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VIA ELECTRONIC MAIL

April 5, 2024

Dan Pangrazio
Town Supervisor
Town of Caledonia
3109 Main Street
Caledonia, New Yor 14423
supervisor@townofcaledoniany.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.

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

For the purposes of the 2^{nd} 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

DWIGHT E. KANYUCK

- Ken

EXHIBIT A

print key	LOC_ST_NBR LOC_ST_NAM	LOC MAIL S	S TOWN	PARCEL ZIP	OWNER NAME	PO BOX OWNER ADD	OWNER CITY	PROP CLASS ASSESS LU	GEN LU	ToC WDNo4	Parcels	Single Family Farm Va	c LandDairy Fa	rm Vacant Res
61-12.155	0 Callan	Rd	Caledonia		usa, Anne M.	0 Callan Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Υ -		1	1	
111-2.2	2516 Cider	St	Caledonia	14423 Filio	o, Lisa D.	0 2516 Cider St	LeRoy, NY 14482	240 Rural Residence	Residential	Υ		1 1		
121-14.113	0 DeNoon	Rd	Caledonia	14423 Ste	in Properties LLC,	0 DeNoon Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Υ		1	1	
111-5.1	2570 DeNoon	Rd	Caledonia	14423 Ste	in Properties LLC,	0 2570 DeNoon Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
121-14.2	0 DeNoon	Rd	Caledonia		in Properties LLC,	0 DeNoon Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Υ		1	1	
201-7	2494 DeNoon	Rd	Caledonia		in Properties LLC,	0 2494 DeNoon Rd	Caledonia, NY 14423	112 Dairy Farm	Agricultural	Υ		1		1
111-5.2	0 DeNoon	Rd	Caledonia		in Properties LLC,	0 DeNoon Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Y		1	1	
71-44	430 Gaslight	Ln	Caledonia		kin, Dennis	0 430 Gaslight Ln	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-30.1	424 Gaslight	Ln	Caledonia		kin, Michelle A.	0 424 Gaslight Ln	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-43	416 Gaslight	Ln	Caledonia	14423 Sny		0 416 Gaslight Ln	Caledonia, NY 14423	270 Mobile Home	Residential	Y		1 1		
71-32 71-33	412 Gaslight	Ln Rd	Caledonia		ab, Shirley J.	0 412 Gaslight Ln	Caledonia, NY 14423	270 Mobile Home	Residential	Y		1 1		
71-33 71-34	2862 Graney 2852 Graney	Rd	Caledonia Caledonia		mes, Justin llins, Timothy J.	0 2862 Graney Rd 0 2852 Graney Rd	Caledonia, NY 14423 Caledonia, NY 14423	210 Single Family Residence 210 Single Family Residence	Residential Residential	Y		1 1		
71-64 71-61.1	2846 Graney	Rd	Caledonia		non. Alexander P.	0 2846 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-61.2	2848 Graney	Rd	Caledonia	14423 Bird	,	0 2848 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	· V		1 1		
71-61.3	2830 Graney	Rd	Caledonia		rtis, Michael W.	0 2830 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Ÿ		1 1		
71-35	2822 Graney	Rd	Caledonia		Iter, Gerard G. Life Use	0 2822 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Ϋ́		1 1		
71-54.2	2806 Graney	Rd	Caledonia		kford, John C.	0 2806 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-36.1	2792 Graney	Rd	Caledonia		key, Robert	0 2792 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-54.112	2756 Graney	Rd	Caledonia		in, David W.	0 2756 Graney Rd	Scottsville, NY 14546	112 Dairy Farm	Agricultural	Υ		1		1
71-39.1	2660 Graney	Rd	Caledonia	14423 Sch	nunk, Stephan W.	0 2660 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-38.1	2682 Graney	Rd	Caledonia	14423 Bos	sdyk, David L.	0 2682 Graney Rd	Caledonia, NY 14423	241 Rural Residence with > 10 acres - and ag	Residential	Υ		1 1		
71-60.21	2619 Graney	Rd	Caledonia	14423 Swa	ain, Kathryn	0 2619 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-60.22	2625 Graney	Rd	Caledonia		skiel, Melanie M.	0 2625 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-7.2	2661 Graney	Rd	Caledonia		nes, William P.	0 2661 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-8	2695 Graney	Rd	Caledonia		adderdon, Greig R.	0 2695 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-18.2	2843 Graney	Rd	Caledonia		ain, Douglas P.	0 2843 Graney Rd	Caledonia, NY 14423	240 Rural Residence	Residential	Y		1 1		
71-18.4	2823 Graney	Rd	Caledonia		rgan, James W.	0 2823 Graney Rd	Caledonia, NY 14423	240 Rural Residence	Residential	Y		1 1		
71-18.321	2807 Graney	Rd	Caledonia		nell, David J.	0 2807 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-18.115	2753 Graney	Rd	Caledonia		rray, Alan J.	0 2753 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-18.114	2757 Graney	Rd Rd	Caledonia		idigan, Steven O.	0 2757 Graney Rd 0 2763 Graney Rd	Caledonia, NY 14423 Caledonia, NY 14423	210 Single Family Residence	Residential	Y Y		1 1		
71-18.113 71-18.31	2763 Graney 2791 Graney	Rd Rd	Caledonia Caledonia		rley, Kim D. bur, John P.	0 2763 Graney Rd 0 2791 Graney Rd	Caledonia, NY 14423 Caledonia, NY 14423	210 Single Family Residence 210 Single Family Residence	Residential Residential	Y		1 1		
71-16.51 71-18.51	2791 Graney 2779 Graney	Rd	Caledonia		rtford, Gary L.	0 2791 Graney Rd	Caledonia, NY 14423	240 Rural Residence	Residential	Y		1 1		
71-16.51	0 Graney	Rd	Caledonia		nes, William P.	0 Graney Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Y		1	1	
71-18.12	2743 Graney	Rd	Caledonia		les, william r. Isons, Andris	0 2743 Graney Rd	Caledonia, NY 14423	240 Rural Residence	Residential	Y		1 1	'	
71-18.322	2799 Graney	Rd	Caledonia		rner, Jason W.	213 2799 Graney Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-60.1	0 Graney	Rd	Caledonia		llum, Steven	0 Graney Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Ÿ		1	1	
71-54.114	0 Graney	Rd	Caledonia		in, David W.	0 Graney Rd	Scottsville, NY 14546	321 Abandoned Agricultural Land	Vacant	Y		1	1	
121-35.11	673 Leicester	Rd	Caledonia		kford, Robert R.	192 673 Leicester Rd	Caledonia, NY 14423	120 Farm - Field Crops	Agricultural	Ϋ́		1	1	
121-23		Rd	Caledonia		nesee & Wyoming Railroad		d Rochester, NY 14618	842 Ceiling Railroad	Transportation	ı Y		1	•	
111-4.2	840 McIntyre	Rd	Caledonia		ddock, Jonathan E.	0 840 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
111-3	824 McIntyre	Rd	Caledonia	14423 Ricl	hter, Christopher	0 824 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
111-4.1	830 McIntyre	Rd	Caledonia	14423 Bar	rett, Janey F.	0 830 McIntyre Rd	Caledonia, NY 14423	240 Rural Residence	Residential	Υ		1 1		
111-2.1	810 McIntyre	Rd	Caledonia	14423 Mar	rtin, Thomas	0 810 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
121-1.111	0 McIntyre	Rd	Caledonia	14423 Ste	in Properties LLC,	 McIntyre Rd 	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Υ		1	1	
111-11	674 McIntyre	Rd	Caledonia		eill, Patricia J.	0 674 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-40.14	639 McIntyre	Rd	Caledonia		wart, Melvin L.	0 639 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-51	629 McIntyre	Rd	Caledonia		kemeier, Scott O.	0 629 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-40.16	0 McIntyre	Rd	Caledonia	14423 Par		0 McIntyre Rd	Caledonia, NY 14423	314 Rural Vacant Lots Smaller than 10 Acres	Vacant	Y		1		1
71-50	619 McIntyre	Rd	Caledonia	14423 Par	,	0 619 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-47	609 McIntyre	Rd	Caledonia	14423 Koo	•	0 609 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-49	599 McIntyre	Rd	Caledonia		lynor, Joseph S.	0 599 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y Y		1 1	4	
111-1	0 McIntyre	Rd Rd	Caledonia		llum, Steven M.	0 McIntyre Rd	leRoy, NY 14482	105 Farm Vacant Land	Agricultural	Y		1	1	
71-52	589 McIntyre		Caledonia		elehan, Thomas David	0 589 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-46 71-40.181	571 McIntyre 580 McIntyre	Rd Rd	Caledonia Caledonia		ns, Charles H. Cabe, Patrick J.	0 571 McIntyre Rd 0 580 McIntyre Rd	Caledonia, NY 14423 Caledonia, NY 14423	210 Single Family Residence 210 Single Family Residence	Residential Residential	Y		1 1 1		
71-40.181 71-45.1	559 McIntyre	Rd	Caledonia		effer, Melissa A.	0 559 McIntyre Rd	Caledonia, NY 14423 Caledonia, NY 14423	210 Single Family Residence 210 Single Family Residence	Residential	Y		1 1 1		
71-48	549 McIntyre	Rd	Caledonia		nett, Mark T.	0 549 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-58	548 McIntyre	Rd	Caledonia		ndahl, Kevin G.	0 548 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		. ' 1 1		
71-40.171	545 McIntyre	Rd	Caledonia		lker, Thomas A. Jr	0 545 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Ϋ́		1 1		
71-40.112	542 McIntyre	Rd	Caledonia		nnuso, Joseph	0 542 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-59.12	532 McIntyre	Rd	Caledonia		ntana-Rivera, William S.	0 532 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-40.5	531 McIntyre	Rd	Caledonia		ht, Allison N.	0 531 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-40.6	492 McIntyre	Rd	Caledonia	14423 Mov		0 492 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-40.4	493 McIntyre	Rd	Caledonia	14423 Lou	ighry, Kenneth H.	0 493 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-40.8	472 McIntyre	Rd	Caledonia		rkness, David E.	0 472 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Υ		1 1		
71-59.11	508 McIntyre	Rd	Caledonia		osman, Joanne S.	0 508 McIntyre Rd	Caledonia, NY 14423	240 Rural Residence	Residential	Υ		1 1		
71-40.2	0 McIntyre	Rd	Caledonia		ighry, Kenneth H.	McIntyre Rd	Caledonia, NY 14423	314 Rural Vacant Lots Smaller than 10 Acres	Vacant	Υ		1		1
71-40.7	452 McIntyre	Rd	Caledonia		raceni, Jeffrey	0 452 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-40.3	0 McIntyre	Rd	Caledonia		ighry, Kenneth H.	0 McIntyre Rd	Caledonia, NY 14423	314 Rural Vacant Lots Smaller than 10 Acres	Vacant	Y		1		1
71-2	426 McIntyre	Rd	Caledonia		ole, Michael G.	0 426 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
71-3.12	408 McIntyre	Rd	Caledonia		Witt, Morgan	0 408 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
121-1.12	869 McIntyre	Rd	Caledonia		enzer, Joseph F.	0 869 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Ϋ́		1 1	4	
121-37	0 McIntyre	Rd	Caledonia		her, David J.	McIntyre Rd McIntyre Rd	Churchville, NY 14428	105 Farm Vacant Land	Agricultural	Y		1	1	
71-4.211	380 McIntyre	Rd	Caledonia		t, Bianca K.	0 380 McIntyre Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		ı 1	4	
71-40.131	0 Skelly	Rd	Caledonia		osman, Joanne S.	0 Skelly Rd	Caledonia, NY 14423	105 Farm Vacant Land	Agricultural	Y		1 4	ı	
71-40.135 61-18.2	2538 Skelly 2474 Skelly	Rd Rd	Caledonia Caledonia		osman, Joanne S. odhue, Robert	0 2538 Skelly Rd 0 2474 Skelly Rd	Caledonia, NY 14423 Caledonia, NY 14423	241 Rural Residence with > 10 acres - and ag 210 Single Family Residence	Residential Residential	Y		1 1 1 1		
61-16.2	2474 Skelly 2466 Skelly	Rd	Caledonia		ker, Rachel A.	0 2474 Skelly Rd 0 2466 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		. ! 1 1		
61-23	2529 Skelly	Rd	Caledonia		le, Daniel R.	0 2529 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
61-13	2507 Skelly	Rd	Caledonia		rham, Kenneth A.	0 2507 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		. ' 1 1		
61-14	2507 Skelly 2503 Skelly	Rd	Caledonia		usa, Anne M.	0 2503 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Y		1 1		
61-15	2493 Skelly	Rd	Caledonia		lard, Michele	0 2493 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Ϋ́		1 1		
61-16	2473 Skelly	Rd	Caledonia		iges, Steven G.	0 2473 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential	Ϋ́		1 1		
•	,		·		-	• •	,	,						

61-24	2463 Skelly	Rd	Caledonia	14423 Toland, Paul	0 2463 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y	•	1				
71-3.11	0 Skelly	Rd	Caledonia	14423 Poole, Michael G.	0 Skelly Rd	Caledonia, NY 14423	314 Rural Vacant Lots Smaller than 10 Acres	Vacant Y	•				1	
71-3.3	2563 Skelly	Rd	Caledonia	14423 Allen, Thomas P.	0 2563 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y	•	1				
71-1.1	2539 Skelly	Rd	Caledonia	14423 Binnert, Eugene R. Jr	0 2539 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y	•	1				
71-3.22	2551 Skelly	Rd	Caledonia	14423 Martin, Brittney Nicole	0 2551 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y	•	1				
61-22	2458 Skelly	Rd	Caledonia	14423 Curts, John C.	0 2458 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y		1				
61-18.11	0 Skelly	Rd	Caledonia	14423 Barber, Elizabeth T.	0 Skelly Rd	Caledonia, NY 14423	120 Farm - Field Crops	Agricultural Y			1			
61-19	2438 Skelly	Rd	Caledonia	14423 Argana, James	0 2438 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y		1				
61-18.12	2482 Skelly	Rd	Caledonia	14423 Barber, Elizabeth T.	0 2482 Skelly Rd	Caledonia, NY 14423	210 Single Family Residence	Residential Y		1				
	-				-			Parcels S	Sum = 94					Estimated Annual Water Use
								Single Family Home S	Sum =	74				3,700,000
								Farm Vacant Land S	Sum =		13			0
								Dairy F	arm =			2		400,000
								Vacant Resider	ntial =				4	0
								Railroad R	OW =					1 0
								Total Sum Ch	neck = 94					4,100,000
														Estimated EDU Count
														82

EXHIBIT B

Q

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

OUR OFFICE

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TOOLS

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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.

INITIATIVES ~ HELP

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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				
					Υ	S	108,900.00				
				i	Y	S	173,200.00				
				i i	Y	\$	157,600.00				
					Y	S	174,600.00				
					N	5	392,700.00				
				i i	γ	\$	320,700.00				
				1	γ	\$	175,400.00				
					Υ	\$	199,400.00				
					Υ	\$	175,000.00				
						\$	182,000.00				
					γ	\$	130,700.00				
					γ	5	321,800.00				
				1	Y	\$	236,000.00				
				1	Υ	\$	221,900.00				
					Υ	\$	168,000.00				
				ļ .	Υ	\$	300,200.00				
				i i	γ	\$	196,200.00				
				i i	γ	\$	25,000.00				
				i -	Y	5	270,000.00				
					Y	\$	132,000.00				
				-	Y	\$	292,700.00				
					Y	S	149,100.00				
					Y	Š	192,100.00				
				 -	٧	\$	219,200.00				
				₩-	Ÿ	\$	313,200.00				
				 -	γ	\$	148,000.00				
				 -	Y	\$	318,100.00				
					Y	\$	215,600.00				
					γ	\$	1,032,600.00				
					γ	\$	31,100.00				
					Y	S	184 800.00				
					Y	\$	207,800.00				
				-	Y	\$	235,000.00				
					Y	\$	276,900.00				
					Y	\$	225,500.00				
					Y		85,000.00				
				-	Ψ	\$	118,600.00				
•					Y Y	\$					
					n	\$	289,900.00 170,100.00				
					Y	\$	205,100.00				
					Y		70,000.00				
						\$	438,500.00				
					N						
					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 V	Vater District
Citteria i im o where di i roposea v	
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 Propos	ed 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 IO	Yes/No/None	Resident		Assessmen			
		ľ		Vote	Owner					
					(Y/N) Y	_	108,900.0			
				+	Y	\$	173,200.0			
				+	Y	\$	157,600.0			
				+	Y	\$	174,600.0			
				- 1-	Ÿ	Ś	320,700.0			
				+	Y	Š	175,400.0			
				T	Y	Ś	199,400.0			
					Y	\$	175,000.0			
					٧	\$	182,000.0			
					Υ	\$	130,700.0			
					Y	\$	321,800.0			
					¥	\$	236,000.0			
					γ	\$	221,900.0			
					γ	\$	168,000.0			
					Y	\$	300,200.0			
					Y	\$	196,200.0			
				-	Y	5	25,000.0			
				+	Y	\$	270,000.0 132,000.0			
					Y	\$	132,000.0			
					Y	\$	292,700.0			
					y	\$	149,100.0			
				+	Y-	\$	192,100.0			
				+	Ÿ	\$	219,200.0			
					Ÿ	Š	313,200.0			
				T	Y	\$	148,000.0			
					Υ	\$	318,100.0			
					Υ	\$	215,600.0			
					Y	\$	1,032,600.0			
					Υ	\$	31,100.0			
					Υ	\$	184,800.0			
					γ	\$	207,800.0			
					Y	\$	235,000.0			
					Y	\$	276,900.0			
					Y	\$	225,500.0			
					Y	\$	85,000.0			
					Y	S	118,600.0			
				+	Y	\$	289,900.0 205,100.0			
					Y	1 >	205,100.0			