

The term "resident owner" also appears in section 191 of the Town Law, which governs petitions with respect to establishing and extending special improvements districts. Section 191 distinguishes between "owners of taxable real property" and "resident owners". It expressly provides that "a petition for the establishment or the extension of an improvement district shall be signed by the owners of taxable real property situate in the proposed district or extension thereof, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of the proposed district or extension thereof ...[emphasis added]" It further provides that if there are "any resident owners, the petition shall include the signatures of resident owners owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the proposed district or extension owned by resident owners ...[emphasis added]."

This Office has long expressed the opinion that, absent any statutory definition, the term "resident owner", as used in section 191, means one who has established a residence within the district and who owns taxable real property therein (see, e.g., 5 Opns St Comp, 1949, p 126). We further have indicated that the evident purpose of this requirement is to ensure that those petitioning are individuals having a permanent home and owning real estate in the district and, therefore, presumably having a greater concern for the welfare of the district than persons not residing and not directly owning real property therein (id.). In addition, we have concluded that the term "resident owner" does not include corporations (see, e.g., 1971 Opns St Comp No. 71-480, unreported; 2 Opns St Comp, 1946, p 669; see also 1981 Opns St Comp No. 81-193, p 206; Wachtel v Diamond State Eng'g Corp.; 215 AD 15, 213 NYS 77, supporting the premise that ordinarily, absent a statutory definition, the word "resident" means individual or citizen; compare Town Law §209-e[3], which authorizes "owners of taxable real property", including specifically

corporate owners, to be signatories of a petition for a referendum on the establishment or extension of a district and to vote on the proposition).

We have reached a similar conclusion with respect to the meaning of the term "resident owner" as used in section 202-c (see 21 Opns St Comp, 1965, p 595). We believe it is appropriate to assume that the reference in section 202-c only to "resident owners" and the absence of any reference to "owners of taxable property", such as that contained in section 191, was intentional. Sections 191 and 202-c relate to a similar subject matter; that is, the creation and dissolution of special improvement districts.

Section 191 was enacted by the State Legislature three years prior to the enactment of section 202-c (compare L 1932 ch 622 and L 1935 ch 520), and it may be presumed that the State Legislature enacted section 202-c with knowledge of existing statutes on the same subject (see Federal Ins. Company v State Tax Comm. 146 AD2d 888, 890, 536 NYS2d 595, 596; see gen. McKinney's Statutes §222).

Therefore, it is our opinion that a petition to dissolve a lighting district pursuant to Town Law §202-c(1) is proper only if signed by the appropriate number of "resident owners"; that is, individual owners of real property who have established a domicile within the district. Corporations are not considered to be "resident owners" for this purpose. Consequently, if there are no resident owners within a lighting district for which services have been provided, the district may not be dissolved pursuant to section 202-c of the Town Law.

There is, however, another statute that provides for the dissolution or diminution of a district for which services have been provided, which does not require a petition of resident owners. Pursuant to section 198(12) of the Town Law, the governing board of a district may, subject to mandatory referendum, sell all of the "property and facilities" of a district to a town, county, city, village, joint water works system or a public authority, and dissolve the district (Town Law §198[12][b],[d]; see 1995 Opns St Comp No. 95-29, p 59). Since section 198(12) seems to presume that the district

to be dissolved has "property" or "facilities" to sell, the question becomes whether a district, such as the one at issue, whose sole asset is a service contract may utilize the procedures set forth in that section.

The word "property" is not defined in section 198(12). In the absence of such a definition, we note that, under the General Construction Law, "[t]he term property includes real and personal property" (General Construction Law §38). "Personal property" is defined to include "chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or encumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership" (General Construction Law §39). Further, when used without qualification, it has been held that the term "property" includes obligations, rights, and other intangibles (see, e.g., In re Acrylite Plastics Inc., 144 F Supp 492 [SDNY]; see also Uniform Commercial Code, Official Comment to §1-206, discussing "general intangibles").

Based on these definitions, it is our view that a service contract of a district constitutes "property" for purposes of section 198(12). Moreover, since section 198(12) authorizes sales to, inter alia, "a town", without limitation as to the location of the town, it is our opinion that section 198(12) permits a district to sell such property to the town in which the district is located in appropriate circumstances (see Town Law §2; cf., 13 Opns St Comp, 1957, p 294, in which we expressed the opinion that a town water district could not gratuitously transfer property to the town pursuant to section 198(12), but could do so for fair and adequate consideration). The town board on behalf of the town may purchase the service agreement so long as it is in furtherance of a proper town purpose (see Town Law §64[2-a]). In this instance, we note that towns are authorized to provide street lighting by contract as a town function (see,

e.g., Highway Law §327; 2 Opns St Comp, 1946, p 217) and, as noted, it appears that the town in this case already is providing street lighting as a general town activity elsewhere in the town.

Accordingly, it is our opinion that, pursuant to Town Law section 198(12), a town board on behalf of a lighting district whose sole asset is a service contract may, subject to mandatory referendum, sell the service contract to the town in which the district is located, in order for the town to include the area encompassing the district as part of its general town lighting function, and may thereafter dissolve the lighting district.^{1,2}

December 31, 2001

James T. Stokes, Esq., Town Attorney
Town of Van Buren

¹ Although not at issue here, we note that Town Law, §209-r authorizes the dissolution of special sewer, drainage and water improvement districts when a town determines it is in the public interest to manage, operate and repair certain improvements or services as a town function under Town Law, article 12-C. We also note that a town, by special act, may be authorized to dissolve a district for which an improvement has been constructed or services provided, by board motion and without submission of a petition (see, e.g., Town Law §202-c[2-a - 2-f]). Our reference to a special act is for informational purposes only, and is not a recommendation of this Office with respect to any such measure.

² For purposes of this opinion, we assume there is nothing in the service contract in question that would preclude the town board, on behalf of the district, from assigning it to the town.

OUR OFFICE



TOOLS



INITIATIVES



HELP



How would you rate our website? ★★★★★

EXHIBIT C

Exhibit C

TOWN OF CALEDONIA Proposed Water District No. 4						
Owner(s)	Petition Signer	Address	Tax ID	Yes/No/None Vote	Resident Owner (Y/N)	Assessment
					Y	\$ 108,900.00
					Y	\$ 173,200.00
					Y	\$ 157,600.00
					Y	\$ 174,600.00
					N	\$ 392,700.00
					Y	\$ 320,700.00
					Y	\$ 175,400.00
					Y	\$ 199,400.00
					Y	\$ 175,000.00
					Y	\$ 182,000.00
					Y	\$ 130,700.00
					Y	\$ 321,800.00
					Y	\$ 236,000.00
					Y	\$ 221,900.00
					Y	\$ 168,000.00
					Y	\$ 300,200.00
					Y	\$ 196,200.00
					Y	\$ 25,000.00
					Y	\$ 270,000.00
					Y	\$ 132,000.00
					Y	\$ 292,700.00
					Y	\$ 149,100.00
					Y	\$ 192,100.00
					Y	\$ 219,200.00
					Y	\$ 313,200.00
					Y	\$ 148,000.00
					Y	\$ 318,100.00
					Y	\$ 215,600.00
					Y	\$ 1,032,600.00
					Y	\$ 31,100.00
					Y	\$ 184,800.00
					Y	\$ 207,800.00
					Y	\$ 235,000.00
					Y	\$ 276,900.00
					Y	\$ 225,500.00
					Y	\$ 85,000.00
					Y	\$ 118,600.00
					Y	\$ 289,900.00
					n	\$ 170,100.00
					Y	\$ 205,100.00
					Y	\$ 70,000.00
					N	\$ 438,500.00
					n	\$ 111,800.00
					n	\$ 204,300.00
					N	\$ 1,574,200.00

EXHIBIT D

Summary of Water District No. 4 Petition Responses

Criteria 1-All Owners of Proposed Water District	
Total Assessed Value	\$ 22,437,000.00
Total Affirmed "No"	\$ 9,633,700.00
Total Affirmed and Verified "Yes"	\$ 11,370,500.00
Total "ineligible"	\$ 439,100.00
Total no response	\$ 994,700.00
Percent "yes"	50.7%
Percent "ineligible"	2.0%
Percent "no"	42.9%
Percent "no response"	4.4%
Criteria-Resident Owners of Proposed Water District	
Total Resident Value	\$ 18,870,000.00
Total Resident "Yes"	\$ 8,478,900.00
Total Resident "No"	\$ 9,633,700.00
Total Resident Ineligible	\$ 291,600.00
Total Resident "no response"	\$ 465,800.00
Percent "yes"	44.9%
Percent "no"	51.1%
Percent "ineligible"	1.5%
Percent resident "no response"	2.5%

EXHIBIT E

Exhibit E

TOWN OF CALEDONIA Proposed Water District No. 4						
Owner(s)	Petition Signer	Address	Tax ID	Yes/No/None Vote	Resident Owner (Y/N)	Assessment
					Y	\$ 108,900.00
					Y	\$ 173,200.00
					Y	\$ 157,600.00
					Y	\$ 174,600.00
					Y	\$ 320,700.00
					Y	\$ 175,400.00
					Y	\$ 199,400.00
					Y	\$ 175,000.00
					Y	\$ 182,000.00
					Y	\$ 130,700.00
					Y	\$ 321,800.00
					Y	\$ 236,000.00
					Y	\$ 221,900.00
					Y	\$ 168,000.00
					Y	\$ 300,200.00
					Y	\$ 196,200.00
					Y	\$ 25,000.00
					Y	\$ 270,000.00
					Y	\$ 132,000.00
					Y	\$ 292,700.00
					Y	\$ 149,100.00
					Y	\$ 192,100.00
					Y	\$ 219,200.00
					Y	\$ 313,200.00
					Y	\$ 148,000.00
					Y	\$ 318,100.00
					Y	\$ 215,600.00
					Y	\$ 1,032,600.00
					Y	\$ 31,100.00
					Y	\$ 184,800.00
					Y	\$ 207,800.00
					Y	\$ 235,000.00
					Y	\$ 276,900.00
					Y	\$ 225,500.00
					Y	\$ 85,000.00
					Y	\$ 118,600.00
					Y	\$ 289,900.00
					Y	\$ 205,100.00
					Y	\$ 70,000.00